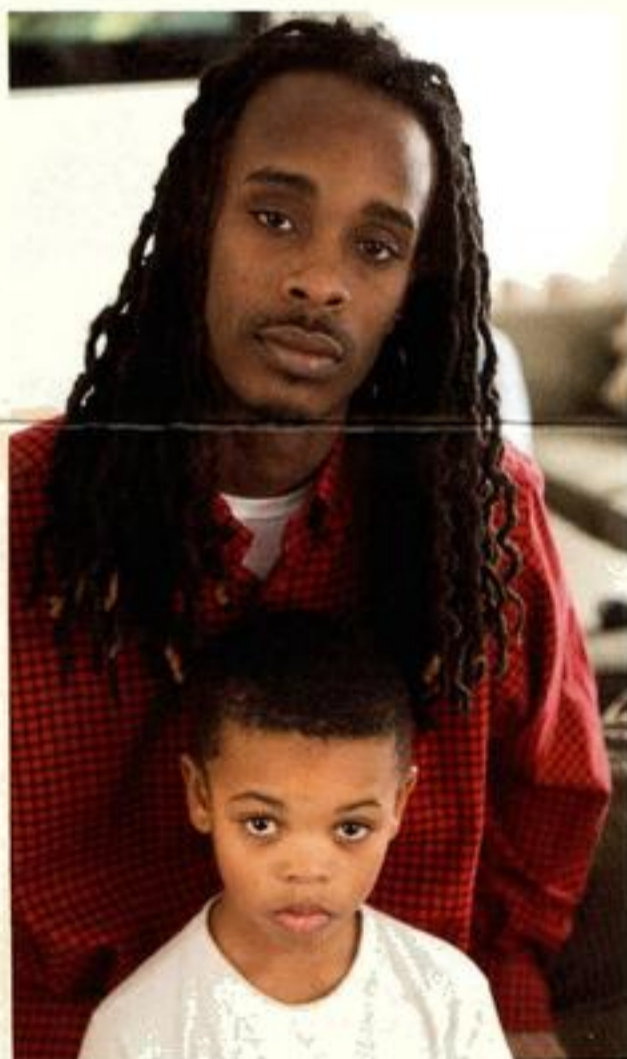


# Ending America's Addiction to Incarceration

Driven by the “War on Drugs” and the “tough on crime” policies of the 1980s and 1990s, America’s prisons are now glutted with nonviolent offenders, the mentally ill, the elderly, drug addicts, and children charged as adults. Further, the resurgence of debtors’ prisons has put thousands in jail solely for being too poor to pay fines for traffic tickets and other minor offenses.

Because of discriminatory laws and biased enforcement, people of color are vastly overrepresented in the criminal justice system. More African Americans are behind bars today than were enslaved in 1850, and an estimated one in three black men can expect to spend time in state or federal prison in his lifetime.



All Americans are paying the price for our addiction to jailing people: amid fiscal austerity, incarceration and related costs are the second-fastest growing category of state budgets.

Thanks in part to ACLU advocacy, policy-makers from across the political spectrum are waking up to the moral and fiscal perils inherent in mass incarceration. We are collaborating with conservatives, independents, and progressives to push for thoughtful de-incarceration policies that stem the flow of people into prisons and reduce the number of people already there. Smart, effective reform is possible.

When DeMarcus Sanders (shown here with his son) was arrested for marijuana possession, he spent a month in jail, owed thousands of dollars in fines, and lost his job and driver’s license. The ACLU’s report, *The War on Marijuana in Black and White*, clearly shows how the war on drugs reflects our failed criminal justice system: it’s racist, ineffective, and too harsh on low-level offenses.

## Advancing Criminal Justice Reform

- The ACLU was a key player in two landmark U.S. Supreme Court cases: *Gideon v. Wainwright* (1962), guaranteeing all defendants the right to an attorney, and *Miranda v. Arizona* (1966), guaranteeing a suspect’s “right to remain silent” when taken into custody.
- In 2010, President Obama signed the Fair Sentencing Act into law. This legislation, championed by the ACLU, dramatically reduced the 100-to-1 sentencing disparity between crack and powder cocaine and eliminated mandatory minimum sentencing for simple possession of crack cocaine.
- In 2014, we led the successful effort to pass Proposition 47 in California, the pioneering initiative that decriminalized low-level offenses and diverted funds from prisons to education and social programs.
- Also that year, the ACLU co-founded Clemency Project 2014 at the request of the U.S. Department of Justice to identify federal prisoners serving extreme sentences for low-level crimes who are eligible for release under new policies.
- We have repeatedly sparked national discussions with headline-generating reports: *The War on Marijuana in Black and White*, which revealed staggering racial disparities in marijuana arrest rates nationwide; *A Living Death*, which exposed the use of life-without-parole sentences for nonviolent offenses; and *War Comes Home*, about the excessive militarization of police in America.



