

**HUMAN RIGHTS ABUSES RELATED TO
THE CRIMINALIZATION AND INCARCERATION OF
LGBT PEOPLE AND PEOPLE LIVING WITH HIV IN THE UNITED STATES**

**Submission to the United Nations Universal Periodic Review of
The United States of America**

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Established in 1973, Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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I. INTRODUCTION

1. Lambda Legal submits the following comments to the United Nations Universal Periodic Review of the United States of America, focusing specifically on human rights concerns surrounding the policing, detention and incarceration of lesbians, gay men, bisexuals, transgender (LGBT) people and people living with the human immunodeficiency virus (HIV). Founded in 1973, Lambda Legal is the oldest and largest United States legal organization advocating for the human rights of LGBT people and people with HIV, using high-impact litigation in courts, as well as educational and public policy work. We respond to more than 7,000 requests for assistance each year, and we have approximately 90 legal matters active at any time.
2. In the course of our work, Lambda Legal has observed rampant abuse of the rights of LGBT people and people living with HIV who interact with the criminal justice system. Those abuses include profiling LGBT young people and adults as criminals; shunting LGBT children into the “school-to-prison pipeline”; criminalizing people living with HIV; denying transgender-related and HIV-related medical care while incarcerated; damaging and dangerous custodial housing placements; and sexual abuse, including rape, while in custody.

II. LEGAL FRAMEWORK

3. The human rights violations experienced by LGBT people and people living with HIV cited below contravene the Universal Declaration of Human Rights (UDHR) Articles 5, 7, 9, 23 and 26.
4. Within the United States, key sources of law that undergird the civil rights of LGBT people and people living with HIV include the First, Fourth, Eighth and Fourteenth amendments to the United States Constitution, Title IX of the Education Amendments Act of 1972, the Americans With Disabilities Act, as amended, and Section 504 of the Rehabilitation Act of 1973.
5. The United States accepted three recommendations specific to the rights of LGBT people during the 2010 UPR: 86, 112, and 116.

III. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

6. **Policing practices lead to disproportionate and excessive incarceration of LGBT and gender-nonconforming people and HIV-affected people.**¹
7. LGBT people are disproportionately exposed to police on the streets for a range of reasons. For example, family rejection of young peopleⁱⁱ leads to homelessness or placements in shelters or other facilities destined to fail them, because they are not culturally competent to receive LGBT people.ⁱⁱⁱ Schools that do not protect students against harassment and discrimination trigger truancy and school dropout. For older LGBT people and people with HIV, discrimination in accessing employment and in the workplace^{iv} in too many instances contributes to unstable housing.

8. Once in the streets, LGBT people are disproportionately targeted by police,^v often profiled as sex workers. While it is unfortunately the case that LGBT children and adults whose rights have been otherwise abused may turn to “survival sex” to sustain themselves,^{vi} it is also frequently the case that the people we serve, particularly transgender women (and among transwomen, especially transwomen of color), are often profiled as sex workers, based simply on police perceptions of their appearance.^{vii}
9. During the first UPR of the United States in 2010, the U.S. accepted Recommendation 86, yet sex workers and LGBT people perceived to work in the sex industry continue to experience police profiling, targeting and violence.
10. Compounding abuse of the rights of LGBT people and people affected by HIV, police practices of confiscating condoms and vouchering them not as personal property but as evidence of supposed intent to engage in prostitution-related crimes has deepened exposure to criminal charges and deterred people from carrying simple, inexpensive devices proven to help protect against HIV.^{viii} Many of the people so deterred are precisely those more likely to engage in behaviors that may contribute to risk of HIV. Since 2010 Lambda Legal and representatives of sister organizations, including organizations that specifically represent sex workers and victims of sex trafficking, have met with and written letters to criminal prosecutors, district attorneys, and legislative leaders in protest. While some prosecutors have pledged to rein in charges against individuals on the street,^{ix} the piecemeal actions do not change street-level dynamics, and legislation to ban these actions has not passed.
11. We are particularly concerned that policing agencies do not have a public health agenda at their core, and are therefore unmoved by clear evidence of the damage to public health of considering unused condoms as evidence of prostitution-related crimes. We also believe that heated political attention to the scourge of human trafficking has one unfortunate effect, in that it appears to cause officials to shy away from considering legal and policy reforms that would bar use of condoms as evidence in sex trafficking prosecutions—despite the fact that victims of trafficking have raised their concerns that using condoms in this fashion truly limits the ability of people who are among the most severely abused to take a simple measure that could, even in their circumstances, protect them.^x
12. Other policing practices that take a disproportionate and excessive toll on LGBT people and people with HIV include failing to recognize or respond appropriately to violence against LGBT people, including failing to recognize or address crimes of domestic violence when inflicted by a same-sex partner.^{xi}
13. Collaterally, these policing practices discourage LGBT people and people affected by HIV from experiencing law enforcement as a resource for protection and impair cooperation with law enforcement as crime witnesses. For example, a sex worker or someone profiled as a sex worker may quite understandably hesitate to work with the police, given the dynamics described above.
14. **LGBT and gender-nonconforming students are at inordinate risk of entering the so-called “school-to-prison pipeline,” a set of dynamics that push students out of schools and into the streets, juvenile detention or criminal institutions,^{xii} in violation of the right to education found in Article 26 of the UDHR.**

