UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

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Authors

Advancement Project

Forward Together

JLUSA

Partners

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Contact Information

Center for American Progress
1333 H Street, NW, 10th Floor
Washington, DC 20005
202-682-1611
www.americanprogress.com

Movement Advancement Project (MAP)
2215 Market Street
Denver, CO 80205
1-844-MAP-8800
www.lgbtmap.org

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FOREWORD

Five years ago, Beacon Press published *Queer (In)Justice: The Criminalization of LGBT People*, a book which provided a comprehensive examination LGBT people in the criminal legal system. Now, this report, *Unjust*, makes a critical contribution to our collective understanding of the wide-ranging impacts of criminalization and mass incarceration. *Unjust* collects the latest research highlighting the experiences of LGBTQ people within the criminal legal and immigration detention systems, describes cutting-edge programs, and makes urgent recommendations for change.

This report pulls together documentation by grassroots groups, national studies, and academic research to unearth and examine evidence of ongoing and pervasive discrimination against LGBTQ people throughout the criminal legal system, from entry to exit. It also highlights the latest chapters in the long history of LGBTQ people's resistance to criminalization, turning a spotlight on both individual experiences and collective organizing campaigns.

In reading this report, two principles are essential to keep in mind, both of which draw directly on decades of work done by the organizations highlighted in the Historical Context sidebar on the next page. First, it is beyond dispute that the story of criminalization and mass incarceration in the United States is overwhelmingly one targeting Black people, people of color, immigrants, people labeled with mental illness or addiction, and low-income people—including the LGBTQ people who share these identities or characteristics. The reality is, as much of the research cited within this report confirms, that LGBTQ youth and people of color, transgender and gender nonconforming people, and low-income and homeless LGBTQ people make up the overwhelming majority of the individuals whose experiences animate these pages.

The experiences of LGBTQ people are both similar to and distinct from those of the communities they are a part of. Their stories are inseparable from and an integral part of the larger story of race, gender, immigration, poverty, ableism and the criminal legal system. There is a distinct danger in understanding the criminalization of LGBTQ people as a process somehow distinct from and unrelated to these larger frameworks, affecting LGBTQ people in isolation, only through discrimination based on sexual orientation or gender identity. Conversations around criminalization of LGBTQ people should neither be framed nor read as an isolated, additional, or competing narrative, but rather situated in a broader systemic understanding of policing and punishment of gender and sexuality in service of maintaining structures of power based on race, poverty, ability, and place.

The second core principle is alluded to in the report's conclusion: that the system is not necessarily broken at all, but rather working exactly as it is intended to. Put another way, policing and punishment along the axes of race, poverty, ability, gender and sexuality are intrinsic to the operation of the criminal legal system at every stage, and have been throughout its history. Of course, this understanding should not keep us from working to reduce the harms worked by the system on individual lives and communities, for instance by advancing the recommendations of this report. But it should give us pause, and urge us to confront the reality that the criminal legal system is in many instances structured to produce violence and punishment rather than to afford protection and safety for people of color and low-income people, including LGBTQ people.

This report comes at a time of unprecedented attention to the impacts of mass incarceration in the United States. It also comes at a time of unprecedented opportunity, as reflected by bipartisan efforts to reform key aspects of the criminal legal system and by the May 2015 report of the President's Task Force on 21st Century Policing, which recommended several measures that would specifically address LGBTQ experiences of profiling and discriminatory treatment.

The hope is that this comprehensive examination of LGBTQ experiences from first contact with police through re-entry can both inform larger conversations about criminalization of the broader communities LGBTQ people are a part of, and simultaneously highlight the ways in which LGBTQ people's experiences must shift our overall strategies, goals, and outcomes. The hope is also that this report will inspire LGBTQ advocates to deepen their engagement in and support for broader struggles against mass incarceration, and against criminal legal responses to poverty, addiction, and mental illness. It is not enough to advocate for non-discrimination based on sexual orientation and gender identity in the application of criminal law, or to seek reforms specific only to LGBTQ people. It is essential to keep in view the broader harms experienced by all individuals targeted for discriminatory enforcement of criminal laws, all who experience violence and deprivation throughout the criminal legal system and all who face denial of opportunities upon re-entry. And it is essential to center the leadership and experiences of LGBTQ people–and specifically LGBTQ youth, people of color and low-income people–directly impacted by criminalization within larger efforts to radically re-envision safety and justice for all members of our communities.

Andrea J. Ritchie
Senior Soros Justice Fellow and co-author *Queer (In)Justice: The Criminalization of LGBTQ People in the United States*

The Report in Historical Context By Andrea J. Ritchie

This report draws and builds on a growing body of work documenting and analyzing the experiences of LGBTQ in the criminal legal system. For the past two decades, grassroots groups like the Audre Lorde Project, Community United Against Violence (CUAV), FIERCE, Queer to the Left, Queers for Economic Justice, the Sylvia Rivera Law Project, and the Transgender Law Center led the way documenting and organizing around LGBTQ people's experiences with policing and punishment at the intersections of race, poverty, gender and sexuality. In 2005, drawing on the expertise of organizers on the ground across the country, Amnesty International released *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States*, one of the first national reports on the subject. And in 2009, the Equity Project released the groundbreaking *Hidden InJustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts*.

More recently, grassroots and national organizations from Streetwise and Safe (SAS) to Lambda Legal, BreakOUT! to the National Coalition of Anti-Violence Programs, the Young Women's Empowerment Project to the National Center for Lesbian Rights, and Make the Road New York to the National Center for Transgender Equality, to name just a few, have conducted community-based research to further reflect the experiences of LGBTQ people in the criminal legal system. Simultaneously, a growing number of academics, service providers, government statisticians, and policymakers have focused on these issues, providing new data and perspectives. Thanks to this long legacy of work lifting up the lived experiences of criminalized LGBTQ people, we are in a time of unprecedented attention to LGBTQ people's experiences of policing, prisons, and immigration detention.

This report also comes at a time of unprecedented policy advocacy rooted in the experiences of criminalized LGBTQ people. In 2013, over 50 LGBTQ, civil rights, racial justice, anti-violence and civil liberties organizations came together to develop a national LGBT criminal justice advocacy agenda. These recommendations were published in 2014 as *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV* by the Center for Gender and Sexuality Law at Columbia University, the Center for American Progress, the Center for HIV Law and Policy and Streetwise and Safe (SAS). Since then, dozens of grassroots groups and national organizations have come together into a federal LGBTQ Criminal Justice Working Group to advance the *Roadmap* recommendations.

Most importantly, this report comes at a time of unprecedented mobilization by and for LGBTQ people directly impacted by policing and criminalization, as reflected by the Get Yr Rights Network, a national network of organizations sharing resources and strategies to challenge the criminalization of LGBTQ youth and their communities founded by Streetwise and Safe (SAS) and BreakOUT!, and by efforts to lift up the experiences of Black LGBTQ people targeted for police violence through the #SayHerName and #BlackLivesMatter campaigns.

Unjust benefits from these legacies and builds on these groundbreaking efforts in this unique historical moment. The work that informed and made this report possible remains critically necessary, and continues to merit our attention, amplification, and resources in order to ensure that efforts to end the criminalization of LGBTQ people and our communities is both driven by and accountable to those on the front lines of the fight.

EXECUTIVE SUMMARY

The criminal justice system in the United States is broken. Police departments around the country are grappling with continued incidents of profiling and excessive force. Jails and prisons are overflowing and disproportionately filled with people of color, low-income people, and people struggling with mental illness—many of whom pose little safety threat. Meanwhile, people who were formerly incarcerated face incredible challenges simply trying to make a living and rebuild their lives.

Among the many population groups that pay an especially high price for the failures of the U.S. criminal justice system are LGBT people, including LGBT people of color and low-income LGBT people.

- According to the National Inmate Survey, in 2011-2012, 7.9% of individuals in state and federal prisons identified as lesbian, gay, or bisexual, as did 7.1% of individuals in city and county jails. This is approximately double the percentage of all American adults who identify as LGBT, according to Gallup (3.8%).[a]
- Sixteen percent of transgender and gender non-conforming respondents to the National Transgender Discrimination Survey indicated they had spent time in jail or prison, with higher rates for transgender women (21%) and lower rates for transgender men (10%).[b] Comparatively, about 5% of all American adults will spend time in jail or prison during their lifetimes.[c]
- In a 2015 survey of young people at seven juvenile detention facilities across the country, an estimated 20% identified as LGBT or gender non-conforming, including 40% of girls and 14% of boys.[d] This is over two times the percentage of all youth who identify as LGBT or gender non-conforming (an estimated 7-9%).[e]

As this report makes clear, efforts to reform the criminal justice system must address the experiences of LGBT people, particularly LGBT people of color. The report documents how pervasive stigma and discrimination, discriminatory enforcement of laws, and discriminatory policing strategies mean that LGBT people are disproportionately likely to interact with law enforcement and enter the criminal justice system. It also shows how LGBT people are treated unfairly once they enter the justice system and are disproportionately likely to be incarcerated and face abuse once incarcerated. Lastly, the report focuses on how LGBT people face additional challenges in the struggle to rebuild their lives after experiences with law enforcement—and particularly time spent in a correctional facility.

ENTERING THE SYSTEM: Three Factors Lead to Increased Criminalization of LGBT People

The report looks at three factors that increase the chances that an LGBT person will be stopped or arrested by police and pushed into the system. These are:

- **Discrimination and stigma** in society, workplaces, families and communities force many LGBT people into untenable situations. LGBT young people are often pushed out of homes and schools because of family rejection, harsh and discriminatory school discipline policies, and other factors—leaving these youth to fend for themselves on the streets. In addition, LGBT adults may be unable to make ends meet because of discrimination in many areas of life. For example, discrimination can make it more difficult to earn a living, find safe shelter and long-term housing, access affordable health care, and meet other basic necessities. As a result, LGBT people are at increased risk of becoming homeless and/or relying on survival economies, which in turn leaves LGBT people vulnerable to encounters with law enforcement and, ultimately, criminalization. For example, one in five (20%) of transgender people in men's prisons in California had been homeless just prior to their incarceration.[f]

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[a] Allen J. Beck et al., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12," (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013), 2011–12, http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf.

