

## **Report on the United States of America Universal Periodic Review on Sexual Rights, 9<sup>th</sup> Round (November 2010)**

This report is submitted by the National Coalition for LGBT Health,<sup>1</sup> the Sexuality Information and Education Council of the United States (SIECUS),<sup>2</sup> and the Sexual Rights Initiative.<sup>3</sup> Within the broad context of sexuality and sexual rights in the United States, it deals specifically with issues affecting lesbian, gay, bisexual, and transgender (LGBT) youth and adults.

**1. Summary:** This report explores the pervasive negative social and legal norms around gender, sex, and sexuality that impact the LGBT population in the United States, where widespread and often state-sanctioned discrimination on the basis of sexual orientation and/or gender identity and expression regularly prevents LGBT people from accessing health care, education, relationship recognition, and other civil rights and benefits. Of special concern in this report are the deeply-entrenched obstructions to health care access for disadvantaged groups like the LGBT population; the health disparities associated with discrimination and a lack of access to health care, particularly the disparities affecting LGBT people who also belong to other minority groups; a lack of comprehensive and LGBT-inclusive sexuality education for youth; and the disproportionate impact of HIV/AIDS on LGBT people, particularly gay and bisexual men and transgender women of color. The report also briefly considers the lack of LGBT cultural competency in the social safety net, prison, and immigration systems, as well as the police persecution of transgender people and out-of-home LGBT youth who engage in transactional sex in order to survive. Each section of the report concludes with specific recommendations for the U.S. government.

**2. Background on Human and Civil Rights in the United States:** The United States is considered by many to be among the most advanced countries in the world in its recognition of the human and civil rights of its citizens. Despite this reputation, the U.S. government does not fully recognize international law charged with safeguarding these rights: for example, though the U.S. helped draft the United Nations Universal Declaration of Human Rights, the U.S. government has ratified only one of the two covenants that complete the International Bill of Human Rights. Moreover, dissonance between U.S. federal and state law often leads to inconsistencies and a lack of implementation and enforcement mechanisms for domestic civil rights protections. While this report focuses on the specific challenges facing LGBT people, it is important to note that many of these challenges have their roots in broader structural problems, such as racism and sexism, that affect women and minority groups in the U.S.

**3. LGBT People and the Law:** The U.S. is home to a large and well-organized LGBT movement and has many vibrant centers of LGBT life. However, LGBT people themselves are frequently silenced or erased by persistent anti-LGBT bias in American society and official resistance to recognizing the disparities affecting the LGBT population. In particular, an almost total lack of inclusion of sexual orientation and gender identity minorities in official data collection tools, including the U.S. Census and the American Community Survey, means that LGBT people are frequently ignored in government efforts to extend protections or benefits on the basis of minority status or other recognized disparity factors.

**4. When U.S. law explicitly concerns LGBT individuals, contradictions between federal and state laws concerning various aspects of the government's interest in managing diversity in sexual orientation and gender identity have resulted in an uneven patchwork of statutes, regulations, and bureaucratic practices. Of particular concern for LGBT people are inconsistencies in protections against discrimination in areas such as health care, insurance, employment, and housing; the availability of comprehensive and LGBT-inclusive sexuality education for**

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<sup>1</sup> The National Coalition for LGBT Health, a coalition of over 70 local and national organizations working in the field of LGBT health, was founded in 2000 to work with the Department of Health and Human Services on Healthy People 2010 and is currently the lead voice in the United States on issues pertaining to LGBT health, including health care reform, LGBT-inclusive data collection, and federal and state initiatives targeting health disparities.

<sup>2</sup> SIECUS, the Sexuality Information and Education Council of the United States, was founded in 1964 to provide education and information about sexuality and sexual and reproductive health. SIECUS affirms that sexuality is a fundamental part of being human, one that is worthy of dignity and respect, and the organization advocates for the right of all people to accurate information, comprehensive education about sexuality, and sexual health services. SIECUS works to create a world that ensures social justice and sexual rights.