15. The synergies of LGBT discrimination and race discrimination render LGBT youth of color particularly vulnerable to school push-out and criminal justice sequelae, as they are separated from educational opportunities and placed in criminal systems^{xiii}.
16. In our cases and in calls we receive, we note patterns feeding the pipeline. For example, students harassed for their sexual orientation or gender identity (“SOGI”) are isolated or sent to inappropriate alternative schools, driven from school placements rather than protected. Without appropriate official leadership and intervention to address school environments, students avoid school, attempting to stay safe. They become truant, lose educational opportunities, and are more likely to be found on the street and in encounters with law enforcement that result in juvenile and criminal records. Those who remain in school may defend themselves or fight back against harassers, with school officials subsequently punishing them for those reactions, including meting out punishments under so-called “zero-tolerance” policies that discipline and even suspend or expel students involved in altercations.^{xiv}
17. In attempts to alleviate the stress and pain of harassment and rejection, targeted students may self-medicate, perhaps with illegal substances, again leading to law enforcement action.
18. Furthermore, researchers have documented that gender-nonconforming students, particularly lesbians, receive disproportionate punishments for the same infractions gender-conforming students commit. A nationally representative sample of more than 15,000 people interviewed as teens in grades 7 through 12 and again at ages 18 to 26 showed LGB adolescents are about 40 percent more likely than other teens to be punished by school authorities, police and the courts, and that differences in the rates of misbehavior not only failed to account for the disparities, but that students who self-identified as LGB engaged in less violence.^{xv}
19. School discipline frequently engages law enforcement in the lives of LGBT young people due to widespread introduction of police department adjuncts designated “school safety officers,” who grease the pathway into juvenile detention or criminal systems when they respond to infractions that in the past would have triggered a trip to the guidance or principal’s office. Insufficient training of school safety officers, including failure to train regarding LGBT identities, exacerbates the school-to-prison pipeline for LGBT young people.
20. Relatedly, when school systems fail to support LGBT inclusion programming and safeguard against harassment (popularly called “bullying”), LGBT students may be isolated from others rather than supported.^{xvi} One of the cases Lambda Legal has litigated since 2010 involved a student who was isolated in a classroom or library as a wrongheaded “solution” to being harassed. In other instances students have been pushed into inappropriate alternative placements, e.g., referred to programs for emotionally disturbed or developmentally delayed students in order to move them from a school where they are harassed. Such isolation tactics, rather than addressing school environments, policies and practices, lead to school push-out and exposure to street policing, severely impairing LGBT young people’s ability to thrive.^{xvii}
21. Discussion of the pipeline would not be complete without referencing the toll on transgender students related to sex-segregated school facilities. We receive a steady stream of pleas for help from transgender students barred from bathrooms and locker rooms that match their gender identities. Students inappropriately shunted to other

facilities frequently end up disciplined for using or attempting to use facilities that match their identities, or when altercations arise in an unsupportive school environment.