[b] Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

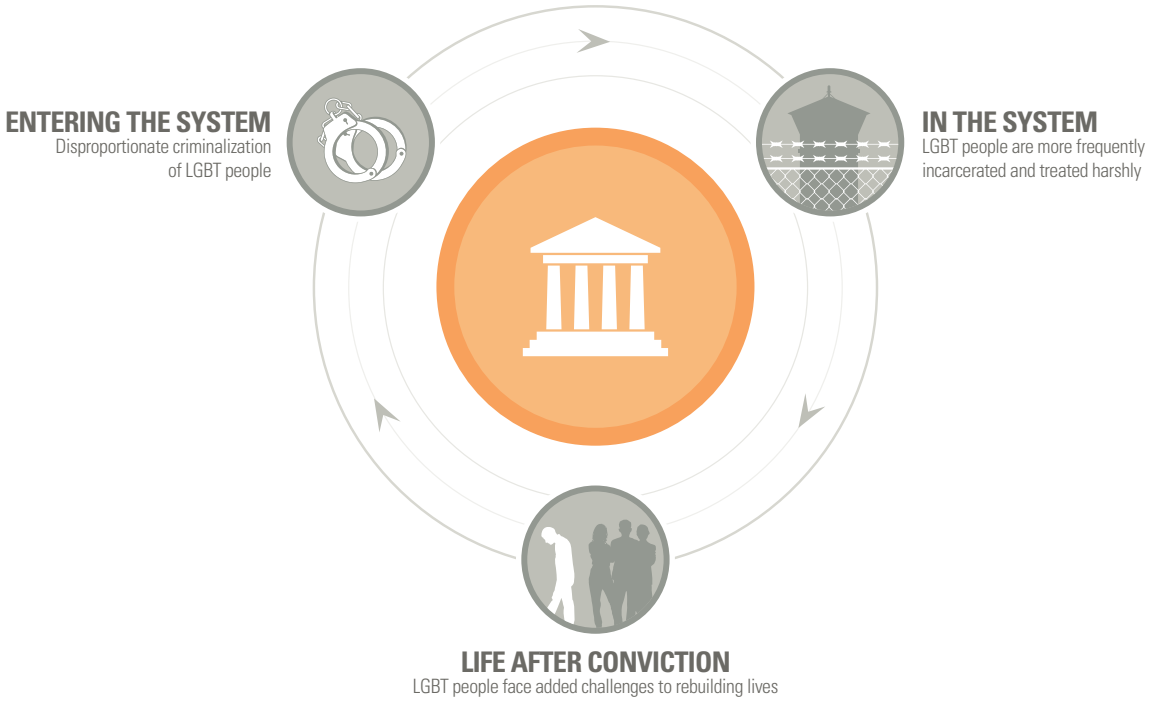
[c] Allen J. Beck and Thomas P. Bonczar, "Lifetime Likelihood of Going to State or Federal Prison," (Bureau of Justice Statistics, March 6, 1997), http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1042.

[d] Angela Irvine, "Time to Expand the Lens on Girls in the Juvenile Justice System," *National Council on Crime & Delinquency*, March 26, 2015, http://www.nccdglobal.org/blog/time-to-expand-the-lens-on-girls-in-the-juvenile-justice-system.

[e] Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, "On the Streets: The Federal Response to Gay and Transgender Homeless Youth," (Center for American Progress, June 2010), https://www.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouthhomelessness.pdf.

[f] Lori Sexton, Valerie Jenness, and Jennifer Sumner, "Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons," University of California, Irvine, June 10, 2009, http://ucicorrections.seweb.uci.edu/files/2013/06/A-Demographic-Assessment-of-Transgender-Inmates-in-Mens-Prisons.pdf.

Unjust: How the Broken Criminal Justice System Fails LGBT People



- **Discriminatory enforcement of laws criminalizes LGBT people's lives.** Discriminatory criminalization of LGBT people happens in numerous ways. HIV criminalization laws, for example, rely on outdated science and are enforced based on stigma. The result is that people living with HIV are in constant fear of being prosecuted and jailed. In a study from prosecutions under California's HIV criminalization statutes, 99% of individuals charged were ultimately convicted, and nearly all served time in prison or jail.[g] In addition, state indecency laws are enforced based on stereotypes and disproportionately target LGBT people engaged in consensual sex. Last but not least, drug law enforcement disproportionately targets people of color and low-income people, including LGBT people.
- **Harmful policing strategies and tactics push LGBT people into the criminal justice system.** How police enforce the law results in certain communities becoming targets. Police may launch a crackdown on "undesirable" behavior, which results in an unfair spike in arrests of LGBT people. In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by the police.[h] Officers also may use force or abuse their power during interactions with LGBT people and people of color, in particular, resulting in sexual and physical abuse, misconduct, neglect, and even death. Recent years have seen increased attention to the toll of harmful policing strategies on communities of color, low-income people, and LGBT people, many of whom are also people of color and/or low-income.

IN THE SYSTEM: LGBT People Are More Frequently Incarcerated and Treated Harshly

Within the criminal justice system, LGBT people face two main challenges:

- **Discrimination in legal proceedings.** When the criminal justice system operates as it should, people are charged, tried, and sentenced without bias. But too frequently, LGBT people are unfairly tried. Their sexual orientation and gender identity are often used against them by prosecutors, judges, and even defense attorneys. In a survey of LGBTQ youth engaged in survival sex in New York City, 44% reported their experience with court

[g] Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," (The Williams Institute, December 2015), http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-December-2015.pdf.

[h] BreakOUT! and the National Council on Crime & Delinquency, "We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color," 2014, http://www.youthbreakout.org/sites/g/files/g189161/f/201410/WE%20DESERVE%20BETTER%20REPORT.pdf.

personnel as negative, including being called by incorrect pronouns or hearing negative comments about their gender identity or sexual orientation.[i] LGBT people often do not receive adequate counsel or representation—and they can face substantial discrimination from juries. As a result, LGBT people are overrepresented in juvenile justice facilities, adult correctional facilities, and immigration detention facilities.

- **Unfair and inhumane treatment in jails, prisons, and other confinement facilities.** LGBT people are frequently placed in solitary confinement, and transgender people are regularly placed in facilities that do not conform to their gender identity; a 2015 report found that 28% of LGB people in prison had been placed in solitary confinement during the past year compared to just 18% of heterosexual people in prison.[j] LGBT people who are placed in confinement facilities disproportionately encounter harsh and unsafe treatment by staff and fellow inmates, insufficient access to comprehensive, competent health care and supportive services, and other challenges. Several studies find incredibly high rates of sexual assault. For example, 24% of transgender people in prisons and jails reported being sexually assaulted by another inmate compared to 2% of all inmates.[k]

LIFE AFTER CONVICTION: LGBT People Face Added Challenges to Rebuilding Their Lives

The report explores two primary post-conviction challenges for LGBT people:

- **Lack of support for LGBT people in probation, parole, and re-entry programs.** LGBT people often face unique needs for support in finding housing and jobs and accessing essential services. They experience discrimination at high rates and frequently lack family support, and transgender people in particular may need additional assistance finding appropriate health care. Rarely do probation, parole, and re-entry programs take into consideration the discrimination that LGBT people experience in many areas of life, including employment, housing, and public accommodations.
- **Having a criminal record harms LGBT people's ability to support themselves and be a part of their families and communities.** The challenges for individuals with criminal records are substantial in the United States and touch every aspect of one's life. In many ways, these individuals continue to be punished for their crimes long after they have completed their sentences. For people who already struggle with pervasive stigma and discrimination, such as LGBT people and people of color, a criminal record compounds daily discrimination to create substantial barriers to rebuilding one's life and avoiding future interactions with the criminal justice system. For LGBT immigrants, regardless of immigration status, having a criminal record can easily lead to deportation.

Fixing a Broken System

America's criminal justice system is under a spotlight. High-profile instances of police misconduct, combined with high rates of incarceration for nonviolent offenses, and shocking rates of recidivism for formerly incarcerated people, have made criminal justice reform the rare issue where there is widespread, bipartisan agreement that change is needed. *Unjust: How the Broken Criminal Justice System Fails LGBT People* documents the unique criminal justice challenges facing LGBT people and makes the case for changes that will create a more just system for the LGBT population.

The report provides high-level recommendations focused on: 1) reducing the number of LGBT people, particularly LGBT people of color and low-income LGBT people, who come into contact with law enforcement; 2) improving access to justice for LGBT people and eliminating abusive and inhumane conditions of confinement; and 3) creating an environment in which LGBT people with criminal records can rebuild their lives and be positive influencers of change in their communities.

As the nation continues to debate how to fix the criminal system, it is critical to explore solutions that will improve conditions and advance the cause of equality for all people. That includes America's 9 million LGBT people who are at increased risk of having their lives and life chances destroyed by the current system.

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[i] Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex," (Urban Institute, September 2015), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf.

[j] Allen J. Beck, "Use Of Restrictive Housing In U.S. Prisons And Jails, 2011–12," (Bureau of Justice Statistics, October 23, 2015), http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5433.

[k] Allen J. Beck, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 – Supplemental Tables," (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2014), http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

Glossary

- **Lesbian, gay, and bisexual (LGB).** The terms lesbian and gay refer to a person's sexual orientation and describe people who are attracted to individuals of the same sex or gender. The term bisexual also refers to a person's sexual orientation and describes people who can be attracted to more than one sex or gender.
- **Transgender.** The term transgender is independent of sexual orientation and describes individuals whose sex assigned at birth is different from who they know they are on the inside. At some point in their lives, many transgender people decide they must live their lives as the gender they have always known themselves to be, and transition to living as that gender.
- **Gender identity and gender expression.** Gender identity is a person's deeply felt inner sense of being male, female, or along the spectrum between male and female. Gender expression refers to a person's characteristics and behaviors such as appearance, dress, mannerisms and speech patterns that can be described as masculine, feminine, or something else. Note that gender identity and expression are independent of sexual orientation, and transgender people may identify as heterosexual, gay, lesbian, or bisexual.
- **Gender non-conforming.** This report uses the term gender non-conforming to describe a person who has, or is perceived to have, gender-related characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender non-conforming women may or may not also identify as lesbian, gay, bisexual, or transgender.
- **Intersex.** The term intersex is used to describe biological conditions in which a person is born with a reproductive or sexual anatomy not usually associated with the typical definitions of female or male.
- **People of color.** In some cases, this report uses the term people of color to refer broadly to African American or black, Latino/a or Hispanic, Asian/Pacific Islander, Native American, and other non-white people in the United States. This term is not meant to suggest a singular experience. Wherever possible, this report reports statistics disaggregated by race or ethnicity. Please note that when discussing data from a particular survey, we use the same terms used by the survey instrument (e.g., Hispanic or Latino, or American Indian or Native American).
- **Queer.** The term queer is an umbrella term used by individuals to describe their sexual orientation and/or gender identity, frequently with an understanding of their identity as fluid. Some people who identify as gender non-conforming in some ways, but may or may not identify as transgender, may also use this term.
- **Two-Spirit.** In some Native American cultures and communities, the term "Two-Spirit" refers to individuals having a blend of female and male spirits in one person.[1] Given that this term emphasizes an individual's gender within a community and culture, it is frequently distinguished from the LGBT identities.

Other key terms are defined as they arise throughout the text. The terms above are used frequently and throughout this report.

Note, in general, we use the acronym LGBT to describe individuals who identify as lesbian, gay, bisexual or transgender. In some instances, however, we add the letter "Q," representing queer. Some people may use this term to describe their sexual orientation and/or gender identity. When used in this report, it is because the specific survey or individual used the term "queer."

What is the Criminal Justice System?

This report explores the experiences of LGBT people in their encounters with the criminal justice system. However, there isn't a single "criminal justice system." Rather than being one large system, the criminal justice system in the United States—and its related facilities designed to detain people, including juvenile detention facilities, jails, and prisons—is a patchwork of overlapping and intersecting federal, state, and local justice and correctional systems.

Law enforcement officials—such as police, sheriffs, state police, and federal agents—enforce federal, state, and local laws or ordinances. They work with government prosecutors to bring charges against individuals who have violated the law. Individuals awaiting charges, who are on trial, or who are awaiting sentencing may be housed in local city or county jails. Depending on the sentence, they may be moved to state or federal prisons, but may also serve their sentences in a jail.