<sup>3</sup> The Sexual Rights Initiative is a coalition that includes Mulabi – Latin American Space for Sexualities and Rights, Action Canada for Population and Development, Creating Resources for Empowerment and Action (CREA)-India, the Polish Federation for Women and Family Planning, and others.

youth; the extent of access to civil rights such as relationship recognition and adoption; and, for transgender people, the ability to access appropriate medical care and to change documents such as birth certificates and passports.

**5. The Costs of Discrimination against LGBT People:** Negative stereotypes and attitudes towards LGBT people persist throughout the United States: in 2008, more than 2,400 LGBT people were victims of crimes perpetrated against them on the basis of their perceived sexual orientation, gender identity, or gender expression, and significant underreporting means that the actual number of hate crimes against LGBT people is probably much higher than the statistics show.<sup>4</sup> In addition to high rates of bias-motivated violence, LGBT people must bear the constant stress of coping with social stigma and systemic discrimination around their sexual orientation and/or gender identity and expression, which leads to significant health disparities. Research shows that LGBT people have elevated levels of suicidal ideation, substance use, and mental health conditions such as depression.<sup>5</sup> In a system that does not support alternative family structures, these challenges increase exponentially for LGBT youth, the children of LGBT parents, and older LGBT adults. Many members of the LGBT community also belong to other communities that face substantial disparities and are thus vulnerable to cumulative negative health impacts: for example, an African American gay man faces disparities common to the African American population as well as those suffered by the LGBT population, and a transgender Spanish-speaking woman in America must navigate multiple layers of discrimination based on language, ethnicity, gender, and gender identity.

**6.** These disparities are compounded by barriers that prevent LGBT people from accessing vital health services even for routine care. Because the U.S. does not have a public health insurance system, most people access insurance either through their employer or their spouse's employer. Unfortunately, most U.S. states do not provide relationship recognition for same-sex couples, and the continued failure by Congress to pass the Employment Nondiscrimination Act (ENDA) means that LGBT people lack federal protection from employment discrimination on the basis of perceived or actual sexual orientation and/or gender identity and expression. A recent study found that 97 percent of more than 6,400 transgender respondents had been mistreated at work because of their gender identity or expression.<sup>6</sup> LGBT people are thus disproportionately affected by insurance industry practices that restrict access to coverage and are more likely than non-LGBT people to be without insurance coverage entirely.<sup>7</sup> For transgender people in particular, insurance coverage can be nearly impossible to obtain: despite statements from entities like the American Medical Association (AMA) defining transition-related care as medically necessary, many private insurers, Medicaid plans in the majority of states, and Medicare all include explicit "transition exclusions" prohibiting the provision of such care.<sup>8</sup> Transition exclusions are often expanded in practice by insurance carriers and medical providers to prevent transgender people from accessing even basic health care services. Despite the barriers that often prevent transgender people from accessing medically necessary transition-related treatment, the U.S. government currently requires them to undergo "sex reassignment surgery" (usually interpreted as genital surgery) to change the gender marker on their passports.

**7.** Such issues are symptomatic of a lack of LGBT inclusion not only in the insurance industry but also in the health care system. LGBT people are regularly discriminated against by health care providers who are not familiar with or sympathetic to their needs. Moreover, many non-discrimination laws include "charitable choice" provisions that allow religiously-affiliated institutions such as Catholic hospitals to refuse to provide services that they claim run counter to their religious beliefs, such as reproductive health services and culturally-competent care for LGBT people.<sup>9</sup> Fear of experiencing bias from providers or receiving substandard treatment as a result of their sexual orientation or gender identity often prevents LGBT people from accessing preventative care or early diagnostic services, making them more likely to delay or not seek necessary medical treatment. Though there exist scattered attempts to remedy these disparities, truly confronting them requires a level of coordination and commitment that can only be achieved by the development and dissemination of comprehensive LGBT cultural competency programs

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<sup>4</sup> National Coalition of Anti-Violence Programs. (2008). "Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States." Available from [http://transgenderlegal.org/media/uploads/doc\\_163.pdf](http://transgenderlegal.org/media/uploads/doc_163.pdf)

<sup>5</sup> Ryan, C, Huebner, D, Diaz, RM, and Sanchez, J. (January 2009). "Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults," *Pediatrics* vol. 123, no. 1, p. 346-352.