22. **Adjunct services for offenders are not culturally competent.** Toward the end of the pipeline, we have observed that students shunted into the juvenile criminal justice system often have no access to services that are competent to serve LGBT youth. Many services assume heterosexuality or cisgender identity and cannot appropriately support LGBT young people or effectively divert them from further progression in the pipeline to incarceration as adults.
23. Supportive services such as halfway houses for adults in the criminal justice system similarly fail to serve LGBT people and even attack their identities. For example, in Spring 2014, Lambda Legal successfully represented a transgender woman when staff at the halfway house to which she was assigned post-incarceration repeatedly raided her room and confiscated any items judged remotely feminine, including body sprays, LGBT-themed magazines, makeup, clothing, a bag of curlers, and a pink shower cap. During one search, the staff told our client, in front of other residents, that she was a man and was not allowed to have feminine items. Staff refused to use feminine pronouns for her, and even threatened to return her to prison if she did not live as male.
24. In response to Lambda Legal's demand letter the facility relented, returning her belongings, pledging to refer to her with appropriate pronouns, allowing her to eat her meals with other female residents, and reassigning her to a single room. At that point, our client explained, "I found for the first time that I was able to concentrate on the real reason I was at [the facility] – treating my substance abuse and preparing myself for my release."^{xviii}
25. **Since its inception, Lambda Legal's HIV Project has championed science over stigma. Some of the most severely misguided conceptions about HIV currently play themselves out in the nation's criminal courts, where people living with HIV are exceptionalized, prosecuted for a range of behaviors, including behaviors that cannot actually transmit HIV.**
26. Dozens of states have laws specifically fashioned to create or heighten criminal penalties for people with HIV.^{xix} In other jurisdictions, prosecutors use laws that are not HIV-specific to heap extra charges on people with HIV, often in instances where there is no indication it is truly possible that HIV could have been transmitted. For example, a New York man with HIV was charged with crimes based on an altercation with police officers in which he bit an officer. He served more than five years in prison before the decision in 2012 of his successful appeal of the court's refusal to dismiss a charge of aggravated assault premised on the ruling that his "saliva, infected with the AIDS virus, is the substance that is a dangerous instrument." Lambda Legal submitted a brief analyzing the medical bases for concluding that the saliva of a person living with HIV does not constitute a "dangerous instrument" under New York Penal Law.^{xx}
27. In another HIV criminalization case, prosecutors in Michigan in 2010 augmented charges against an HIV-positive man previously accused of assault after an altercation with a neighbor. Upon learning the man was living with HIV, they added an entirely inapposite charge of "bioterrorism."^{xxi}
28. In other instances, people with HIV are charged, incarcerated, and permanently designated as sex offenders for consensual, adult sexual activity with partners who later

- assert they did not know the person they agreed to have sex with was living with HIV. In 2014 Lambda Legal argued such a case to the Iowa Supreme Court, vindicating the rights of a man initially sentenced to a quarter-century in prison and lifetime sex offender registration after a single consensual sexual encounter in which he used a condom.^{xxii}
29. The public health implications of centering the need to explore HIV status and to initiate safer sex practices (which in many instances do not constitute a legal defense to these charges) solely on people with HIV are staggering. These prosecutions telegraph to people who are HIV-negative or do not know their status that they need not inquire about their partners' status, since a person with HIV is assumed to bear the entire burden of taking preventive actions or abstaining from sexual activity entirely. Additionally, the structure of the criminal law, which looks to a "guilty mind" that knows the facts deemed relevant to the charges deters people from knowing their status—since ascertaining that one is living with HIV becomes a potential element of a crime from that moment forward.
 30. **When LGBT people are imprisoned, risk of harm skyrockets. LGBT people are overwhelmingly subjected to sexual harassment and sexual assault in detention and prisons, by other inmates and by prison staff, in violation of UDHR Article 5, which says "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."**
 31. For example, the Bureau of Justice Statistics at the Department of Justice's 2012 study of data collected the previous year showed rates of abuse approximately ten times higher for bisexual or gay inmates than for straight men.^{xxiii} Transgender inmates are particularly vulnerable.^{xxiv}
 32. **LGBT inmates are inappropriately and dangerously housed.** For example, while the Prison Rape Elimination Act (PREA) discusses a case-by-case analysis of safer housing options for prisoners, authorities have in practice defaulted to housing transgender people according to sex assigned at birth.^{xxv}
 33. Relatedly, our experience and observations show that officials overuse solitary confinement for LGBT people, including immigration detainees.^{xxvi} Known for its devastating impact on mental health, as well as practical deprivations of educational and recreational programming, solitary confinement may be used inappropriately as a "safety measure" in lieu of adequate housing, or to punish an LGBT inmate who attempts to fight off other sexually aggressive inmates.
 34. **Transgender inmates lack medically necessary healthcare, including assessments for gender dysphoria, access to hormone treatment, and access to surgery as needed.** This also constitutes "cruel, inhuman and degrading treatment" in violation of the UDHR Article 5.
 35. In some instances transgender people face "freeze-frame" policies that bar access to any treatments they cannot verify they used before incarceration—although of course treatments for other conditions (e.g., diabetes) untreated at entry or developed afterwards would be treated without question. In other instances hostile legislation publicized as "prohibiting prison makeovers on the taxpayer's dime" has blocked healthcare. And in some cases prison officials flatly refuse medically indicated treatment, perhaps in reaction to a particular individual or the substance of a conviction.^{xxvii} In any case,