The system for young people who are charged with violating juvenile statutes is similar but separate with its own facilities, courts, and legal advocates. And while it is not part of the criminal justice system, the immigration system in the United States functions as a legal system in many ways, relying on immigration enforcement officers, immigration courts and attorneys, and immigration detention facilities.

How an individual interacts with the criminal justice system depends on who they are, where they are located, and what the potential crime or offense may be. For example:

- A minor in most states arrested for truancy or shoplifting may be held in a local city or county jail while awaiting charges and then appear before a juvenile court judge. Depending on the sentence, a youth may receive community supervision or be placed in a juvenile justice facility overseen by a city, county, or state correctional department.
- Adults, on the other hand, may be placed in a city or county jail while awaiting charges and a trial, and then be sentenced to either jail or state prison. In some cases, adults may serve time in a federal prison.
- An undocumented immigrant who is arrested by police or detained by immigration officials may be held in immigration detention while awaiting deportation proceedings, asylum applications, or other judgments.

Individuals who receive community supervision, such as probation, as well as those who are released from jail, prison or juvenile justice facilities, may be supervised through the parole system.

UNJUST:
HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

ENTERING THE SYSTEM

Disproportionate criminalization of LGBT people

IN THE SYSTEM

LGBT people are more frequently incarcerated and treated harshly



LIFE AFTER CONVICTION

LGBT people face added challenges to rebuilding lives

INTRODUCTION

A gay teen is forced from his home by his parents because of his sexual orientation and is harassed and arrested by police for sleeping on the street. A black transgender woman walking to the grocery store is arrested under suspicion of prostitution just because of her gender identity. A bisexual parolee can't find a home because she's not legally protected from housing discrimination and she also has a criminal record. A lesbian woman in prison is assaulted by a correctional officer. A transgender woman who is an undocumented immigrant is placed in a men's facility, in isolation, simply because she is transgender.

These are the experiences of many lesbian, gay, bisexual, and transgender (LGBT)[a] people across the United States. Despite comprising an estimated 3.8% of the adult U.S. population,[2] LGBT people are overrepresented in the criminal justice system (see infographic on page 7). They are frequently targeted by and vulnerable to increased criminalization and abuse by law enforcement. They regularly experience assault and violence in correctional settings. And they face extraordinary challenges to rebuilding their lives upon release from the system, both because of their criminal record and because they are LGBT.

But the experiences of LGBT people in the U.S. criminal justice system remain largely hidden, even as the national conversation in the United States about the need for reform has flourished.[3] Current conversations about problems in criminal justice focus on police interactions, profiling, and excessive force; the ballooning prison population and conditions in confinement settings and immigration detention facilities; and employment and other challenges for individuals with a criminal record. Reform efforts are currently aimed at addressing clear racial and economic disparities in enforcement and sentencing, as well as the ways in which mental health care has increasingly become the responsibility of the criminal justice system. As this report makes clear, these reforms also must address the experiences of LGBT people, particularly LGBT people of color impacted by both racial and ethnic discrimination and sexual orientation and gender identity discrimination.

This report joins a clarion call for change in the nation's approach to criminal justice. It outlines the ways in which LGBT people are disproportionately and negatively impacted by the system and provides high-level recommendations for policy change at the federal, state, and local levels. It also includes profiles of initiatives and policies that are improving the lives of LGBT people and their interactions with the criminal justice system. Look for the "spotlight" icon throughout the report for these programs and initiatives.

The report is divided into three sections as follows:

Entering the System: The first section explains how pervasive stigma and discrimination, discriminatory enforcement of laws, and discriminatory policing strategies mean that LGBT people are disproportionately likely to interact with law enforcement and enter the criminal justice system. Stigma and discrimination in society, workplaces, families, and communities force many LGBT people into difficult situations, such as homelessness and survival economies. This leaves LGBT people vulnerable to over-policing and criminalization. These problems are exacerbated by discriminatory enforcement of the law, as LGBT people are disproportionately likely to have their lives criminalized. In many cases, it isn't only an individual's sexual orientation or gender identity that brings them under surveillance or at increased risk of interaction with police, but rather the combination of being LGBT along with other factors such as race, ethnicity, and stereotyping by police.

In the System: Section 2 examines the ways in which LGBT people are treated unfairly once they enter the justice system and are disproportionately likely to be placed in correctional or detention facilities. The section also describes how LGBT people in these facilities are frequently abused, disrespected, and left vulnerable to violence. Discrimination in courts and by court staff, prosecutors, and judges reduces the chances that LGBT people receive adequate representation and just treatment in the court system. And, once LGBT people enter jails, prisons, and other confinement facilities, including both correctional and immigration detention facilities, their physical, mental, and emotional well-being is jeopardized and consistently disregarded by correctional staff and federal, state, and local laws and regulations. While the same could be said of many individuals in the system, the degree to which LGBT people are treated unjustly while in confinement is higher than it is for many of their non-LGBT peers.

[a] See page vi for a definition of these terms, which we use as an umbrella to include individuals who may identify as lesbian, gay, bisexual, transgender, queer, gender non-conforming, and/or Two-Spirit.

UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE



ENTERING THE SYSTEM

Disproportionate Criminalization of LGBT people

Discrimination and stigma push LGBT adults and youth into the criminal justice system

Discriminatory enforcement of laws criminalizes LGBT people

Harmful policing strategies and tactics target LGBT people



IN THE SYSTEM

LGBT People are More Frequently Incarcerated and Treated Harshly

Discrimination in legal proceedings results in increased incarceration of LGBT people

Unfair and inhumane treatment in prisons, jails, and detention facilities for LGBT people



LIFE AFTER CONVICTION

LGBT People Face Added Challenges to Rebuilding Lives

Lack of support in probation, parole, and re-entry programs make it more difficult for LGBT people to re-enter society

Impact of a criminal record limits opportunities for LGBT individuals with records

Life After Conviction: The final section of the report shows how LGBT people face additional challenges in the struggle to rebuild their lives after experiences with law enforcement—and particularly time spent in a correctional facility. The section connects these struggles to ongoing discrimination and barriers facing LGBT people not only because of their criminal records but also because they are LGBT. On the whole, many parole, probation, and re-entry programs are understaffed, underfunded, and focus heavily on employment. These programs largely ignore the wide range of challenges—and substantial barriers—facing LGBT people when it comes to securing basic necessities such as food and shelter and reunifying with their families. The system also fails LGBT people, as it does most formerly incarcerated or detained people, when it comes to helping them access education and steady employment. All too often, the system leaves LGBT people struggling and vulnerable to being arrested again, serving additional time in prison, and never outliving a criminal record.

LGBT People are Overrepresented in the Criminal Justice System

It is estimated that one in three adults in the United States, or more than 70 million people, have been arrested or convicted for a serious misdemeanor or felony.[4] The criminal justice system in the United States is broken for many people, including people of color (see the infographics on page viii and 4-5). While similar statistics are not available for the LGBT population, several studies find that LGBT people are more likely to be incarcerated than the general population, as shown in the infographic on page 6.

- According to the National Inmate Survey, in 2011-2012, 7.9% of individuals in state and federal prisons identified as lesbian, gay, or bisexual, as did 7.1% of individuals in city and county jails.[5] This is approximately double the percentage of all adults in the United States who identify as LGBT, according to Gallup (3.8%).[6]
- The National Inmate Survey also found that in 2011-2012 there were approximately 5,000 transgender adults serving time in prisons and jails in the United States.[7]
- Sixteen percent of transgender and gender non-conforming respondents to the National Transgender Discrimination Survey indicated they had spent time in jail or prison, with higher rates for transgender women (21%) and lower rates for transgender men (10%).[8] Comparatively, about 5% of all American adults will have spent time in prison during their lifetimes.[9]
- In a 2015 survey of young people at seven juvenile detention facilities across the country, an estimated 20% identified as LGBT or gender non-conforming, including 40% of girls and 14% of boys.[10] This is more than two times the percentage of all youth who identify as LGBT or gender non-conforming (estimated 7-9%).[11]

In all, there are an estimated 9 million people in the United States who identify as lesbian, gay, bisexual, and/or transgender.[12,b] LGBT people in the United States are diverse—one in three identify as a person of color.[13] They live throughout the United States, comprising anywhere from 2.6% of the population in Birmingham, Alabama, to 10.0% in the District of Columbia.[14]

[b] As noted in the glossary, all individuals have both a sexual orientation and a gender identity. Thus it is possible for an individual to identify as transgender and not identify as lesbian, gay, or bisexual, or to identify as both transgender and lesbian, for example.

THE MASSIVE AND BROKEN CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES

TODAY, AMERICA HAS

2.2 MILLION ADULTS

CURRENTLY IN PRISON OR JAIL



5% OF THE WORLD'S **POPULATION**

— *BUT* —

25% OF THE WORLD'S **PEOPLE IN JAIL OR PRISON**



1 IN 3 ADULTS HAVE BEEN ARRESTED OR CONVICTED FOR A SERIOUS **MISDEMEANOR** OR **FELONY**

1 IN 35 ADULTS IS CURRENTLY UNDER SUPERVISION (IN **JAIL**, **PRISON**, OR ON **PROBATION** OR **PAROLE**)

Sources: Glaze and Kaeble, "Correctional Populations in the United States, 2011"; Travis, Western, and Redburn, The Growth of Incarceration in the United States; Emsellem and Ziedenberg, "Strategies for Full Employment Through Reform of the Criminal Justice System."

BLACK COMMUNITIES BEAR THE BRUNT OF THE SYSTEM'S DYSFUNCTION

ARRESTED, SUSPENDED, AND STOPPED



BLACK STUDENTS ARE **3X** AS LIKELY TO BE SUSPENDED FROM SCHOOL AS WHITE STUDENTS



72% OF ALL STOPS BY CHICAGO POLICE WERE OF BLACK PEOPLE, WHO COMPRISE JUST **32%** OF THE CITY'S POPULATION

IMPRISONED AND DETAINED



BLACK MEN ARE IMPRISONED AT **6X** THE RATE OF WHITE MEN



BLACK WOMEN ARE IMPRISONED AT **2X** THE RATE OF WHITE WOMEN

40% OF YOUTH IN THE JUVENILE JUSTICE SYSTEM ARE BLACK

ONLY 14% OF YOUTH NATIONWIDE ARE BLACK

Sources: Civil Rights Data Collection, U.S. Department of Education Office for Civil Rights, "Data Snapshot: School Discipline"; ACLU of Illinois, "Stop and Frisk in Chicago"; Carson, "Prisoners in 2013"; Rovner, "Disproportionate Minority Contact in the Juvenile Justice System."

LGBT PEOPLE ARE OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM

IN THE UNITED STATES

3.8% OF ADULTS IDENTIFY AS LGBT

9 MILLION ADULTS

IN PRISONS AND JAILS

2X MORE LIKELY

7.9%

OF ADULTS IN PRISONS IDENTIFY AS LGBT

7.1%

OF ADULTS IN JAILS IDENTIFY AS LGBT

IN JUVENILE DETENTION FACILITIES

2X MORE LIKELY

20% OF YOUTH IDENTIFY AS LGBT

(COMPARED TO 7-9% OF YOUTH OVERALL WHO ARE LGBT)

Sources: Gates and Newport, "LGBT Percentage Highest in D.C., Lowest in North Dakota"; Mallory et al., "Ensuring Access to Mentoring Programs for LGBTQ Youth"; Beck et al., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12"; Irvine, "Time to Expand the Lens on Girls in the Juvenile Justice System."