<sup>6</sup> National Center for Transgender Equality and the National Gay and Lesbian Task Force. (November 2009). *National Transgender Discrimination Survey: Preliminary Findings*. Available from [http://transequality.org/Resources/NCTE\\_prelim\\_survey\\_econ.pdf](http://transequality.org/Resources/NCTE_prelim_survey_econ.pdf)

<sup>7</sup> Center for American Progress. (December 2009). *How to Close the LGBT Health Disparities Gap*. Available from [http://www.americanprogress.org/issues/2009/12/lgbt\\_health\\_disparities.html](http://www.americanprogress.org/issues/2009/12/lgbt_health_disparities.html)

<sup>8</sup> AMA Resolution 122, available online at <http://www.ama-assn.org/ama1/pub/upload/mm/38/a08resolutions.pdf>

<sup>9</sup> Congressional Research Service. (June 22, 2001). "Comparison of Proposed Charitable Choice Act of 2001 with Current Charitable Choice Law." Available from <http://www.firstamendmentcenter.org/pdf/CRS.charitable1.pdf>

by the federal government. The ideal source for such programs, as well as a key element of a well-coordinated federal-led effort to combat LGBT health disparities, would be a dedicated Office of LGBT Health in the Department of Health and Human Services.

**8. The U.S. government should:**

- Pass the Employment Nondiscrimination Act (ENDA);
- Require all federal demographic and health surveys to add an LGBT-focused demographic question or questions that measure sexual orientation and gender identity;
- Outlaw discrimination on the basis of sexual orientation and gender identity and expression in health care access, insurance coverage, and housing;
- Remove transgender exclusions from Medicare and Medicaid programs;
- Remove the requirement that transgender people must undergo “sex-reassignment” or genital surgery before being able to change the sex on their passports;
- Develop and implement LGBT-focused competency programs, which provide information about how to better serve LGBT patients by understanding the culture and communities in which they live, throughout the federal government and in all health care centers and health-focused programs that receive federal funding;
- Create an Office of LGBT Health within the federal Department of Health and Human Services to coordinate efforts to eliminate LGBT health disparities; and
- Remove charitable choice provisions from all government-run programs to ensure that all people, regardless of religion, sexual orientation, or gender identity, are able to access appropriate health care services.

**9. Family Matters: Marriage, Domestic Partner Benefits, and Adoption**

In U.S. state and federal law, the terms “family,” “parent,” and “spouse” commonly exclude LGBT families on the basis of a lack of access to institutions such as legal marriage. Five U.S. states have removed gendered laws around marriage, allowing LGBT couples to marry, and several more offer broad protections similar to marriage for LGBT couples.<sup>10</sup> However, the majority of the U.S. population lives in one of 24 states where equality in marriage is expressly denied by constitutional amendment.<sup>11</sup> On the federal level, the 1996 Defense of Marriage Act (DOMA) explicitly prohibits the federal government from recognizing the validity of anything but heterosexual marriage, excluding same-sex and many transgender spouses from over 1,100 federal benefits and responsibilities associated with marriage, and federally-funded programs such as the Healthy Marriage Initiative exclusively support and promote heterosexual models of marriage and family creation. Many states also discriminate in adoption: almost 40 states do not allow LGBT couples to adopt a child, and others impose stringent eligibility requirements on them out of the false belief that even a single parent household is better for children than one headed by same-sex parents or a couple in which a parent is transgender.<sup>12</sup>

**10. The U.S. government should:**

- Repeal the Defense of Marriage Act (DOMA) and end gendered laws governing eligibility for federal benefits, to allow LGBT couples equal access to all such benefits;
- End or revise federal programs that exclusively promote heterosexual marriage, such as the Healthy Marriage Initiative, and end federal funding to states for such programs; and
- Prohibit discrimination against LGBT parents in adoption.

