

October 21, 2021

Chair Walter F. Timilty
Joint Committee on Public Safety
And Homeland Security
State House, Room 213-B
Boston, MA 02133

Chair Carlos González
Joint Committee on Public Safety
And Homeland Security
State House, Room 26
Boston, MA 02133

Re: *An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ people* (S. 1566 and H.2484)

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

Fenway Health would like to go on record IN SUPPORT of *An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ people* (S. 1566 and H.2484) and urges you to report this bill favorably.

Founded in 1971, Fenway Health advocates for and delivers innovative, equitable, accessible health care, supportive services, and transformative research and education. We center LGBTQIA+ people, BIPOC individuals, and other underserved communities to enable our local, national, and global neighbors to flourish. We are motivated by the belief that healthcare is a right, not a privilege. AIDS Action, the public health division of Fenway Health, aims to fight HIV health inequities by eliminating new infections, maximizing healthier outcomes for those infected and at risk, and tackling the root causes of HIV/AIDS.

Unfortunately, homophobic and transphobic violence is deeply embedded within the culture of incarceration. This bill seeks to reduce that harm by ensuring LGBTQI+ people have the right to safety, transparency, access to HIV prevention and treatment, and affirming programming. Additionally, this bill seeks to minimize the inappropriate and disproportionate use of solitary confinement for LGBTQI+ people.

The Fenway Institute, in its policy brief on best practices for management of incarcerated LGBTI individuals, sites the Bureau of Justice Statistics (BJS) which “repeatedly documents that gay and bisexual men and transgender women inmates are about 10 times more likely to be sexually victimized in prison than heterosexual male inmates.”¹ LGBTI inmates experience significantly higher rates of harassment and assault, compared to their heterosexual counterparts. This is a safety issue for all inmates as well as staff. The current process of cellmate assignment has no mechanism for preventing this kind of violence, leaving LGBTQI inmates vulnerable to homophobic or transphobic cellmates, which is more likely to result in physical or sexual assault. This bill would create a screening process to prevent this kind of avoidable violence. The Prison Rape Elimination Act of 2003 (PREA) codified the right of inmates to be protected from sexual harassment and abuse. While often misused and misapplied, which I will discuss later, these standards are meant to protect vulnerable individuals by several methods, one of which is repeated assessment of housing assignments for LGBTQIA+ inmates. Upholding these

¹ https://fenwayhealth.org/wp-content/uploads/TFIP-34_LGBTI-Prisoners-Brief_spreads_UPDATE-6_20_email.pdf

protections is already central to the professional obligations of correctional administrators and staff. This bill provides methods for this rule to actually protect LGBTQIA+ inmates from preventable violence.

The Bureau of Justice Statistics (BJS) reports that 1.5% of prisoners in the U.S. are living with HIV, a rate four times that of the general population.² “Many people entering prison who are HIV-infected have never been diagnosed with HIV or have been diagnosed but are not on anti-retroviral treatment.”³ HIV prevention, early diagnosis, and treatment are all essential for decreasing transmission. Best practices to reduce HIV transmission are not available to incarcerated people. Unlike other states, no harm reduction tools are offered to mitigate risk of new HIV infections in incarcerated populations. Those living with HIV need access to their medication. Those at risk for HIV need access to prevention tools, like pre-exposure prophylaxis (PrEP), a medicine that prevents HIV infection from sex or injection drug use. These resources need to be available in a timely and barrier-free way. This bill would permit HIV medication storage inside inmates’ cells (supporting adherence) and provide literature about living with HIV.

For people living with HIV (PLWH), access to medication and a treatment plan that ensures adherence is also critical. When taken properly, HIV medication can help PLWH achieve an undetectable viral load, meaning that the amount of HIV in the blood is not detectable. This means that they are also unable to transmit the virus. This is referred to as U=U (Undetectable=Untransmittable) and requires an environment that supports regular access to medication, ensuring adherence to treatment.

When taken daily, PrEP is highly effective at preventing HIV infection from sex (reduces the risk by 99%) and from injection drug use (reduces the risk by at least 74%) but is much less effective when not taken as prescribed.⁴ It is critical that people who are incarcerated have access to this common sense public health prevention measure.

As an AIDS service organization, AIDS Action, the public health division of Fenway Health, has received complaints from advocates for people who are incarcerated about lack of access to HIV medication. This happens in Massachusetts. PLWH and those at risk need access to their medication in a timely manner, without barriers. This bill would provide access to PrEP and a 30 day supply of PrEP or HIV medication upon release.

Disproportionate and inappropriate use of solitary confinement with LGBTQIA+ people is used as a first resort for problems that arise from homophobia and transphobia. This is often justified by misapplication of the PREA. These exaggerated responses cause trauma and damage mental health. This bill would reduce the misuse of solitary confinement for LGBTQIA+ people by prohibiting its use as punishment for consensual sex, or for reporting an act of sexual violence. It would also prohibit punishment for non-sexual touching such as hugs or handshakes.

² <https://bjs.ojp.gov/content/pub/pdf/hivp08.pdf>

³ https://fenwayhealth.org/wp-content/uploads/TFIP-34_LGBTI-Prisoners-Brief_spreads_UPDATE-6_20_email.pdf

⁴ <https://www.cdc.gov/hiv/basics/prep/prep-effectiveness.html>

Identifying the scope of these problems and their impact on the health of those incarcerated is depended on having good data. There is a lack of data about LGBTQIA+ people and PLWH in custody. This dearth of information prevents research, proper treatment, and community oversight. Confidential, voluntary sexual orientation and gender identity (SOGI) data needs to be collected in a culturally competent manner in order to address these public health concerns. This bill would mandate collection and publication of SOGI data, of complaints related to LGBTQIA+ people and PLWH, and of data related to the PREA.

Prisoners have the right to access LGBT materials, which is protected by the First Amendment to the U.S. Constitution.⁵ Access to affirming material and programming reduces violence and suicidality. Shame, stigma, and social alienation in prison are fueled by a hyper-masculine culture that includes homophobia and transphobia. Fear of LGBTQI+ people contributes to violence and ignores their unique programming needs. This causes avoidable trauma and undermines rehabilitative goals. The RIGHTS Act would protect incarcerated people's right to access affirming materials and support.

The RIGHTS Act addresses basic needs for incarcerated people to access necessary healthcare, identifies ways to reduce violence, harm, and avoidable trauma. Massachusetts' commitment to public health and the LGBTQIA+ community is unfulfilled until it extends to the lives and well-being of those who are incarcerated. Please support *An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ people* (S. 1566 and H.2484) and grant it a favorable report.

Thank you.

Sincerely,
Carl Sciortino
Executive Vice President of External Relations
Fenway Health

⁵ https://fenwayhealth.org/wp-content/uploads/TFIP-34_LGBTI-Prisoners-Brief_spreads_UPDATE-6_20_email.pdf
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