SECTION 1: ENTERING THE SYSTEM: THREE FACTORS LEAD TO INCREASED CRIMINALIZATION OF LGBT PEOPLE

Lesbian, gay, bisexual and transgender (LGBT) people face frequent, pervasive stigma and discrimination in the United States—by individuals, institutions, and government officials, laws, and systems.[15] Recent progress has been made for the LGBT community, particularly as marriage is now a nationwide reality for same-sex couples.[16] By no means, however, are LGBT people free from legal inequality, institutional and societal discrimination, and social stigma.[17] Indeed, research finds that LGBT people are more likely to live in poverty, to experience bouts of unemployment and lower wages, to be refused needed health care, and to have poorer health than non-LGBT people.[18]

As shown in the graphic on page 6, LGBT people also are overrepresented in the criminal justice system. The reasons are complex, but we focus on three key factors that increase the chances that an LGBT person will be stopped or arrested by police and pushed into the system: pervasive stigma and discrimination in society; discriminatory laws and enforcement; and discriminatory policing strategies.



Discrimination and stigma in society, workplaces, families and communities forces many LGBT people into untenable situations. LGBT young people are often pushed out of homes and schools because of family rejection, harsh and discriminatory school discipline policies, and other factors—leaving these youth to fend for themselves on the streets. In addition, LGBT adults may be unable to make ends meet because of discrimination in many areas of life. For example, discrimination can make it more difficult to earn a living, find safe shelter and long-term housing, access affordable health care, and meet other basic necessities. As a result, LGBT people are at increased risk of becoming homeless and/or relying on survival economies, which in turns leaves LGBT people vulnerable to encounters with law enforcement and, ultimately, criminalization.



Discriminatory enforcement of laws criminalizes LGBT people's lives. Discriminatory criminalization of LGBT people happens in numerous ways. HIV criminalization laws, for example, rely on outdated science and are enforced based on stigma. The result is that people living with HIV are in constant fear of being prosecuted and jailed. In addition, indecency laws are enforced based on stereotypes and disproportionately used to target LGBT people engaging in consensual sex. Last but not least, drug law enforcement disproportionately targets people of color and low-income people, including LGBT people.



Harmful policing strategies and tactics push LGBT people into the criminal justice system. How police enforce the law results in certain communities becoming targets. Police may launch a crackdown on "undesirable" behavior, which results in an unfair spike in arrests of LGBT people. Officers also may use force or abuse their power during interactions with LGBT people and people of color, in particular, resulting in sexual and physical abuse, misconduct, neglect, and even death. Recent years have seen increased attention to the toll of harmful policing strategies on communities of color, low-income people, and LGBT people, many of whom are also people of color and/or low-income.

KEY TERM: Survival Economies

Out of desperation, many populations seek to earn money or obtain shelter or food in ways that run them afoul of the law. Also referred to as "underground economies," these activities include selling or trading sex, selling drugs or other items, shoplifting, or theft.

ENTERING THE SYSTEM: DISPROPORTIONATE CRIMINALIZATION OF LGBT PEOPLE



DISCRIMINATION & STIGMA

LGBT people are pushed into the system by:

- Family Rejection and Negative Child Welfare System Experiences
- Unsafe Schools and School-to-Prison Pipeline
- Employment, Housing, and Healthcare Discrimination
- Homelessness
- Unemployment and Poverty
- Inability to Update ID Documents
- Lack of Social Services



DISCRIMINATORY ENFORCEMENT OF LAWS

LGBT people disproportionately impacted by:

- HIV Criminalization Laws
- Laws Criminalizing Consensual Sex
- Drug Laws



HARMFUL POLICING STRATEGIES & TACTICS

LGBT people experience negative policing strategies, including:

- Quality-of-Life and Zero-Tolerance Policing
- Policing of Gender Norms
- Aggressive Enforcement of Anti-Prostitution Statutes
- Stop-and-Frisk
- Discrimination and Violence When Seeking Assistance
- Abuse and Brutality



Discrimination and Stigma

Stigma and discrimination in society, in communities, and in families force many LGBT people into untenable situations, pushing them into interactions with law enforcement and the criminal justice system. This section looks at the ways in which discrimination and stigma increase criminalization of LGBT young people and LGBT adults.

The Effects of Discrimination and Stigma on LGBT Youth

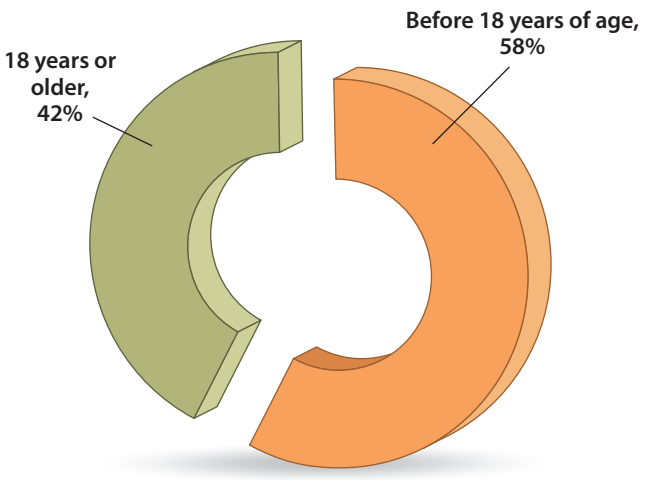
Young people in the United States are "coming out" at younger and younger ages.[19] The Williams Institute estimates that there are approximately 3.2 million young people between the ages of 8 and 18 who identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ).[c,20] More than six in 10 (61%) of these young people are girls, and 39% are boys; more than half (52%) identify as youth of color.

Many LGBT young people struggle with receiving the support and love they need from their families, their schools, and their communities. When young people are disconnected from these important sources of support, the chances rise that they will have run-ins with law enforcement. In fact, the Williams Institute estimates that of the 3.2 million LGBTQ youth in the United States, half are "at risk" of being arrested or entering juvenile and criminal justice systems.[21] Analysis of a national population-based survey found that LGBTQ youth were between 25% and 300% more likely than their non-LGBTQ peers to experience some sort of official sanction, ranging from being expelled from school, to being stopped by police, to being arrested or convicted as an adult or juvenile.[22] Of the more than 1,100 LGBTQ prisoners surveyed by Black and Pink, an organization for currently and formerly incarcerated LGBTQ people, in 2015, a majority (58%) had been arrested before age 18, as shown in *Figure 1*, with black and Latino/a respondents at increased likelihood of having been arrested as youth.[23]

Young LGBT people face unique risks because of a number of problems we explore in the following pages: family rejection, family instability and poverty, negative experiences in the child welfare system, unsafe schools, and the school-to-prison pipeline.

[c] In general, we use the acronym LGBT to describe individuals who identify as lesbian, gay, bisexual, or transgender. In some instances, however, we add the letter "Q," representing queer. Some people may use this term to describe their sexual orientation and/or gender identity. When used in this report, it is because the specific survey or individual used the term "queer."

Figure 1: Age of First Arrest for Currently Incarcerated LGBTQ People



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

PROBLEM: FAMILY REJECTION

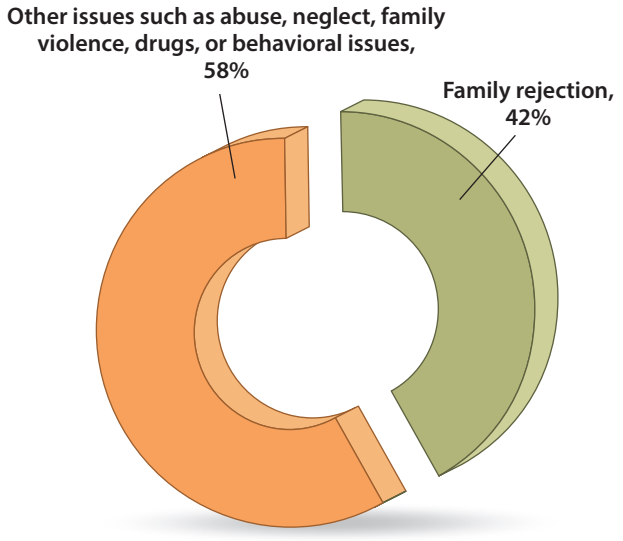
At the most basic level, young people rely on their families for love, support, shelter, food, and other basic necessities. Unfortunately, some LGBT youth are met with hostility, violence, and rejection when they come out to their families. In a survey of LGBT young people between the ages of 13 and 17, one-quarter (26%) said non-accepting families were the most important problem in their lives, while non-LGBT young people listed other top concerns such as: classes, exams, and grades; college and career; and financial pressures.[24] In a separate survey of transgender adults, 40% said parents or other family members had rejected them because of their gender identity or expression. Transgender people of color, particularly multiracial, Native American, and Latino/a respondents, were more likely to report this experience.[25]

When home is no longer a safe and supportive place, some LGBT young people make the difficult decision to leave home. Others may be kicked out of their homes. Many lack a support network of extended family or friends and struggle to find a stable, consistent place to live.

- According to the National Transgender Discrimination Survey, one in five transgender people report having experienced homelessness at some time in their lives because of discrimination and family rejection.[26]

Figure 2: High Rates of Family Conflict for LGBT Youth in Child Welfare System

Percent of White and Latino LGBT Youth in California Experiencing Homelessness or Living in Custodial Care

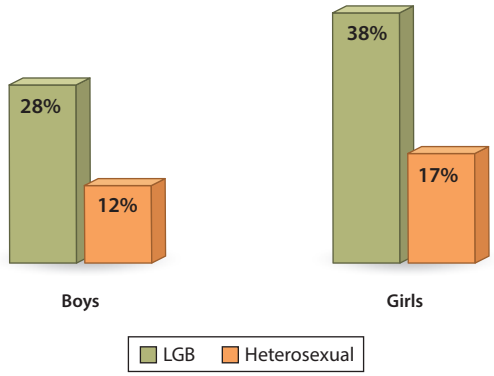


Source: Caitlin Ryan and Rafael Diaz, "Family Responses as a Source of Risk & Resiliency for LGBT Youth," paper presented at the Child Welfare League of America Preconference Institute, Washington, DC, February 2005.

- In a study of Seattle young people ages 13 to 21 without a stable place to live, LGBT young people were statistically more likely than their non-LGBT peers in the same situation to report leaving home because of abuse. Fourteen percent of the LGBT youth left home because of conflicts with parents about their sexual orientation or gender identity.[27]
- In a study of white and Latino/a LGBT young people in California, more than four in 10 (42%) of those experiencing homelessness or living in custodial care (e.g., on the streets or in foster care or juvenile detention facilities) reported family rejection as the reason for leaving home, as shown in *Figure 2*.[28]
- According to a survey of service providers working with young people who are homeless or at risk of homelessness, two-thirds (67%) indicated that the primary reason transgender young people were homeless was family rejection—either being forced out or running away. Fifty-five percent (55%) of service providers cited family rejection as the leading reason for homelessness among lesbian, gay, bisexual, and queer-identified youth.[29]
- In a 2009 study of professionals working in the juvenile justice system, more than 90% of staff "identified lack of parental support as a 'very serious' or 'somewhat serious' problem" for LGBT youth already involved in the system.[30]

Figure 3: LGB Youth At Higher Risk For Being Detained as a Result of Running Away

Percent of Youth in Juvenile Justice System Reporting Being Detained for Running Away



Source: Angela Irvine, "LGBT Kids in the Prison Pipeline," The Public Intellectual, May 2, 2011.