**11. LGBT Youth, Sexuality Education, and Safe Schools**

Most sexuality education programs do not cover the topics of sexual orientation or gender identity, and abstinence-only-until-marriage programs further existing prejudice against LGBT people, including LGBT youth. As a result, LGBT youth are more vulnerable to harmful behaviors, including skipping school and attempting suicide, than their heterosexual peers. Comprehensive sexuality education that includes unbiased information about sexual orientation and gender identity is a vital step toward educating individuals and changing society to promote the health and well-being of all. Moreover, all youth need access to comprehensive sexuality education that addresses a range of topics including sexual orientation and gender identity, alongside other key topics such as abstinence, effective contraception methods, healthy relationships, family and interpersonal communication skills, and decision-making skills. Unfortunately, over the past nearly thirty years, federal and state governments have spent over \$1.5 billion on

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<sup>10</sup> According to the organization Freedom to Marry, only 15 states provide some form of relationship recognition for same-sex couples.

<sup>11</sup> Freedom to Marry, <http://www.freedomtomarry.org/states> (Accessed February 18, 2010)

<sup>12</sup> Human Rights Campaign. (July 6, 2009). “Parenting Laws in the U.S” [ONLINE]. Available from [http://www.hrc.org/documents/parenting\\_laws\\_maps.pdf](http://www.hrc.org/documents/parenting_laws_maps.pdf) (Accessed February 18, 2010)

abstinence-only-until-marriage programs that, by their very nature, discriminate against LGBT people, most of whom cannot legally marry in the U.S. While the federal government has just this year eliminated funding for existing abstinence-only-until-marriage programs, previous heavy investment in this funding and the inclusion of \$250 million for such programs in the recent health care reform law has promulgated a myriad of state policies, state agencies, and community-based organizations focused on promoting abstinence until marriage, despite the fact that overwhelming evidence proves these programs to be ineffective. By assuming heterosexuality, disparaging non-traditional families, and spreading fear, shame, and inaccurate information about sexual orientation and gender identity, these programs assert that LGBT individuals and relationships are unhealthy and morally inferior and send powerful and disturbing messages to young people of all sexual orientations and gender identities. Moreover, LGBT students, especially young men who have sex with men and transgender women, are at increased risk for sexually-transmitted infections such as HIV, yet abstinence-only-until-marriage programs fail to provide these students with any realistic risk-reduction strategies. Comprehensive sexuality education, on the other hand, addresses the prevention and relationship needs of all youth, including those who identify as LGBT or those who are questioning their sexual orientation or gender identity. Moreover, leading public health and medical professional organizations support a comprehensive approach to sex education on the basis of both ethical and evidentiary considerations.

**12.** LGBT students are at higher risk for violence in school, sexual risk taking, being harassed, abusing drugs and alcohol, and attempting suicide, simply because of their sexuality and/or gender identity and the pressures that come with it. At the federal and state levels, safe school initiatives fail to be universally recognized and adopted so that all youth are free from harassment and violence in schools. In 2007, nearly nine out of ten LGBT students experienced verbal and/or physical harassment or assault at school, three-fifths felt unsafe at school because of their sexual orientation, and close to one-third skipped a day of school in the past month because of feeling unsafe.<sup>13</sup> The percentage of states with comprehensive safe school laws is also low. Only 11 states and Washington, DC protect students from bullying and harassment based on sexual orientation, and only seven states and Washington, DC protect students on the basis of gender identity and expression.<sup>14</sup>

