



November 10, 2016

The Honorable Janet T. Mills
Attorney General
Maine Office of the Attorney General
6 State House Station
Augusta, ME 04333

Dear Attorney General Mills:

We write regarding an incident that took place between October 29 and November 2, 2016. As we understand it, a young transgender man detained at Long Creek Youth Development Center (“Long Creek”) in the female unit lost his life to suicide while on suicide watch.

Given the Office of the Attorney General’s mandate to investigate deaths in correctional institutions, we write to provide information that you might find helpful about prevailing national standards regarding transgender youth and the mental health of incarcerated youth more generally.

First, we wish to emphasize as strongly as possible that the person or persons investigating this child’s tragic death should have specialized knowledge about LGBT issues. It is important to understand that because of misconceptions, stereotypes and prejudice, transgender people are particularly vulnerable among otherwise vulnerable youth.

In addition to the gauntlet of hostility or stigma from schools and others, transgender youth are often rejected by those closest to them – their own families – because of who they are. Again, this rejection of transgender and gender nonconforming individuals is particularly painful and destabilizing because it is a rejection of a core piece of an individual’s identity by those closest to them.

As the New England Journal of Medicine summarized in an article by leading pediatricians, “transgender people still face substantial discrimination. Beyond bathroom accessibility, discrimination is associated with increased stress, anxiety, depressive symptoms, post-traumatic stress disorder, substance abuse, and suicide. It is also associated with increased

risk of bullying, verbal harassment, sexual assault, and nonsexual violence, as well as decreased health care utilization.”¹

The American Psychological Association describes that “[s]light elevations in anxiety, mood, and behavioral problems have been found in a subgroup of gender diverse and transgender youth, with some cases of self-harm, suicidality, PTSD, substance abuse, and body image issues.”² As noted by the State of Maine in its fact sheet “Suicide Prevention and LGBTQ Youth,” LGBTQ youth are 1½-3 times more likely to report suicidal ideation and 1½-7 times more likely to attempt suicide than their heterosexual peers.³

The unique vulnerabilities of LGB and transgender youth mean that they are disproportionately represented in the juvenile justice system. As the Annie E. Casey Foundation explained in a report on LGBT youth in the juvenile justice system, “[s]ocial stigma, family rejection, and discrimination subject LGBT youth to increased risk of substance abuse, homelessness, school drop-out or push-out, depression and suicidality. These risks are well-documented and devastating, driving disproportionate numbers of LGBT youth in the justice system. Recent research has shown that up to 20 percent of the youth confined in America’s juvenile justice facilities identify as LGBT, questioning or gender nonconforming, which is almost three times their estimated number in the general population.”⁴

For these reasons, this person or persons should be aware of the vulnerabilities of transgender youth and best practices for transgender care, including the gender affirming standards of the American Psychological Association, the World Professional Association for Transgender Health, and the National Commission on Correctional Healthcare. The American Academy of Pediatrics endorses gender-affirming care, as does the American Psychological Association and the National Association of School Psychologists, among others.⁵ Gender-affirming care recognizes the diversity of children’s experiences and

¹ Beyond Bathrooms – Meeting the Health Needs of Transgender People. Mark A. Schuster, M.D., Ph.D., Sari L. Reisner, Sc.D., and Sarah E. Onorato, B.A., *N Engl J Med* 2016; 375:101-10 (2016).

² American Psychological Association, Fact Sheet on Gender Diversity and Transgender Identity in Adolescents available at <http://www.apadivisions.org/division-44/resources/advocacy/transgender-adolescents.pdf>

³ <http://www.maine.gov/suicide/docs/GLBTQFactSheet-2011.pdf>

⁴ Shannan Wilber, *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* at 4 (Annie E. Casey Foundation 2015), <http://www.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>.

⁵ American Academy of Pediatrics Technical “Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth,” *Pediatrics* 132, no. 1 (2013): e297–313, doi:10.1542/peds.2013-1283; American Psychological Association. “Guidelines for Psychological Practice with Transgender and Gender Nonconforming People.” *The American*

considers and assesses each child individually to support their gender transition in a developmentally appropriate manner.⁶

Not only is it critical to understand what happened with this young person, but this death raises urgent, substantial concerns about the conditions, policies, patterns and practices at Long Creek and the health, safety and well-being of transgender, lesbian, gay and bisexual youth.