convictions may legally include sentences to prison—not to deprivation of necessary medical care.

IV. RECOMMENDATIONS

36. Take measures to address profiling, including support for passing and implementing legislation such as the End Racial Profiling Act,^{xxviii} amended to additionally prohibit profiling individuals based upon sexual orientation and/or gender identity.
37. Oppose confiscation or use of condoms as evidence of prostitution-related crimes, including sex trafficking cases.
38. Resource campaigns to educate the public and government officials, including law enforcement and the judiciary, about SOGI. Continue work to ensure anti-trafficking policies do not have unintended negative impacts on harm-reduction efforts and sex workers' rights.
39. Support comprehensive anti-harassment campaigns in schools. Minimize police presence and limit police interventions in schools to situations of behavior actually constituting a crime.
40. Require SOGI cultural competency in diversion programs, halfway houses and other criminal justice services.
41. PREA, while an important step to combat prison rape, requires more extensive implementation, and its standards should be extended to the full range of lockups, police holding areas, and other places of detention. Implement true case-by-case analysis of safe housing, counteracting an apparent “default” to housing transgender people and other gender-nonconforming people according to their sex assigned at birth. Curb use of solitary confinement.
42. Influence states to decriminalize HIV and to reformulate their laws consonant with modern knowledge of HIV.^{xxix}
43. Ensure adequate healthcare for transgender prisoners.

ⁱ See, e.g., Catherine Hanssens, et al., A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV (May 7, 2014),

<http://www.americanprogress.org/issues/ext/2014/05/07/89117/a-roadmap-for-change-federal-policy-recommendations-for-addressing-the-criminalization-of-lgbt-people-and-people-living-with-hiv/>

ⁱⁱ Caitlyn Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, *Pediatrics*, 123(1), 346-352 (2009).

ⁱⁱⁱ Andrew Cray, Katie Miller, and Laura E. Durso, Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth, Center for American Progress (2013), available at: <http://cdn.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf>

^{iv} See Know Your Rights: Workplace, <http://www.lambdalegal.org/know-your-rights/workplace>; see also *Glenn v. Brumby*, 632 F. Supp. 2d 1308 (N.D. Ga. 2009), aff'd, 663 F.3d 1312 (11th Cir. 2011), *Roe v. City of Atlanta*, 456 Fed. Appx. 820 (11th Cir. Ga. 2012).

^v Joey L. Mogul, Andrea J. Ritchie and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (2011).

^{vi} National Gay and Lesbian Task Force, Lesbian Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness, 55 (2007), available at <http://www.thetaskforce.org/downloads/HomelessYouth.pdf>; J.M. Greene, S.T. Ennett, and C.L. Ringwalt, *Prevalence and correlates of survival sex among runaway and homeless youth*, 89 Am. J. Public Health 1406-1409 (1999).