LGBT young people at risk of homelessness face substantial challenges, including risks to their physical safety and emotional and mental health.[d] Engaging in shoplifting, trading sex, selling drugs, or other illegal activities as a way to survive increases the chances that young people may be stopped and arrested, and enter the juvenile justice system.[e]

- As shown in *Figure 3*, in a survey of youth in the juvenile justice system, 28% of gay and bisexual boys had been detained for running away compared to 12% of heterosexual-identified boys.[31] The percentage of girls reporting being detained for running away was even higher—38% of lesbian and bisexual girls compared to 17% of heterosexual-identified girls.

Of course, not all LGBT young people who are experiencing family rejection and other problems at home try to move out. Many remain at home but find ways to avoid conflict, harsh treatment, and rejection. Some hide their LGBT identities. Others spend as much time elsewhere as possible. Young people in urban areas may hang out in public parks, at local LGBT community centers, or in neighborhoods that are perceived to be more welcoming of LGBT people. Spending time on the street or in public parks, however, can put these young

[d] See pages 16-18 for a detailed discussion of homeless LGBT youth and their risk for criminalization.
[e] See pages page 44 for more about how discrimination results in increased criminalization.

Story: Fleeing Abuse at Home, Pushed onto the Streets

When he was five years old, George's father abandoned him, leaving him in the care of an abusive aunt and uncle. For years, George endured the beatings and verbal abuse of family, whom he describes as "the monsters waiting for me at home," because he is gay. He thought of school as his sanctuary until a teacher sexually assaulted him. At age 14, determined to find new meaning and a new home, he fled to Hollywood, where he lived on the streets and worked as a prostitute to survive. After two years, he was arrested and placed in an LGBT group home, where he felt like he was given a second chance.

Excerpted from Katayoon Majd, Jody Marksamer, and Carolyn Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts," Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights, October 16, 2009.

people at increased risk for being stopped and arrested by police. LGBT youth of color and transgender youth are at particular risk due to heightened visibility.

PROBLEM: FAMILY INSTABILITY AND POVERTY

As families across the United States struggle to make ends meet and provide stability for their children, youth may feel the consequences. Some youth in struggling families, including many LGBT youth, may find themselves without a home and be pushed into unsafe living situations such as on the streets or in shelters.[32]

Low and stagnant wages, high poverty rates, chronic unemployment, and high costs for housing, childcare, and other necessities leave many families stretched. One in five children (21.1%) under the age of 18 in the United States in 2014 was living in poverty, as shown in *Figure 4* on the next page.[33] Adding to the challenges, high rates of incarceration in the United States mean that some families must rely on a single earner or networks of support to provide basic necessities. Racial and ethnic discrimination mean that communities of color are particularly vulnerable. When some youth reach a certain age, they may be told they are "on their own" and need to find ways to provide for themselves.

For some families that struggle with economic insecurity and housing instability, older youth may be

SPOTLIGHT

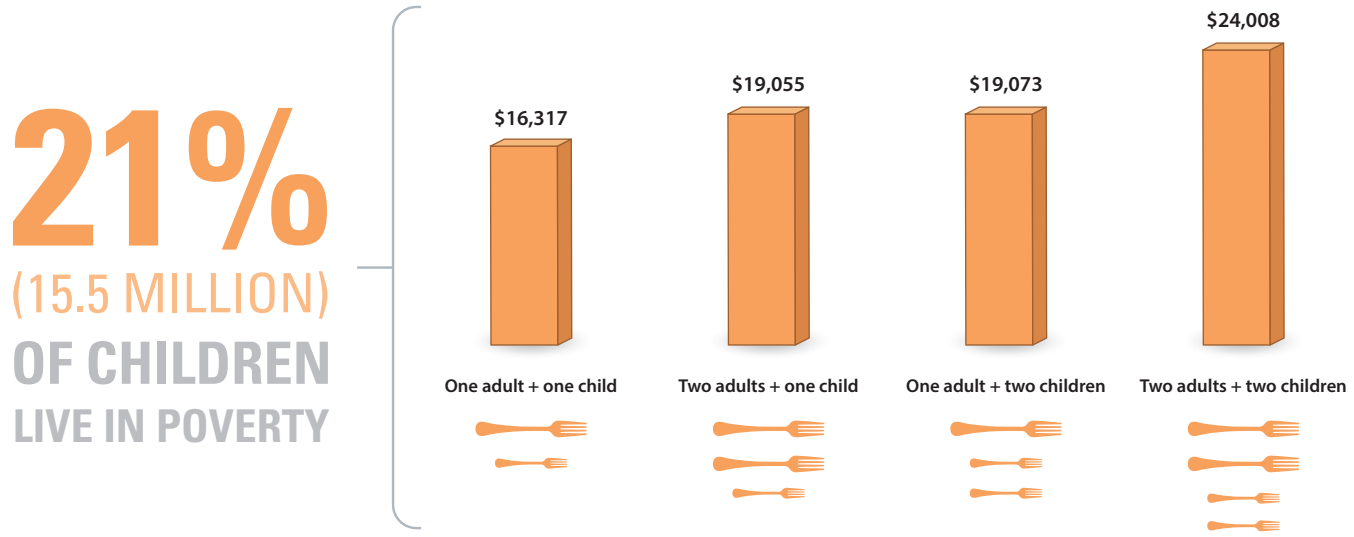
Helping Families Support Their LGBT Children: The Family Acceptance Project

The **Family Acceptance Project** (FAP) is a research, intervention, education and policy project that helps diverse families to support their LGBT children, to prevent health risks and promote well-being in the context of their families, cultures and faith communities.

FAP conducted compelling research with LGBT youth, young adults and families, which found that how families respond to their LGBT children—with specific rejecting and accepting behaviors—has a compelling relationship with serious health risks and well-being in young adulthood. For example, youth who reported high levels of family rejection during adolescence were more than three times as likely to use illegal drugs and more than eight times as likely to attempt suicide compared with those who reported no or low levels of family rejection. Similarly, higher levels of family acceptance protect against risk and are related to higher levels of self-esteem, social support, life satisfaction and better overall health.

FAP has developed the first evidence-based family support approach to help ethnically and religiously diverse families to support their LGBT children and provides training on this model for families, healthcare providers, religious leaders, child welfare agencies, schools, juvenile justice and homeless services, congregations and communities. FAP has also produced research-based family educational materials, videos and assessment resources to increase family acceptance and support, including multilingual family education booklets that are "Best Practices" for suicide prevention for LGBT youth and young adults. These resources are crucial in helping diverse youth and families build strong, healthy relationships, reduce the risks to young people associated with family rejection and promote well-being associated with family acceptance and support.

Figure 4: More Than 15 Million Children Grow Up in Poverty
2015 Poverty Thresholds by Family Configuration



Source: Carmen DeNavas-Walt and Bernadette D. Proctor, "Income and Poverty in the United States: 2014," Current Population Reports, P60-252, Washington, DC: U.S. Census Bureau, 2015.

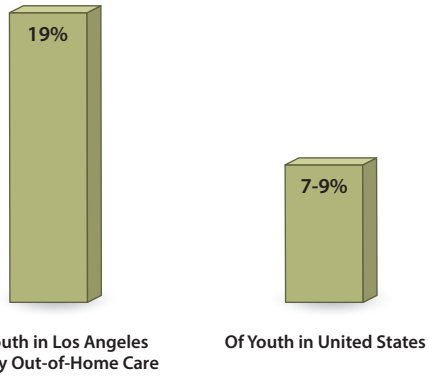
separated from their families as they try to find a place to stay. Other families may include a parent who lacks legal authorization to be in the United States. If the parent is forced to leave the country, youth may find themselves on their own. Domestic violence, abuse, or mental health issues among caregivers also can make home a scary or unsafe place to be.[34]

Without strong safety net programs and support for families, youth suffer the consequences.

PROBLEM: NEGATIVE EXPERIENCES IN THE CHILD WELFARE SYSTEM

Some LGBT young people are placed in the child welfare system. Sometimes, this happens because their parents are unable or unwilling to care for them. Others are in the system because they experience poverty, abuse, or neglect at home. And still more are driven into the child welfare system because of incarceration and criminalization among their parents, particularly in communities of color. In the District of Columbia, parental incarceration is ranked third, behind neglect and abuse, among the reasons for children entering the child welfare system; in 2010, one in every six children entering foster care in the city had an incarcerated parent.[35]

Figure 5: LGBTQ Youth Are Over-Represented in Child Welfare System
Percent of Youth Identifying as LGBTQ



Source: Bianca D.M. Wilson et al., "Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles" (Los Angeles: The Williams Institute, 2014).

Research finds that LGBT young people are overrepresented in the child welfare system. For example, in a study of young people in out-of-home care in Los Angeles County, nearly one in five (19%) identified as LGBTQ, as shown in *Figure 5*.[36] This rate is approximately 1.5 to 2 times higher than the estimated LGBTQ youth population as a whole for the area.[37] A majority of the LGBTQ youth in the study were youth of color, and many were born outside the United

States and/or had at least one parent born outside the United States.[38] Of the LGBTQ youth in the survey, 7.5% reported being kicked out of their homes or running away for issues related to their sexual orientation, gender identity, or gender expression.[39]

The U.S. child welfare system faces well-documented deficiencies in caring for all children, and LGBT young people face their own special challenges in the system. Specifically, LGBT youth in the child welfare system face a lack of support and increased risk to their physical safety as well as higher risk of interaction with law enforcement.

- LGBT youth report being harassed by peers within group settings, and they experience more rejection and hostility from service providers and care givers.[40]
- Studies find that LGBT youth in out-of-home placements are disciplined more frequently for sexual conduct and "morality" offenses than their peers.[41]
- Thirty-nine percent of LGBT youth experiencing homelessness in San Diego indicated they'd been kicked out of their homes or child welfare placement because of their sexual orientation.[42]
- Of LGBTQ young people in Washington State's juvenile justice and child welfare system, 60% said they didn't feel safe or comfortable disclosing their identity to system staff.[43]

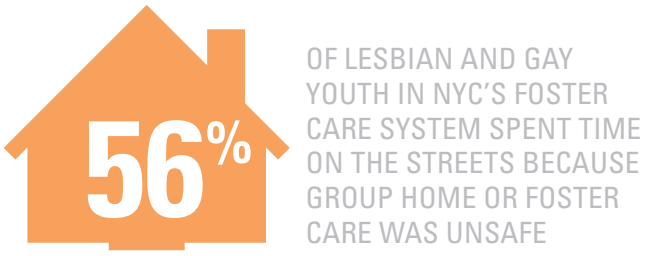
Young people in the child welfare system also report high levels of exploitation and/or violence.

- More than one-third (38%) of complaints about the Illinois Department of Children and Family Services catalogued by the Young Women Empowered's "Bad Encounter Line" were filed by transgender youth.[44] The Bad Encounter Line is a venue for girls and women ages 12 to 23, including transgender youth, who have current or past experience in the sex trade and street economies, to report negative experiences with government and social services.

As a result of mistreatment and abuse in child welfare placements, many LGBT young people are forced out of these settings, run away and find themselves on the streets.