Second, whomever conducts this investigation should be aware of the prevailing expert consensus regarding mental health care and treatment for all incarcerated youth. Given the death in this case, as well as the recent suicide attempts at the facility, we respectfully request that your investigation consult with nationally-recognized experts in best practices and standards of care for all incarcerated youth. All youth detained in or committed to a state correctional facility like Long Creek obviously have issues needing attention – both upon entry into the facility and that may develop during the course of their stay. All of these children must receive adequate, necessary care.

Third, the person or persons conducting this investigation must hold in the foreground the primary purposes of Maine’s juvenile justice system, as expressed in the Maine Juvenile Code: securing for each juvenile “care and guidance. . .as will best serve the juvenile’s welfare and the interests of society” and securing for juveniles taken from the care and custody of their parents “necessary treatment” and “care.” 15 M.R.S. § 3002(1). Apart from national standards, the investigation should consider whether Long Creek is in compliance with Maine law.

Fourth, we respectfully request that the investigation contemplate the following:

- Gender-affirming care for transgender youth: For transgender youth, medical consensus and best practices require treatment of youth that affirms their self-identified gender identity and expression.

Youth at Long Creek must have access to adequate medical care, including transition-related care such as access to hormones, in a timely and consistent manner. Additionally, transgender youth must receive necessary care based on their individual needs, and Long Creek may not abdicate its legal and medical responsibilities by relying exclusively on directions or recommendations from parents or legal guardians. As you know, the Commissioner has the ability to

Psychologist 70, no. 9 (2015): 832; American Psychological Association and National Association of School Psychologists, “Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools,” 2015, <http://www.apa.org/about/policy/orientation-diversity.aspx>.

⁶ Supporting and Caring for Transgender Children, American College of Osteopathic Pediatricians, American Academy of Pediatrics, and Human Rights Campaign Foundation at 16-17 (2016).

authorize necessary medical care, and it is critical that transgender youth at Long Creek are receiving appropriate care. See 34-A M.R.S. § 3809-A (“The commissioner has all the power over a juvenile detainee that a guardian has over a ward and that a parent has over a child with regard to necessary medical care.”)

- **Housing for transgender youth:** Long Creek must appropriately screen and assessing housing and program assignments for transgender and gender nonconforming youth. This screening must consider the youth’s health and safety, potential security concerns, the youth’s desired housing assignment and recommendations from the youth’s health and mental health providers. The standards promulgated pursuant to the Prison Rape Elimination Act (“PREA”) require that decisions about housing for transgender people must be made on a case-by-case basis and must include serious consideration of the youth’s views of their own safety. Placements should be reassessed regularly and include a review of safety threats experienced by the person. 28 C.F.R §§115.42, 115.242, and 115.342.
- **Employee training:** Long Creek employees must receive training on the best practices for working with transgender youth. PREA standards require employee training on communicating effectively and professionally with LGBTI and gender nonconforming individuals. 28 C.F.R. §§115.31, 115.231, and 115.331.
- **Mental health resources:** Many of the young people at Long Creek suffer from mental illness, have histories of trauma and abuse, and have experience with addiction—either their own or that of family members. Judges often send youth to Long Creek expecting that they will receive substantial care and rehabilitative services, but we are skeptical that Long Creek has all the necessary resources to provide the necessary care. This death, and recent attempted suicides, should provoke a full-scale review of whether the care and services being provided satisfy the law, as well as International Human Rights norms and standards.
- **Alternatives to Incarceration:** In our brief preliminary investigation, we have already heard that a number of young people are confined at Long Creek because there are no other placements available, and not because they are in need of punishment or are a danger to society. This is likely to be particularly true for LGBT youth, who (as discussed above) are more likely to be alienated from their family. This death demonstrates, though, that Long Creek is far from a benign option. The Department of Health and Human Services must provide alternatives to incarceration for young people who lack family support.
- **Grief Counseling:** Long Creek must immediately put in place resources to support the needs of the youth coping with this loss and with their own mental health needs. This

counseling, which should be ongoing, must address other potential attempts at self-harm and suicide contagion.⁷

We request a response to update us on the investigation of this death and on the measures immediately being taken to ensure the safety of remaining residents at Long Creek, particularly transgender youth. We will be following up shortly with a list of experts and nationally-recognized resources and organizations that we hope will guide your important work.

Thank you for your attention to this most important matter. We look forward to assisting you in conducting a prompt and thorough investigation of this matter, and are available to help in any way that you might need.

Sincerely yours,

/s/ Mary L. Bonauto

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⁷ See <http://www.nytimes.com/2014/08/14/upshot/the-science-behind-suicide-contagion.html>