^{vii} See *Doe v. Jindal*, 851 F. Supp. 2d 995, 1007 (E.D. La. 2012); Chase Strangio, Arrested for Walking While Trans: An Interview with Monica Jones (Apr. 4, 2014), <https://www.aclu.org/blog/lgbt-rights-criminal-law-reform-hiv-aids-reproductive-freedom-womens-rights/arrested-walking>

^{viii} Memorandum of Support from Lambda Legal Defense and Education Fund for Bill S.323/A.1008, available at http://www.lambdalegal.org/sites/default/files/ltr_ny_20120405_condoms-as-evidence_0.pdf; Coalition Memos of Support for Bill S.323/A.1008, <http://www.nocondomsasevidence.org/memos-of-support/>

^{ix} NY S.1379-2013; Wilson Dizard, “NYC to stop using condoms as evidence – in some cases,” Al Jazeera America (May 12, 2014), <http://america.aljazeera.com/articles/2014/5/12/sex-condoms-nyc.html>

^x Memos of Support for Bill S.323/A.1008, <http://www.nocondomsasevidence.org/memos-of-support/>, Human Rights Watch, Sex Workers at Risk: Condoms As Evidence of Prostitution in Four U.S. Cities, (2012), available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf.

^{xi} National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2012 (2013), available at http://www.avp.org/storage/documents/ncavp_2012_ipvreport.final.pdf.

^{xii} See, e.g., Jerome Hunt and Aisha C. Moodie-Mills, The Unfair Criminalization of Gay and Transgender Youth (June 29, 2012), <http://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/>. Lambda Legal has here focused on the effect of the school-to-prison pipeline on LGBT young people, but also notes the widespread effect of the pipeline on other youth of color.

^{xiii} Lambda Legal’s Protected and Served?: School Security, Policing and Discipline, <http://www.lambdalegal.org/protected-and-served-schools>

^{xiv} Lambda Legal’s letter to the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, dated December 10, 2012, available at http://www.lambdalegal.org/sites/default/files/leg_us_20121210_testimony-school-to-prison-pipeline.pdf;

Advancement Project, Alliance for Educational Justice & GSA Network, Two Wrongs Don’t Make A Right: Why Zero Tolerance is Not the Solution to Bullying 4 (June 2012), available at http://gsanetwork.org/files/aboutus/APJ-005_D5-FINALsmall.pdf; Lambda Legal’s Of Counsel, Ending the School-to-Prison Pipeline (Sept. 12, 2013), http://www.lambdalegal.org/blog/201309_of-counsel.

^{xv} Kathryn E. W. Himmelstein and Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49-57 (2011).

^{xvi} A 2011 study found that 63.5% of LGBT students felt unsafe in their school because of their sexual orientation. Not surprisingly, the result is that 1 out of every 3 LGBT students reports skipping school based on safety concerns, rendering them truant and pushing them closer to suspension and expulsion. Joseph G. Kosciw, et al., Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey* xiv (2011), <http://glsen.org/press/2011-national-school-climate-survey>.

^{xvii} See Lambda Legal’s Know Your Rights: Bullying and the Law, <http://www.lambdalegal.org/know-your-rights/youth/bullying-and-the-law>

^{xviii} See Lambda Legal and Transgender Woman Celebrate Successful Fight Against Discrimination and Harassment at Halfway House (June 10, 2014), http://www.lambdalegal.org/news/il_20140610_transgender-woman-celebrate-success; <https://www.youtube.com/watch?v=e7EwptvEKXM&feature=youtu.be>.

^{xix} Center for HIV Law and Policy, “When Sex is A Crime and Spit is a Dangerous Weapon: A Snapshot of HIV Criminalization in the United States, The Center for HIV Law and Policy,” <http://hivlawandpolicy.org/resources/when-sex-crime-and-spit-dangerous-weapon-snapshot-hiv-criminalization-united-states-center>.

^{xx} Brief available at http://www.lambdalegal.org/sites/default/files/plunkett_ny_20120319_amicus-lambda-legal-et-al.pdf; decision available at http://www.lambdalegal.org/sites/default/files/plunkett_ny_20120607_decision-ny-court-of-appeals.pdf.