**13.** Adolescence comes with the opportunity to establish habits and decision-making skills that form the basis for decisions about health and wellbeing for the rest of an individual's life. Unfortunately, attempts to meet the health needs of LGBT youth have historically suffered from a lack of coordinated funding and focus at the government level, and the specific needs of LGBT youth have often been left out of broader adolescent health discussions. Though it was created in 1992, the Office of Adolescent Health (OAH) was not actually funded and established until 2010. OAH is charged with coordinating all activities within HHS that relate to adolescent "disease prevention, health promotion, preventive health services, and health information and education," including program design, support, and evaluation, trend monitoring, adolescent health research projects, and training for health providers who work with adolescents.<sup>15</sup> This office provides a key opportunity to prioritize the health of LGBT young people while addressing the health needs of all adolescents, and to provide accurate and comprehensive sex education that promotes healthy behaviors and relationships for all young people, including LGBT youth.

**14. *The U.S. government should:***

- Establish funding for age-appropriate, medically accurate, and comprehensive sexuality education that discusses abstinence and contraception, avoids gender stereotypes and the stigmatization of LGBT individuals, and addresses the prevention and relationship needs of all youth;
- Require school districts that choose to offer human sexuality instruction to provide medically accurate, evidence-based, and comprehensive sex education that affirmatively includes LGBT issues;
- End federal funding for abstinence-only-until-marriage programs;
- Ensure the newly established Office of Adolescent Health addresses the specific needs of LGBT youth;
- Require schools receiving federal funding to implement a comprehensive anti-bullying policy that explicitly recognizes factors such as race, religion, sexual orientation, and gender identity and expression;
- Outlaw discrimination in schools against Gay-Straight Alliances (GSAs) and other groups that affirmatively address LGBT issues; and
- Require federally-funded training resources and other resource materials for teachers and school administrators to include sexual orientation and gender identity.

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<sup>13</sup> Gay, Lesbian, and Straight Education Network. (2008). 2007 National School Climate Survey. New York, NY.

<sup>14</sup> Ibid.

<sup>15</sup> PL 102-531

### **15. The Continuing Impact of HIV/AIDS**

Thirty years after the explosion of the HIV/AIDS epidemic in the U.S., the disease continues to take a disproportionate toll on many of America's most marginalized populations, including Black and Latino gay and bisexual men, LGBT youth and elders, and transgender women of color. Nationwide, men who have sex with men (MSM<sup>16</sup>) comprise 48 percent of the approximately one million people living with HIV and 53 percent of the almost 30,000 new HIV infections in the U.S. each year.<sup>17</sup> Despite these grim statistics, little official acknowledgment exists of the massive threat still posed by HIV/AIDS to the LGBT population in the U.S.; there is extremely limited research conducted on behavioral and structural interventions for this population, and few resources are directed towards stemming the tide of new infections. In fact, men who have sex with men are the only risk group among whom the rate of new HIV infections is increasing in America.<sup>18</sup>

### **16. The U.S. government should:**

- Fund the development and implementation of behavioral interventions to lower the rate of HIV/AIDS infection among LGBT people, especially LGBT people of color;
- Prioritize and adequately fund HIV prevention efforts that strengthen and expand outreach, education, HIV testing, and prevention programs targeting high-risk populations, especially the LGBT community;
- Fund research that addresses identified gaps in targeted HIV prevention, including for young gay men and men who have sex with men, especially those from Black or Latino communities; and
- Promote and expand evidence-based prevention measures, including ensuring access to comprehensive sex education for all school-age children as a foundation for prevention, as well as wide availability of condoms and education about their proper use.