## MASS INCARCERATION

The ACLU is committed to realizing a fair criminal justice system. With well over 2 million incarcerated people, the United States has earned the disgraceful distinction of being the world's largest jailer—ahead of China and Russia—and racial bias infects the entire system. Through litigation, public education, and legislative advocacy, our goal is to reduce the population of incarcerated people by 50 percent. We envision a criminal justice system that is fair and free of racism, keeps our communities safe, uses fiscal resources wisely, and respects the rights of all who come into contact with it.

## Unjustly Sentenced

**At age 26, Douglas Ray Dunkins Jr. was convicted of conspiracy to possess and distribute crack cocaine.**

No drugs were seized, and he was convicted largely based on the say-so of others connected to the case who received reduced sentences in exchange for their testimony. This was a first-time nonviolent drug offense. But because Douglas had two prior petty theft convictions, he was sentenced to life without parole—the judge's hands were tied by mandatory minimum sentencing laws.

Now 50, Douglas has been in prison for 25 years and remains separated from his three grown daughters.

More than 3,200 people are serving life for nonviolent offenses, some as trivial as shoplifting three belts.

We exposed their plight in our 2013 report, *A Living Death: Life Without Parole for Nonviolent Offenders*. Soon after its publication, President Obama commuted the sentences of four people we profiled, and the U.S. Department of Justice asked us to co-found Clemency Project 2014, to increase commutations for certain federal prisoners serving extreme sentences.

The ACLU represents Douglas in his clemency petition—which includes a recommendation by Douglas' sentencing judge for his release; we hope to make him a free man before President Obama leaves office.



Douglas Ray Dunkins Jr. (back row, center) with his family. His daughters were ages one, five, and six when he was incarcerated. They are now in their twenties.

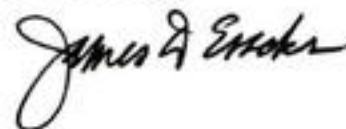
IX to investigate and remedy overlapping sexual harassment or gender-based harassment.

Russlynn Ali, Department of Education Office of Civil Rights, Guidance on Combating Bullying (October 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; *see also* Catherine E. Lhamon, Department of Education Office of Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

Deliberate indifference to severe harassment and bullying of LGBT students also violates the Fourteenth Amendment. *See, e.g., Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) (“Reasonable persons in the defendants’ positions . . . would have concluded that discrimination against [a public school student] based on his sexual orientation was unconstitutional.”); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134-35 (9th Cir. 2003). It is therefore incumbent on school officials to take claims of LGBT-related harassment seriously, and work hard to fully and effectively resolve them. *See Flores* at 1135-36 (“Failure to take any further steps once [the school administrator] knew his remedial measures were inadequate supports a finding of deliberate indifference”); *Martin v. Swartz Creek Cmty. Schools*, 419 F. Supp. 2d 967, 974 (E.D. Mich. 2006) (“[If] the school district’s efforts . . . did not abate the frequency or severity of [anti-gay bullying], [the ineffective remedy] might alone create a jury question of whether the school was deliberately indifferent.”)

With this information in mind, we urge you to investigate and respond appropriately to the LGBT-related harassment that may be occurring at your school or schools. Please do not hesitate to contact the ACLU if you have any questions about this letter or if we can be of any assistance to you. We can be reached at 212-549-2673.

Sincerely,



James D. Esseks  
Director  
ACLU Lesbian Gay Bisexual Transgender & HIV Project

Students and parents: Feel free to use this letter as an advocacy tool in your own school.

December 7, 2015

Dear Principal or Superintendent:

You have been presented with this letter because one or more of your schools may be failing to protect lesbian, gay, bisexual, or transgender (LGBT) students from severe bullying and harassment. It is your legal responsibility to investigate such cases of bullying, both physical and verbal, and ensure that harassment stops and your school is a safe learning environment for all students.

Public schools that fail to adequately protect LGBT students from severe bullying and harassment can be held liable under Title IX and the Equal Protection Clause. Cases that have determined school districts are liable for anti-LGBT bullying as a result of their deliberate indifference have led to damages awards and settlements as high as \$1.1 million. *See, e.g., Flores*, 324 F.3d 1130 (awarding \$1.1 million in damages and attorneys' fees); *Nabozny*, 92 F.3d 446 (awarding \$962,000 in damages); *Dickerson v. Aberdeen School Dist. No. 5*, No. 3:10-cv-5886 (W.D. Wash. 2010) (awarding \$100,000 in damages); *Theno v. Tonganoxie Unified School Dist. No. 464*, 404 F.Supp.2d 1281 (D. Kan. 2005) (awarding \$440,000 in damages and attorneys' fees); *Henkle v. Gregory*, 150 F.Supp.2d 1067 (D. Nev. 2001) (awarding \$451,000 in damages); *Vance v. Spencer*, 231 F.3d 253 (\$220,000 in damages); *Putman v. Bd. of Educ. of Somerset Ind. Schools*, No. 6:00-cv-00145 (E.D. Ky. 2000) (awarding \$135,000 in damages).

