

Wes Ware/ BreakOUT! PREA Testimony 9-14-11  
wes@youthbreakout.org  
o: (504) 522-5435  
c: (504) 473-2651

My name is Wesley Ware. I first wanted to thank members of the panel for convening this hearing and listening to testimony today. I am here today to speak with members of the panel regarding the treatment of lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) young people inside Orleans Parish Prison, or OPP.

I testify before this panel today in honor of those who lost their lives inside of OPP, those who were raped and violently assaulted inside OPP, and in honor of those LGBTQ young people who were not able to be with us today. I thank them for their courage for sharing their stories and recommendations for reforming OPP and for trusting me to deliver them to you.

I am the Director of *BreakOUT!*, which is a project of the Juvenile Justice Project of Louisiana (JJPL) that focuses on working with LGBTQ young people to help reform the criminal justice system in New Orleans.

Prior to founding *BreakOUT!*, I worked as an advocate and investigator at the Juvenile Justice Project of Louisiana, visiting youth in facilities across the state of Louisiana. At JJPL, from 2007 until 2010, I focused on the needs and experiences of LGBTQ young people in Louisiana's state secure care facilities, as well as local detention centers.

I have presented on this issue at numerous juvenile justice conferences and trained system stakeholders from detention line staff to juvenile judges. I published a report on the experiences of LGBTQ youth in state custody called *Locked Up & Out* and investigated cases of abuse and discriminatory treatment toward transgender women in custody. I currently sit on the Advisory Board of the Equity Project, a national initiative to reform juvenile courts to provide fairness to LGBTQ clients and am on a working group convened by the National Institute of Corrections to develop policy guidelines for LGBTQ people in prisons and jails.

While at JJPL, I began working more and more with LGBTQ young people who had been released from the system and were interested in making change in their communities. Although many were still teenagers and in high school, many had already been detained at OPP. I began working with these young people and listening to their stories of sexual assaults, threats,

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and rape in OPP. In 2011, I received the Soros U.S. Justice Fellowship to launch *BreakOUT!*

Just this past summer, *BreakOUT!* youth members, most of whom are formerly-incarcerated African American transgender women between the ages of 16 and 24, recently began conducting a survey of their peers. They began with surveying 15 young transgender women and one gay-identified partner of a transgender woman. All participants were African American, with the exception of one biracial respondent. Most of the respondents identified as straight or heterosexual and partnered with men. All respondents were homeless or marginally housed, with the majority living in motels. Most had previously or currently engaged in sex work, or prostitution, in order to survive. The surveys were conducted in person by their peers. Respondents had the choice to be anonymous without fear of incrimination.

In our preliminary results, we found that of the 90% who had been detained, over 80% had experienced some kind of sexual assault, rape, or physical attack in OPP. 85% percent did not receive medicine they were prescribed, from HIV medication to doctor-prescribed hormones necessary for their health and well-being. They were housed at various locations throughout OPP, including the Tents and House of Detention (HOD.) The majority of violence was considered “inmate verses inmate,” in areas with little staff or guard supervision.

As the Department of Justice recently released their investigative findings of the New Orleans Police Department citing examples of discriminatory policing against the LGBTQ community, in particular African American transgender women, it should come as no surprise that LGBTQ people are disproportionately represented in prisons and jails, both locally and across the country. Of course, once detained, LGBTQ people in prison often experience extreme physical, psychological, and sexual abuse and victimization.

In 2009 the American Civil Liberties Union stated in a public letter to Sheriff Marlin Gusman, “Under present circumstances, if you are gay and you happen to be arrested in Orleans Parish, we recommend you try your best to post bond as quickly as possible, because you are at risk of rape in

Orleans Parish Prison.”<sup>1</sup> This advice is well-known to members of the transgender community in New Orleans and came after an investigation that uncovered multiple complaints of rape from people housed in OPP.

Recently, I spoke with a transgender young woman who works with *BreakOUT!* about her experiences at OPP. She told me the story of Jasmine, with whom she was incarcerated in 2009. Jasmine is in her early 20’s and is a transgender woman who was housed in the tents at OPP. After repeating several times to the few staff and guards who were supervising the tents that she needed to be placed onto Protective Custody out of fear for her safety, she was brought into the shower by another inmate and raped. When she attempted to run from her attacker, she was charged with Attempted Escape.

Another youth who works with *BreakOUT!* told me the story of an Asian transgender woman he met while detained just this past March of 2011. She told him stories of surviving rape and abuse in HOD during her time incarcerated as well.