- Service providers working with LGBTQ youth experiencing homelessness estimate that between one in four and one in five of these youth have been in foster care.[45]

Figure 6: Staying on Streets Because Foster Care is Unsafe



Source: Gerald P. Mallon, We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems (New York: Columbia University Press, 1998).

- More than half (56%) of lesbian and gay youth in New York City's child welfare system indicated they'd stayed on the streets at times because they felt safer there than living in group or foster homes, as shown in *Figure 6*.[46]

Once away from support structures, LGBT young people may engage in survival economies, such as trading sex for food, shelter, or money. They also are at increased risk of becoming victims of violence, including trafficking, making them more likely to come into contact with law enforcement.[47] In general, young people who were removed from their homes and placed in out-of-home care are between two and three times more likely to be involved in the justice system than youth who remain in their homes.[48]

Given that LGBT young people are often rejected by their families—and many struggle with foster care placements—LGBT youth are also at increased risk of "aging out" of the child welfare system. This means they are neither reunited with their families nor given a permanent placement, but rather reach the age of independence and are no longer cared for by the state despite lacking a formal family support network. Youth who age out rarely have the resources necessary to succeed on their own, let alone access to housing, employment, or health insurance.[49] This puts young people who age out of the child welfare system at particular risk for interactions with the criminal justice system. Of all children who were involved in Illinois' child welfare system between 1990 and 2003 and were at least age 18 in 2005, those placed in foster care were two to three times as likely to have been arrested, convicted, and imprisoned as youth who remained with their families.[50] A 2010 study found that youth aging out of foster care were more likely than their peers to be arrested, but were no more likely to have actually committed an offense.[51]

Story: From Child Welfare System to the Streets to College: Kristopher Sharp's Journey



I was homeless, forgotten, abandoned and alone. A product of the Texas foster care system, I had no one.

My life was reduced to two pairs of clothes, a well-worn backpack, and the streets. By day, I begged strangers for their change; and by night, I was turning tricks for a place to stay, a shower, a hot meal, or whatever resources I could trade my body for.

That was my reality.

The many years I had spent growing up in foster care took away any chances I had at a normal life. I lived in over 20 different homes—sometimes moving every six to eight months—never staying in one place long enough to create support systems, build community, or establish roots. Sometimes, I think that maybe this was for the better, because almost all of the 20-plus homes I lived in were imbued with abuse.

By the time I was 18, I had been raped and beaten more times than I care to remember—often by the very people the State of Texas was paying to "care" for me.

On the streets, I found out very quickly that there aren't a lot of resources for homeless youth in Houston, especially if you're gay. I remember once being turned away from the Covenant House—a homeless shelter that caters to youth—after an intake worker determined I was gay and erroneously suggested that I "probably had AIDS" and would be a risk to other youth in the shelter.

So I learned to make do with what I had. Most nights, I would wander the streets in Montrose until someone picked me up. Sometimes I'd get lucky and they'd let me spend the night, but more often than not, I'd be forced to sleep on the roof of a shopping strip in the north side of Houston—no more than 10 blocks away from the group home I was living at when I aged out of the system and into homelessness.

I spent the next six months on the streets doing this over and over again, living day-to-day, surviving through the street economy—alone, ashamed and guilt-ridden.

One day in August of 2010, I was in downtown Houston searching for an air-conditioned space and a restroom and ended up wandering into the University of Houston-Downtown.

That day, the course of my life changed.

Youth who age out of the foster care system in Texas are eligible to utilize a tuition waiver that covers the complete costs of tuition and fees at state-funded institutions of higher education within the state.

It was on that fateful day in August that I found out about this waiver, and with the help of university staff I registered for classes and applied for financial aid. I spent the majority of my first semester homeless, struggling to keep up with my course work—but eventually, I would receive a refund check for about $2,000 that I used to get my first apartment.

I live in that very same apartment today, and in May of this year, I will graduate from the University of Houston-Downtown with a bachelor's degree in social work.

Reprinted from Kristopher Sharp, "My Struggle To Survive As A Homeless Youth," The Huffington Post, April 28, 2015.

SPOTLIGHT



Supporting LGBT Youth in Foster Care

As discussed on page 12-16, lack of safety and support that LGBT youth face in the foster care system leads to increased interactions with law enforcement and the criminal justice system. Many youth "cross over" from the child welfare system to the juvenile justice system. These youth, particularly LGBT youth, frequently lack culturally competent foster care placements and social workers, and are vulnerable to harassment and discrimination by staff and fellow foster youth.

Several programs at the local and state levels are setting out to address these problems.

The **LGBT Sanctuary Palm Springs** is trying to combat the foster care-to-prison pipeline by providing a safe, culturally competent space for LGBT youth in foster care to grow and learn. The Sanctuary offers in-house counseling and therapy, mentorship, and meeting groups.

Similarly, the **Los Angeles LGBT Center** is collaborating with the Los Angeles Department of Children and Family Services and more than 20 community organizations on a program called RISE–Recognize Interview Support Empower. The program helps LGBTQ children and youth in the child welfare system find safe, stable, permanent families. By improving care and services for LGBT youth in the child welfare system, RISE makes it less likely that these youth will end up without a home or be pushed into the criminal justice system.

The **Illinois Department of Children and Families** was the first child welfare agency in the United States to develop an LGBTQ youth service policy. Released in 2009, the detailed policy was the result of conversations beginning in 2003 among state legislators, agency administrators and psychologists, and Lambda Legal.[52] The policy requires ongoing training and education about sexual orientation, gender identity, and gender expression for all staff. As part of the policy, the department also named LGBTQ Clinical Consultants to serve as points of contact and resources for staff.

Under the policy guidance, youth must be served holistically, taking into account their sexual orientation and gender identity. Youth are not to be placed with a caregiver who expresses disgust or is opposed to a youth identifying as LGBT. Youth in foster care must have their gender identity and expression respected, including using their chosen name and pronoun whenever possible and allowing youth to make choices about clothing, friends, and activities to the extent possible. The guidance is also careful to point out that a young person's gender identity or sexual orientation should never be shared without explicit permission.

PROBLEM: INCREASED RATES OF HOMELESSNESS

LGBT young adults are greatly overrepresented in the homeless population.

- An estimated 20% to 40% of youth experiencing homelessness in the United States identify as LGBT or believe they may be LGBT,[53] compared to an estimated 5% to 7% of youth who identify as LGBT.[54]
- The August 2015 Homeless Youth Census in the District of Columbia found that 43% of youth experiencing homelessness identified as LGBT.[55]
- Service providers serving youth experiencing homelessness estimated in 2012 that LGBT youth comprised about 40% of their clients.[56] A follow-up survey in 2014 similarly found that LGBTQ youth are overrepresented among youth experiencing homelessness. Service providers reported a median of 20% of youth identifying as gay or lesbian, 7% as bisexual, and 2% as questioning.[57] Three percent identified as transgender and 1% identified as genderqueer.
- The Crib, a shelter open every night of the year for youth ages 18 to 24 in Chicago, estimates that as many as 80% of its guests identify as LGBTQ or questioning.[58]

A significant number of LGBT youth who are homeless are people of color, reflecting broader trends in the homeless population.

- African American and Native American young people are overrepresented among LGBT youth experiencing homelessness and also among the broader homeless population.[59]
- In a 2014 survey of human service providers serving the youth homeless population, providers reported that 31% of their LGBTQ clients identified as African American or Black, 14% as Latino/Hispanic, 1% as Native American, and 1% as Asian or Pacific Islander.[60]

A series of studies released in 2015 by the Urban Institute and Streetwise and Safe uncovered diverse reasons for homelessness among LGBTQ youth, including: social and familial discrimination and rejection, family dysfunction, family poverty, physical abuse, sexual abuse and exploitation, and emotional and mental trauma.[61]

Story: Helping Youth Who Have Nowhere Else to Turn: El Rescate in Chicago



Antonio Gray came out to his family when he was 14. He didn't get along with his mother, and her boyfriend was violent. "I just couldn't take it. It was all just too much," Gray told NBC News in 2014. When he was 17, he became homeless. He moved between friends' houses and emergency shelters. Antonio found his way to El Rescate, a community center in Chicago's Humboldt Park neighborhood for LGBTQ youth and youth living with HIV. He lives among other youth, learning life skills from the center's staff and receiving assistance with education and employment readiness.

As another resident, Mordecai Barnaby, explained, "El Rescate embraced me by putting a roof over my head while focusing on my goals, which include: continuing my education and finding a stable job, and hopefully soon, getting my own apartment. El Rescate has supported me as a transsexual man and has loved me as their own. They help me with all of my life necessities, including: food, hygiene products, bus fare, and the support I need to become independent. I'm so thankful to live here and be a part of El Rescate. Now, I can achieve all of my goals and live up to all of my dreams."

Adapted from "El Rescate Chicago," accessed January 12, 2016; Erika L. Sánchez, "At Chicago's El Rescate, Homeless, LGBTQ Youth Find True 'Home,'" NBC News, June 5, 2014.

Becoming homeless can make it extremely difficult for young people to complete school and do well academically and, in turn, move on to good jobs and rewarding careers. Instead, homeless youth are at increased risk of contact with police and being pushed into the juvenile and criminal justice systems. Service providers working with LGBTQ young adults experiencing homelessness estimate that 20% of transgender youth and 15% of LGBQ youth have experience with the juvenile justice and/or criminal justice systems.[62] And the streets

SPOTLIGHT

Connecting LGBT Youth to Community Service: The Lesbian, Gay, Bisexual & Transgender Center in New York City

THE CENTER
THE LESBIAN, GAY, BISEXUAL & TRANSGENDER COMMUNITY CENTER

The Lesbian, Gay, Bisexual & Transgender Community Center in New York City is in a unique position to provide support and services for LGBT youth, many of whom have experienced homelessness and/or involvement with law enforcement and the juvenile justice system. The Center's many programs for youth focus on building skills and leadership. With approximately 10% of youth who participate in the Center's programs having had some interaction with the juvenile or criminal justice system, several of its programs aim to address the unique challenges these youth face.

Through a program funded by the New York State Department of Labor, the Center partners with the Ali Forney Center (AFC), a New York City organization providing housing and programming to homeless LGBT youth. The program provides service learning, internship, and employment opportunities for LGBT youth–particularly those impacted by homelessness and justice system involvement. The goal of the program is to help youth achieve milestones on the road to employment, whether finishing a resume, applying for an internship, or getting back to school.

The Center's main role has been in supporting youth to create and implement service learning projects. During 2015, youth created a video project to educate school officials on issues facing LGBT youth, including discipline, harassment, and the school-to-prison pipeline. Young people from the Center also offered support in a community meal and pantry program; and they presented a workshop to peers on mental health concerns impacting their community, among many other initiatives.

Another service learning project open to all youth at the Center is called ROAR, which stands for Responsibility, Opportunity, Action and Results. Through this three-month program, each young participant establishes individual goals (e.g., applying to college, creating a resume, perfecting a performance piece for an audition). Together, the students also decide on a group community service project. For example, one group chose to focus on food and the environment. Its project involved creating an informational 'zine (self-published magazine) that was shared in their communities. Students also volunteered for a day at the New Alternatives soup kitchen, a drop-in program for homeless LGBT youth. It was a powerful experience for the Center's youth leaders, some of whom receive services at the program themselves, and some of whom came face-to-face with peers and friends.