### **17. Lack of LGBT cultural competency in government institutions**

Like other disadvantaged minority groups in America, LGBT people are disproportionately likely to encounter government institutions like the social safety net, prison, foster care, and immigration systems, where official and unofficial discrimination on the basis of sexual orientation and/or gender identity and expression is rife. Despite the popular perception that the LGBT population is wealthier than the American average, studies show that the majority of LGBT people are economically disadvantaged by factors such as employment discrimination and a lack of relationship recognition.<sup>19</sup> LGBT youth are particularly at risk of being left with few prospects as a result of familial rejection and bullying by peers that can cause them to perform poorly in school or to drop out entirely. According to one study, approximately 30 percent of LGBT youth in the U.S. have been physically abused by family members because of their sexual orientation or gender identity, and LGBT youth are estimated to comprise up to 40 percent of the homeless youth population in the U.S.<sup>20</sup> Lacking other means of support, many LGBT people, especially youth and transgender women of color, are forced to turn to criminalized activities such as sex work to survive. When transgender people are arrested, they are at high risk of mistreatment by both fellow inmates and prison staff; however, very few prisons have policies in place to provide transgender inmates with not only safe and appropriate housing but also gender-appropriate clothing (e.g. brassieres for transgender women with breasts) and access to medically necessary care, including hormone therapy.

**18.** Though LGBT asylum seekers and immigrants from all over the world continue to come to the U.S. seeking refuge from persecution or a better life, the U.S. immigration system is woefully unprepared to meet their needs. Because the federal government recognizes the validity only of heterosexual marriage, same-sex partners cannot sponsor their foreign-born partners for immigration purposes. Moreover, many claims of asylum on the basis of anti-LGBT persecution are summarily dismissed because the Department of Homeland Security (DHS) does not officially recognize gender identity, sexual orientation, or HIV status in its asylum policies.

**19.** Finally, gay men and lesbians serving in the U.S. military continue to be targeted and stigmatized by “Don’t

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<sup>16</sup> In government reports, gay and bisexual men and transgender women are often classified as “men who have sex with men” (MSM) together with heterosexually-identified men who acquired the virus through sexual contact with another man.

<sup>17</sup> Centers for Disease Control and Prevention. (March 2010). “HIV and AIDS among Gay and Bisexual Men.” Available from <http://www.cdc.gov/NCHHSTP/newsroom/docs/FastFacts-MSM-FINAL508COMP.pdf>

<sup>18</sup> Centers for Disease Control and Prevention. (March 2010). “HIV and AIDS among Gay and Bisexual Men.” Available from <http://www.cdc.gov/NCHHSTP/newsroom/docs/FastFacts-MSM-FINAL508COMP.pdf>

<sup>19</sup> The Williams Institute. (March 2009). *Poverty in the Lesbian, Gay, and Bisexual Community*. Available from <http://escholarship.org/uc/item/2509p8r5>

<sup>20</sup> Majd, K, Marksamer, J, and Reyes, C. (2009). *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*. Available from [http://www.njdc.info/pdf/hidden\\_injustice.pdf](http://www.njdc.info/pdf/hidden_injustice.pdf)

Ask, Don't Tell," the federal policy that requires LGB soldiers to hide their sexual orientation or face immediate discharge. Since the policy was instituted in 1994, more than 13,500 servicemembers have been discharged, including almost 800 mission-critical troops.<sup>21</sup> The United States is one of only two NATO members (the other is Turkey) that still maintain a ban on open service by gay, lesbian, and bisexual soldiers.

**20. *The U.S. government should:***

- Develop and implement LGBT cultural competency training for all staff at federally-funded social safety net institutions such as welfare offices, homeless shelters, and transitional housing;
- Develop and implement LGBT cultural competency training for the immigration and prison systems, as well as federal police services such as the FBI and all systems that work with refugees and asylum seekers;
- Include gender identity, sexual orientation, and HIV status as officially recognized categories in U.S. asylum policy;
- Require prison systems to implement policies for transgender inmates that include appropriate medical care and access to housing and clothing appropriate to their gender identity; and
- Repeal "Don't Ask, Don't Tell," the federal policy that prohibits gay men and lesbians from serving openly in the U.S. armed forces.

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<sup>21</sup> Servicemembers Legal Defense Network (SLDN). (2009). "About Don't Ask, Don't Tell" [ONLINE]. Available from <http://www.sldn.org/pages/about-dadt> (Accessed March 8, 2010)