And just this past Friday, an Orleans Parish Sheriff’s Office prison guard was fired and arrested for raping and kidnapping an inmate, whom anonymous informants reported was targeted because he was LGBTQ-identified.

Lastly, I will never forget accepting an OPP phone call late at night from a gay, gender non-conforming youth I have worked with since 2007, who was raped at OPP in 2010. Today, I have the privilege of providing you with his testimony, which I will now read:

*My name is Robert. I am a twenty-two year old gender-nonconforming, gay white male. I was arrested on a robbery charge on December 14, 2010 and was in the custody of the Orleans Parish Prison (OPP) until February 26, 2011. I am 6’1”, and at the time of my arrest, I weighed approximately one hundred and thirty pounds. After my arrest, I was taken to Central Lock-up at the House of Detention (HOD), one of OPP’s facilities. I underwent a medical screening, and then I was taken to a HOD tier that had 13 cells*

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<sup>1</sup> Statement from Marjorie Esman, April 4, 2009. See “ACLU seeks to end rapes in Orleans Parish Prison” accessible at <https://www.laclu.org> and *Letter to Sheriff Marlin Gusman*, accessible at [https://www.laclu.org/PDF\\_documents/Letter\\_Gusman\\_042809.pdf](https://www.laclu.org/PDF_documents/Letter_Gusman_042809.pdf).

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*where I was placed alone in cell three. At no time during the screening process did OPP staff ask if I had any concerns about my safety.*

*There was another inmate in the cell that was next to my cell. There may have been inmates in some of the other cells on the tier, but I am not sure. The inmate in the cell next to mine attempted to interact with me when I walked by his cell on my way to the shower, but I did not engage him. On the second day of my incarceration at HOD, I was awoken in the middle of the night by that inmate trying to get into my cell with a tooth brush. I do not know the exact time, but it was sometime after lights out which occurred at 10:30 p.m. I told him to go away. When he finally managed to pry open my cell door I screamed for help. The man was around three hundred pounds and I was one hundred and thirty pounds so I was scared. Once he got in my cell he told me to pull down my pants and bend over. I said "no" and screamed for the guards at the top of my lungs. We started fighting and he managed to wrestle me face-down on the floor where he pulled my pants down and penetrated me. I was screaming as he raped me. The assault went on for about ten to fifteen minutes during which time no guard responded to my screams for help.*

*After the man finished, he got up, shut my cell door and left. I was crying because I was hurting from being overpowered by the massive man. I continued to scream for the guards following the rape. I did not go back to sleep. The guards did not respond to my screams or walk through on rounds the remainder of the night.*

*Sometime after the OPP shift change at 6:00 a.m., the following morning, I told the morning shift guard that I had been raped. The guard contacted his supervisor, and about two hours after the guard reported the incident, the supervisors and two men from the Special Operations Division (SOD) interviewed me in the presence of the supervisory guard. During the interview, one of the SOD investigators accused me of lying and called me a "faggot." He accused me of wanting to have anal sex because I was a "faggot."*

*After the interview, I was placed in a holding cell for two to three hours and then finally taken to the hospital. I had bruises on my body, and I had tears in my anus. A rape kit was completed, but I do not believe it ever made it to the New Orleans Police Department because the OPP officials who accompanied me to the hospital took custody of it from the nurse who helped*

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*treat me. I was taken back to the HOD and placed back in the same cell right next to the cell with the inmate who raped me. The OPP never provided me with any additional medical or psychological treatment while I was in its custody.*

*I filed a number of written grievances while I was in OPP, including an emergency grievance complaining about the rape as well as one complaining about being physically abuse by an OPP guard. I never received a response to my grievances.*

*OPP needs to create a classification system that doesn't mix everybody in when some people are more vulnerable than others. They should hire guards that are committed to doing their jobs properly and responsibly. The place is severely understaffed and no one is safe in there. They should also install cameras on the tiers, and they should increase both guard and inmate supervision. They should also create an effective protective custody tier; and train guards and supervisors on LGBTQ issues, and not permit its employees to call people "faggots" or "punks" or other derogatory names. Finally, the OPP should make sure that grievances are properly processed.*

*I wrote this personal testimony because I was a victim. I want people to know how I was hurt, mistreated, and violated. There are people all over the world who are in, or who have been in the same position I was in. It's wrong that a human being has to experience such events. We are supposed to be safe in our jails.*

Robert's story, along with the stories of other young people in OPP, show a disturbing pattern of rape from 2009 until now, two years after the ACLU notified Sheriff Marlin Gusman of this problem, and nearly two years after the Department of Justice issued their investigative report findings, demanding that immediate steps be taken to improve conditions inside the facility to prevent further legal action from being taken.