The Center has also been working for six years within New York City's foster care system to increase the system's cultural competency when caring for LGBTQ-youth. Specifically, the Center has been able to provide technical assistance in cases involving LGBT foster youth struggling with acceptance from parents or guardians, as well as offering training to foster care agencies to ensure that they are effectively meeting the support needs of LGBTQ youth in care.

Adapted with permission from Glennda Testone, Executive Director, The Lesbian, Gay, Bisexual & Transgender Center, New York City

are frequently unsafe for LGBT youth. It is estimated that LGBT youth on the streets are more than seven times more likely to experience sexual violence that non-LGBT youth experiencing homelessness.[63] But LGBTQ homeless young people don't always avail themselves of shelters and other resources out of fear of discrimination. Research finds that homeless shelters can be difficult places for LGBT young people and adults. Some LGBT youth worry that shelter staff will contact the local child and family services office and try to reconnect them with their families, who may be openly hostile about a young person's sexual orientation or gender identity.[64]

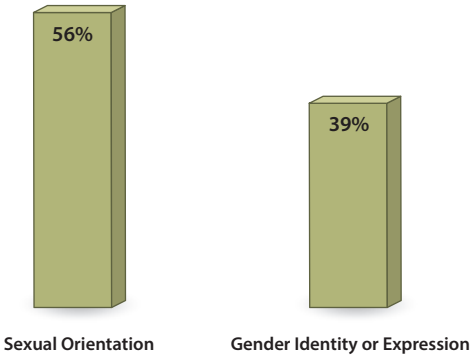
PROBLEM: UNSAFE SCHOOLS

In addition to encountering challenging environments at home, LGBT students, including LGBT students of color, are more likely to report an unsafe environment at school and have little means to address it. Many of these students experience bullying and harassment, a lack of supportive services, and the use of zero-tolerance discipline strategies that push LGBT youth into the juvenile justice system.

- The 2013 National School Climate Survey found that more than half of LGBT middle and high school students (56%) reported feeling unsafe at school because of their sexual orientation, and four in ten students (39%) felt unsafe because of how they expressed their gender (see *Figure 7*).[65] The same survey found that LGBT youth of color reported higher rates of harassment and violence because of their race and ethnicity compared to white LGBT youth. Multiracial LGBT students reported higher rates of physical harassment based on sexual orientation and gender expression than all other LGBT students.
- A 2012 survey of LGBT youth conducted by the Human Rights Campaign found that LGBT Latino/a youth were twice as likely as non-LGBT Latino/a youth to report being excluded by peers, verbally harassed, or physically assaulted at school.[66]
- In a longitudinal survey of 4,200 students in Alabama, Texas, and California that began when the students entered fifth grade and concluded when they finished tenth grade, students who identified as lesbian, gay, or bisexual were 91% more likely to be bullied and 46% more likely to be victimized compared to their heterosexual peers, as shown in *Figure 8*.[67]

Figure 7: LGBT Students Report Feeling Unsafe at School

Percent of LGBT Youth Reporting Feeling Unsafe Because of Their…



Source: Joseph G. Kosciw et al., "The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools" (New York: GLSEN, 2014).

Figure 8: LGB Students at High Risk for Bullying and Victimization

Over five years, LGB youth were:



Source: Mark A. Schuster et al., "A Longitudinal Study of Bullying of Sexual-Minority Youth," New England Journal of Medicine 372, no. 19 (May 7, 2015): 1872–74.

"Gay-straight alliances," "gender-sexuality alliances" (GSAs), and other groups for LGBT students and teachers and their supporters have been shown to improve the academic and social experiences of LGBT students in schools, in part by reducing harassment and bullying. Yet amid budget cuts and a lack of institutional support at many schools, only 50% of LGBT youth report having a school organization, such as a GSA, that is focused on issues affecting LGBT students.[68]

Some LGBT students who are bullied or harassed at school receive little support or recourse through school officials. Ultimately, LGBT youth may be forced to defend themselves.[69]

- According to the 2013 National School Climate Survey, 3% of LGBT students said they didn't report bullying because they thought school personnel wouldn't help and that staff were hostile toward LGBT students.[70] One percent of students feared they would be disciplined if they reported an incident.
- Analysis of Youth Risk Behavior Surveillance System data finds that youth who identify as lesbian, gay, bisexual, or aren't sure—together with those who reported only same-sex sexual contact—were more likely to carry a weapon, gun, or be in a physical fight than non-LGBQ youth.[71]

Compared to other students who experience bullying at school, LGBT young people who are bullied and harassed at school often experience more severe consequences, including school discipline, risk of substance use, mental health challenges, missed school, thoughts of suicide, and lower aspirations to attend college.[72]

- In the 2013 National School Climate Survey, 3.4% of LGBT youth said they did not plan to graduate high school or were unsure if they would graduate.[73] When asked why, a majority of these students (57%) named hostile or unsupportive school environments as the reason why they felt they had to leave school. One-fifth (20%) of students planning to drop out reported having mental health concerns.
- Service providers working with LGBTQ youth experiencing homelessness estimated that virtually all LGBTQ youth they see have experienced harassment and bullying; the numbers were 90% for transgender youth and 70% for LGBQ youth.[74] The providers also estimated that 20% of homeless transgender youth and 12% of homeless LGBQ youth had dropped out of high school.[75]

When LGBT young people miss school, or drop out entirely, they are at increased risk for interaction with law enforcement. In some states, "failure to attend school," or truancy, is a criminal charge, as it is in Texas, where it can be accompanied by a $500 fine.[76]

What's more, when young people don't complete their educations, they are also at increased risk for entering the criminal justice system. The reason: limited employment opportunities and increased likelihood of engaging in survival or underground economies. Among young adults ages 16 to 24, those without a high school diploma were 63 times more likely to be in a correctional facility compared to those with college degrees, according to an analysis of young adults in correctional facilities in 2006 and 2007.[77]

LGBT young people also face barriers accessing mentoring programs designed to help youth. For example, LGBT youth are less likely to have access to LGBT mentors and may feel unsafe coming out to non-LGBT mentors, particularly if they have experienced negative reactions from family and friends when disclosing their sexual orientation or gender identity. Additionally, many mentoring programs are religiously affiliated, and some may discourage youth from coming out because of their stance on LGBT people. Most mentoring programs lack clear policies addressing and preventing discrimination based on sexual orientation and gender identity.[78]

KEY TERM: School-to-Prison Pipeline

Harsh school policies and an increased role for law enforcement in schools create a "school-to-prison pipeline." The problem: punitive measures such as suspensions, expulsions, and school-based arrests are increasingly used to deal with student misbehavior, and huge numbers of youth are pushed out of school and into prisons and jails.

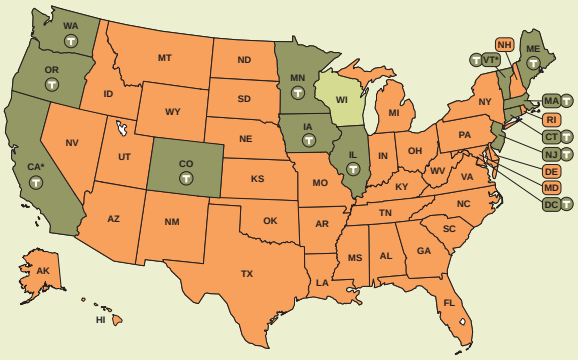
The Legal Landscape for LGBT Students

A variety of federal laws prohibit discrimination in education based on race, color, national origin, language, sex, religion, and disability.[79] Federal law, however, does not explicitly protect LGBT students from discrimination based on sexual orientation or gender identity/expression. Recent guidance from the Department of Education makes clear that Title IX's prohibition on sex discrimination in education includes a prohibition on discrimination based on gender identity or failure to conform to gender stereotypes. As a result, the Department of Education is now investigating claims of discrimination based on gender identity occurring in public schools and universities. Some universities, however, are claiming religious exemptions from these protections.

In addition, no federal law explicitly prohibits bullying of LGBT students. The vast majority of states also lack laws protecting LGBT students from discrimination and bullying.[80] As shown in *Figure 9*, only 12 states and the District of Columbia have passed state nondiscrimination laws protecting students from discrimination based on sexual orientation and gender identity; another state, Wisconsin, has such a law covering only sexual orientation. In addition, only 19 states and the District of Columbia have laws prohibiting bullying in school based on sexual orientation or gender identity; and five states and the District of Columbia include protections based on association with someone who may be LGBT (such as a student who has LGBT parents).

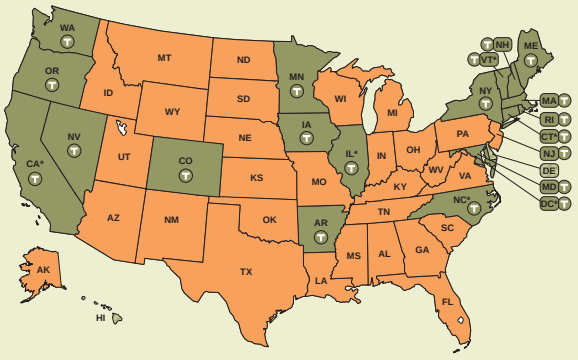
Figure 9: Safe School Laws By State

School Nondiscrimination Laws



- Law prohibits discrimination in schools based on sexual orientation and gender identity (12 states + D.C.)
- Law prohibits discrimination in schools based on sexual orientation only (1 state)
- * Law prohibits discrimination in schools based on association with someone with a listed characteristic (2 states)
- No law protecting LGBT students (33 states)

Anti-Bullying Laws



- Law prohibits bullying based on sexual orientation and gender identity (19 states + D.C.)
- Law prohibits bullying based on sexual orientation only (0 states)
- * Law prohibits bullying based on association with someone with a listed characteristic (5 states + D.C.)
- No law protecting LGBT students (24 states)

Source: Movement Advancement Project, Equality Maps, current as of February 2, 2016. For updates see http://lgbtmap.org/equality-maps/safe_school_laws.

PROBLEM: SCHOOL-TO-PRISON PIPELINE

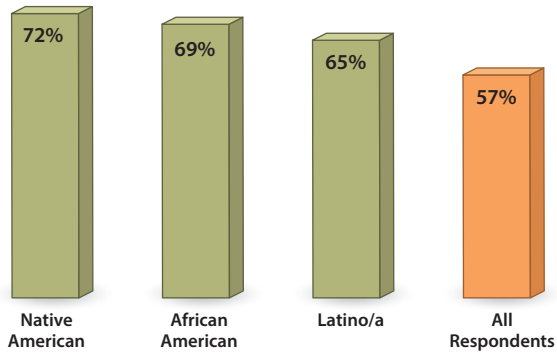
Not only do LGBT young people frequently contend with unsafe school environments, they also face punitive disciplinary systems that frequently push students into the school-to-prison pipeline. LGBT students are at risk for entry into the school-to-prison pipeline because of three key factors: disproportionate discipline of LGBT students; an increased police presence in schools; and the advent of zero-tolerance policies in schools.