^{xxi} See *People v. Allen*, No. 2009-4960-FH (Macomb County Ct., June 2, 2010); ACLU of Michigan, Bioterrorism Charge Against HIV-Positive Man Must Be Dropped, ACLU Tells Court (Apr. 1, 2010), <http://www.aclumich.org/issues/criminal-justice/2010-04/1433>; Lambda Legal’s Amicus Brief available at http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/people-v-allen_mi_20100419_amicus-lambda-legal-et-al.pdf.

^{xxii} *Rhoades v. State*, 2014 Iowa Sup. LEXIS 71 (Iowa 2014); http://www.lambdalegal.org/sites/default/files/rhoades_ia_20140613_decision.pdf

^{xxiii} Bureau of Justice Statistics at the Department of Justice National Inmate Survey 2011-2012, *available at* <http://www.bjs.gov/content/pub/pdf/pdca12.pdf> (“Among heterosexual males, an estimated 3.5% reported being sexually victimized by another inmate. In comparison, among males who were bisexual, 34% reported being sexually victimized by another inmate. Among males who were homosexual or gay, 39% reported being victimized by another inmate.”) Inmates who reported their sexual orientation as gay, lesbian, bisexual, or other were among those with the highest rates of sexual victimization in 2011-12. Among non-heterosexual inmates, 12.2% of prisoners and 8.5% of jail inmates reported being sexually victimized by another inmate; 5.4% of prisoners and 4.3% of jail inmates reported being victimized by staff. In each demographic subgroup (sex, race or “Hispanic origin,” age, and education), non-heterosexual prison and jail inmates reported higher rates of inmate-on-inmate sexual victimization than heterosexual inmates. Among inmates with serious psychological distress, non-heterosexual inmates reported the highest rates of inmate-on-inmate sexual victimization (21.0% of prison inmates and 14.7% of jail inmates).

^{xxiv} See Lambda Legal’s Toolkit for Transgender Prisoners in Crisis, *available at*

http://www.lambdalegal.org/sites/default/files/publications/downloads/transgender_prisoners_in_crisis.pdf.

^{xxv} Lambda Legal’s *Protected And Served?: Jails and Prisons*, <http://www.lambdalegal.org/protected-and-served-jails-and-prisons>.

^{xxvi} See *Testimony of Organizations Supporting LGBT Equality* (June 19, 2012) http://www.lambdalegal.org/in-court/legal-docs/ltr_sjsccrhr_20120619_solitary-confinement;

The Dangers of Solitary Confinement for Transgender Prisoners and Detainees (July 9, 2012), <http://www.lambdalegal.org/blog/dangers-solitary-confinement-transgender-prisoners-detainees>; *Lambda Legal, Immigrants’ Rights and LGBT Groups Urge Homeland Security to Protect LGBT Immigrants’ Rights in Detention Facilities* (June 8, 2011),

http://www.lambdalegal.org/news/ny_20110608_lambda-legal-immigrants; *Letter to Homeland Security Regarding LGBT Immigrants* (June 8, 2011) http://www.lambdalegal.org/in-court/legal-docs/ltr_dhs_20110608_lgbt-immigrants

^{xxvii} See, e.g., *Adams v. Fed. Bureau of Prisons*, 716 F. Supp. 2d 107; 2010 U.S. Dist. LEXIS 55344; *Fields v. Smith*, 653 F.3d 550; 2011 U.S. App. LEXIS 16152 and <http://www.lambdalegal.org/in-court/cases/fields-v-smith>; and *Kosilek v. Spencer*, 2014 U.S. App. LEXIS 2660 (1st Cir. Feb. 12, 2014).

^{xxviii} S. 1038, 113th Cong. (2013)

^{xxix} See Scott Schoettes, *Lambda Legal Calls for Halt to HIV-Based Criminal Prosecutions in Wake of Department of Justice Guidance* (July 17, 2014), http://www.lambdalegal.org/blog/20140717_lambda-legal-calls-for-halt-to-hiv-based-criminal-prosecutions; Positive Justice Project, *Consensus Statement on the Criminalization of HIV in the United States*, *available at* http://www.lambdalegal.org/sites/default/files/ltr_pjp_20120724_criminalization-of-hiv.pdf; Scott Schoettes, *It’s Time to End HIV Criminalization* (Nov. 30, 2012), <http://www.lambdalegal.org/blog/time-to-end-hiv-criminalization>