Under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681, schools may be held liable if they act with deliberate indifference in failing to protect students from severe peer harassment on the basis of sex. *See Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999). Harassment based on a student's gender identity, sexual orientation, or failure to conform to sex stereotypes is a form of harassment based on sex under Title IX. *See Videckis v. Pepperdine Univ.*, No. CV 15-00298 DDP JCX, 2015 WL 1735191, at \*7 (C.D. Cal. Apr. 16, 2015); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150 (N.D.N.Y. 2011). The U.S. Department of Education issued guidelines on bullying in 2010 that further confirm the responsibility of public schools to take seriously the harassment of students on the basis of their actual or perceived LGBT status. The guidelines state,

When students are subjected to harassment on the basis of their LGBT status, they may also . . . be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title

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## **Open Letter to Schools About Addressing Anti-LGBT Bullying** <sup>[1]</sup>

This open letter to principals and superintendents explains why it's illegal under federal law for public schools to ignore anti-LGBT harassment of students.

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**Source URL:** <https://www.aclu.org/legal-document/open-letter-schools-about-addressing-anti-lgbt-bullying>

### **Links**

[1] <https://www.aclu.org/legal-document/open-letter-schools-about-addressing-anti-lgbt-bullying>

December 4, 2015

Dear Principal or Superintendent:

You have been presented with this letter because at least one of your schools may have a policy prohibiting students from wearing clothing or accessories with slogans or symbols expressing support for acceptance and fair treatment of lesbian, gay, bisexual, or transgender (LGBT) people (e.g., a t-shirt with the slogan "Gay, Fine By Me," or a rainbow wristband, or sticker). Any such rule violates the First Amendment and must be rescinded immediately.

The U.S. Supreme Court has made clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gates." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969) (upholding rights of high school and middle school students to wear black armbands to exhibit their disapproval of the Vietnam War). As long as it is not lewd and does not constitute a threat of violence, a student's speech may be lawfully censored only if it would substantially disrupt the work of the school or interfere with the rights of others. *Tinker*, 393 U.S. at 513.

There is nothing lewd, violent, or disruptive about a student peacefully displaying his or her support for fairness and equality for LGBT people. In *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008), a school board banned students from displaying rainbows, pink triangles, and pro-gay slogans such as "Gay Pride," "I Support My Gay Friends," "Pro-Gay Marriage," and "Sexual Orientation is not a choice. Religion, however, is." The district court held that the Board's censorship violated the First Amendment and subsequently ordered the district to pay \$325,000 for the students' legal fees and expenses.

The School Board in *Gillman* tried to justify censorship by claiming that the LGBT-positive expressions were sexually suggestive or lewd. The court in *Gillman* rejected this argument as "an obvious mischaracterization of the speech." 567 F. Supp. 2d at 1377. Instead, the court found that the school had improperly "imposed an outright ban on speech by students that is not vulgar, lewd, obscene, plainly offensive, or violent, but which is pure, political, and expresses tolerance, acceptance, fairness, and support for not only a marginalized group." *Id.* at 1370.

The School Board in *Gillman* also rejected the school's argument that the speech could be censored because it would allegedly cause disruption. The court explained that "student expression may not be suppressed simply

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because it gives rise to some slight, easily overlooked disruption, including but not limited to a showing of mild curiosity by other students, discussion and comment among students, or even some hostile remarks or 'discussion outside of the classrooms' by other students." *Id.* at 1359 (internal quotation marks and citations omitted). "Obviously, political speech involving a controversial topic such as homosexuality is likely to spur some debate, argument, and conflict. Indeed, the issue of equal rights for citizens who are homosexual is presently a topic of fervent discussion and debate . . . . The nation's high school students, some of whom are of voting age, should not be foreclosed from that national dialogue." *Id.* at 1374.

To comply with the law, you must ensure that your policy permits students to express their support for the respect, equal treatment, and acceptance of LGBT people regardless of the conflicting personal views of faculty, staff, students, or parents.

Please do not hesitate to contact the ACLU if you have any questions about this letter or if we can be of any assistance to you. We can be reached at 212-549-2673.

Sincerely,



James D. Esseks  
Director  
ACLU Lesbian Gay Bisexual Transgender & HIV Project

Students and parents: Feel free to use this letter as an advocacy tool in your own school.



Published on *American Civil Liberties Union* (<https://www.aclu.org>)

## **Open Letter to Schools about LGBT Censorship** <sup>[1]</sup>

A letter to principals and educators explaining the legal requirement that public schools allow students to wear clothing or accessories with slogans or symbols that express support for LGBT people and issues.

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**Source URL:** <https://www.aclu.org/letter/open-letter-schools-about-lgbt-censorship>

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