In 2010, *BreakOUT!* convened a meeting where the issue of OPP was discussed with LGBTQ community members, most of whom were formerly-incarcerated African American gay men or transgender women. Participants gave recommendations for reform, many of which were not unique to transgender inmates and have been echoed among other criminal justice reform advocates across New Orleans. The following recommendations are

brought to you today from this meeting, as well as from *BreakOUT!* youth members, many formerly-incarcerated members of the larger LGBTQ community in New Orleans, and other criminal justice reform advocates in New Orleans.

### **(Recommendations)**

Since there is virtually no classification system inside OPP, establishing a thorough intake process is crucial. However, the classification system cannot rely on identifying LGBTQ people and isolating them on special tier. Increasingly, other jurisdictions are looking at “best practices” for housing LGBTQ-identified people in prison, in particular transgender women. Cook County Jail in Chicago recently started housing transgender women with other women in their facilities and New Orleans’ own juvenile detention center, the Youth Study Center, recently adopted a model LGBTQ-policy as well. Classification decisions on the housing of transgender people should be done on an individualized basis and in consultation with the individual, with the majority of transgender people housed according to their gender identity, not birth sex.

Orleans Parish Prison should establish a thorough grievance and investigation system to ensure the timely response to complaints of rape, proper protocols for ensuring the safety and confidentiality of those who report abuse, and access to the courts and attorneys to report abuse. This includes addressing issues of visitations at OPP and access to phone calls and legal mail.

As overpopulation is a contributing factor to prison rape and sexual violence behind bars, Orleans Parish must also address fundamental issues with inmate population and increase staff-to-inmate ratios. Orleans Parish currently incarcerates more people per capita than any other city in the U.S. and more than fifty percent of the over 59,000 admissions to OPP in 2009 were for misdemeanor, municipal or traffic offenses. Approximately half of all inmates in OPP are pre-trial detainees charged with non-violent offenses and another twenty-five percent are State Department of Corrections prisoners who should be in State DOC facilities. New Orleans is also the only major U.S. city funding its jail on a per diem system, which creates a financial incentive to fill jail cells in order to cover fixed operational costs.

Staff at every level of Orleans Parish Prison, from administration to line staff, should be trained on LGBTQ issues, including the legal rights of LGBTQ people in prison and “best practices” for keeping LGBTQ people safe in state custody. The training should be done in accordance with national experts in the field and in consultation with local, formerly-incarcerated LGBTQ individuals.

Orleans Parish Prison should ensure proper medical care and follow-up for those in need of medical attention. This includes individuals who have been the victim of sexual assault, people who are more vulnerable because of pre-existing medical concerns, and those who are living with HIV or AIDS. This also includes ensuring mental health services for individuals who are, mentally ill or have mental health needs, as they may be more likely to be victimized, as well as services for survivors of rape or sexual assault. This also includes additional programming and services for those who may be possible perpetrators *before* incidents occur. Lastly, all services and programs should be LGBTQ-competent and culturally-competent.

Orleans Parish Prison should increase its accountability mechanisms to the community. This includes access to family visits and attorney visits to communicate abuses and increased accountability to the public regarding reforms and implementation. Orleans Parish Sheriff’s Office should consider convening regular meetings with community members, including LGBTQ young people with experiences in OPP.

Orleans Parish Sheriff’s Office should ensure immigrant victims of sexual assault or rape can safely come forward by not submitting to hold requests from U.S. Immigration and Customs Enforcement (ICE) so that individuals are able to come forward without the fear of facing a removal proceeding.

In addition, language barriers should be addressed so that non-English speaking individuals can communicate concerns during intake and classification, request intervention if they are being sexually victimized, as well as report issues of sexual assault or rape after it occurs.

### **(Conclusion)**

It is critical to understand that reducing rape and sexual abuse and improving conditions for LGBTQ people in OPP cannot happen in a vacuum. We

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cannot improve conditions at Orleans Parish Prison without addressing the larger problem and the city's reliance on incarceration. OPP is overcrowded with dismal conditions, and serious health and safety concerns, including rape and death, the last reported death occurring just this past June. New Orleans has one of the highest violent crime and murder rates in the U.S. as well as the highest incarceration rate and one of the most violent jails in the country. Clearly, our approach to criminal justice and the safety of those who are incarcerated is not working.

It is apparent that in addition to the recommendations already stated, we need federal oversight of our jail to realize full reform.

On behalf of Robert and the countless other people who have survived rape behind the bars of Orleans Parish Prison, I urge you today to act on our recommended reforms.