Disproportionate Discipline Against LGBT Students. LGBT young people are among the groups of students who are more likely to be suspended, expelled, or otherwise removed from school settings—often for relatively minor offenses—and pushed into the juvenile justice and broader correctional systems.[81]

- A study published in *Pediatrics* found that students who reported identifying as LGB or having same-sex attractions were more likely to be stopped by police, to be expelled from school, or to be arrested and convicted as juveniles and adults.[82]
- In interviews with LGBTQ and questioning youth in Arizona, California, and Georgia, researchers found that these youth were often punished for displaying affection and transgressing gender norms.[83] The youth reported needing to stand up for themselves at school against bullying and harassment and then being labeled as aggressors, putting them at increased risk of being disciplined or arrested.
- More than one-quarter of LGBT students surveyed in the 2013 National School Climate Survey said they had been disciplined for public displays of affection that were not disciplined among non-LGBT students.[84]
- In its work in New York State, the New York Civil Liberties Union received many complaints of transgender and gender non-conforming youth being disciplined for wearing clothes that were consistent with their gender identity or for using the "wrong" restroom.[85]
- Emerging research suggests that girls are at increased risk because of harsh school disciplinary policies. This is particularly true of African American girls and girls who identify as LGBT who are perceived to be gender non-conforming in some way, such as dressing in a more stereotypically masculine fashion, speaking out in class, or playing sports.[86]

Figure 10: LGBT Youth of Color More Likely to be Disciplined at School

Percent of LGBTQ Young Adults Ages 18-24 Reporting Being Sent to Detention in Middle or High school, By Race/Ethnicity



Source: Lambda Legal, "Protected and Served? School Security, Policing and Discipline," accessed January 7, 2016.

- As discussed earlier, LGBT students are at increased risk for truancy violations, particularly because LGBT students who are bullied or harassed are more likely to skip school than those who are not.[87] When students are suspended or expelled from school, they fall behind in their academic studies, further jeopardizing their long-term future.[88]

Transgender youth and LGBT youth who are African American are at particularly high risk of disciplinary actions in school.

- The 2013 National School Climate Survey revealed that transgender students were more likely to have experienced school disciplinary actions, including detention, suspension, or expulsion, than non-transgender LGB students.[89]
- In a 2012 national survey of LGBT people ages 18-24, 72% of Native American LGBT youth, 69% of African American LGBT youth, and 65% of Latino/a LGBT youth had been sent to detention in middle or high school, as shown in *Figure 10*.[90] Nearly one-third (31%) of African American LGBT youth reported being suspended compared to 20% of LGBT youth overall. More than three-quarters (79%) of LGBT youth of color reported that they interacted with security or law enforcement in their middle or high school years, compared to 63% of white LGBT young people.[91]

These findings about LGBT students mirror research about the disproportionate impact of disciplinary policies on students of color and students with

disabilities. For example, research finds that black, American Indian, and Native-Alaskan students are subject to more disciplinary action than white students even when controlling for the type of offense.[92] Black students are three times more likely to be suspended than their white peers.[93] Students with disabilities are also disproportionately affected by school disciplinary policies. For example, in 2009-2010, two in ten high school students with a disability had been suspended compared to fewer than one in ten students without a disability.[94]

Increased police presence in schools. Many students in the United States, particularly students of color, attend schools that utilize metal detectors and have substantial police presence.[95] Particularly for students of color and other students who are already at risk of being stopped by police or arrested, including LGBT students and students with disabilities, increased security and police presence can turn school from a place of safety and learning to a place where students feel unsafe and on edge. More than two-thirds of LGBTQ youth 18 to 24 years of age responding to a survey by Lambda Legal stated they had school security or school police in their middle and high schools.[96] This increased presence, in turn, can have a significant impact on learning outcomes as well as emotional well-being.[97] Students report that heavily secured schools make them feel untrustworthy and that any misstep will be treated as a crime.[98]

As school budgets have tightened, funding for support staff—including school counselors, psychologists, and other behavioral staff—has been cut, making it more difficult for teachers, principals, and other school staff to adequately address social and behavioral issues. These cuts, combined with increased police presence, mean that routine classroom management and minor disciplinary issues quickly escalate and result in more students being referred to the police.[99]

Zero-tolerance policies. In the early 1990s, schools began adopting "zero-tolerance" policies toward school infractions. This means that student offenses, even for minor code violations such as smoking, fighting, or disrupting a classroom, often result in suspension, escalating to expulsion.[100] Research finds that these policies fail to improve school safety or to create positive learning environments, and they actually make schools and communities *less* safe.[101] These policies can also push students out of the classroom rather than empower students, teachers, and staff to engage in conflict resolution and mediation.

Story: Unsafe Zone

A 19-year-old, bisexual Latino boy was asked by an interviewer, "Were you ever stopped and frisked?" He responded:

About three times like in front of my old school. I would stand across the street and the [police] car would just come by and they'd be like, "freeze," and we weren't doing anything, we were just standing across the street from the school. And they would like throw my [skate] board to the side to make sure I didn't like hit them or anything. And then they would just pat me down all types of stuff. One time it was like really crazy. A guy like grabbed my penis and it was just like I don't know. I feel like it got worse, you're stopped and frisked... it just got worse.

Excerpted from Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex" (Urban Institute, September 2015).

SPOTLIGHT

Partners in Safety: Improving Denver Public Schools

Padres & Jóvenes Unidos, a multi-issue community organization in Denver, began working on school-to-prison pipeline issues in 2000, when parents expressed concern about the disciplinary policies impacting their middle school students, primarily Latino and black youth. In 2008, the organization partnered with the **Advancement Project** to push for school reforms to dismantle the school-to-prison pipeline in Denver Public Schools. In 2011, it released a research report that included a school scorecard showing how each school was doing in implementing reforms passed in 2008.[102] Overall, schools did poorly, and were referring more, rather than fewer, students of color to police.

Through advocacy and collaboration, Padres & Jóvenes Unidos and the Advancement Project pushed Denver Public Schools administration and the Denver Police Department to rewrite the "intergovernmental agreement" that sets out how police officers operate within schools. Youth were actively involved in the negotiations around the agreement. Tori Ortiz, a youth leader, explained, "I have had friends get suspended and ticketed for minor offenses, and I saw how that affected them as students and took away from their potential. It put them on the wrong track, and I recognized this. And I wanted to find out what I could do to change it. As students, we researched best practices for [these agreements] from around the country and proposed our solutions to Denver Public Schools and the Denver Police Department."[103]

Under the agreement, police officers in schools, frequently called "school resource officers," must differentiate between disciplinary issues and criminal behavior and work to de-escalate school-based incidents whenever possible. These officers also should work with the district to use restorative justice approaches that minimize the use of law enforcement and prioritize youth taking responsibility for their actions, with a focus on working to improve relationships between youth and their communities.

As Denver Police Department Chief Robert White explained after the agreement was signed, "We have, as the police, no desire to be disciplinarians. That's not our job. That's the parents' job, that's the schools' job. Our job is to deal with serious violations of the law and that's what we're going to do."[104]

The long-term partnership and advocacy of Padres & Jóvenes Unidos and the Advancement Project changed the landscape of school discipline in Colorado. In Denver, the new agreement resulted in dramatic reductions in harsh discipline, including a 58% reduction in out-of-school suspensions and a 57% reduction in referrals to law enforcement for students of color.[105] The success of this work in Denver resonated throughout the state, where measures of harsh school discipline have declined across-the-board and teachers and administrators report more autonomy in addressing disciplinary issues without involving law enforcement. From 2012 to 2013, statewide out-of-school suspensions were reduced by 10% and expulsions dropped by 25%.[106]

SPOTLIGHT

Building Safe Schools Without Pushing Youth Out: #GSAs4Justice

In 2014, the **GSA Network** launched the **#GSAs4Justice campaign**. The goal is to empower youth to urge school districts to adopt restorative justice policies that focus on rehabilitation of offenders through reconciliation with survivors and communities. Compared to the traditional juvenile justice system, restorative justice allows individuals to take responsibility for their actions while simultaneously dismantling the school-to-prison pipeline by keeping youth in schools. The campaign was launched in conjunction with a toolkit for educators and several resources for youth to advocate against criminalization and to keep youth in schools. The campaign recognizes that LGBT youth, including youth of color, immigrant youth, and youth with disabilities, are at greatest risk for being pushed out of school and into the juvenile and criminal justice systems.

As part of this effort, the GSA Network has worked with youth around the country to highlight the needs of LGBT youth, particularly LGBT youth of color. In Wisconsin, **GSAFE**, an organization focused on creating schools where LGBTQ and all youth can thrive, created a "GSAs for Justice" curriculum in two high schools examining the impact of discrimination on communities. In a partnership with the Madison Metropolitan School District, GSAFE, and the University of Wisconsin, it offers a "Foundations of Leadership" program that empowers LGBT high school students, particularly students of color, to become active partners in creating more safe and fair learning environments for LGBT students and students of color. The four-year program meets weekly and is designed to allow students to attend even if they have disciplinary issues at school.

A related effort is a partnership between the GSA Network and the **Youth Empowerment Project** of New Orleans. LGBTQ youth in that city who have been pushed out of school and are in "alternative school settings" can participate in a "GSA for Justice" programming.

Revising School Disciplinary Codes to Break Down the School-to-Prison Pipeline

Many school districts are taking the initiative to revise school disciplinary codes to reduce the number of youth pushed out of school and into the juvenile justice system.

- **Baltimore** reduced its dropout rate by more than half in just a few years after it revised the school discipline code to prevent suspensions for minor offenses, added school counselors and after-school programs, and instituted a range of academic interventions.[107]
- **Colorado** reduced out-of-school suspensions by 10% and expulsions by 25% during 2012-13—just one year after the state enacted legislation mandating that all school districts rewrite their discipline codes to include alternative approaches such as restorative justice programs and to eliminate automatic expulsions for all offenses other than bringing firearms to school.[108]
- Reforms at **Florida's** Miami-Dade and Broward County Public Schools have cut school-based arrests by more than half in five years and have significantly reduced suspensions.[109]
- In **California**, expulsions decreased 12.3% and suspensions dropped 14.1% between the 2011-12 and 2012-13 school years. This happened in the wake of district-level changes enacted throughout the state that eliminated suspensions for young children and expulsions for all students for minor misconduct.[110] In 2014 California limited suspensions or expulsions of students for "willful defiance" or disruption of school activities.[111]
- In **Los Angeles**, the school district has nearly eliminated police-issued truancy tickets in the past four years and has enacted new disciplinary policies to reduce reliance on its school police department. School officials will now deal directly with students who deface property, fight, or get caught with tobacco on school grounds. Suspensions in the Los Angeles Unified School District alone dropped 37.5% after the discipline policy was revised to discourage suspension for minor offenses.

Story: Escaping the School-to-Prison Pipeline



All throughout school I was known as a very smart and articulate person, but there was always a red flag floating around my head... the fact that I am transgender. Some people aren't as accepting to trans men and women. I have been made fun of, bullied, run out of my school, even treated differently by school staff. There were several times where I felt as if I wasn't safe or felt like I wasn't welcomed at all.

After a while, I stopped going to school to just ignore the day-to-day stress. It pushed me more to the streets, where I didn't face as much judgment or as many issues. People would come up to me just to have a conversation, but then I realized that most of those people just wanted something from me. I battled with being in and out of school, in and out of the streets, on drugs, and doing sex work just to make sure I could survive on a daily basis. Then it hit me that I have a life, and I have so much more potential to do a lot of things that people said I never could, so I beat the school-to-prison pipeline stereotypes. I'm currently a college student making big changes in myself and my community.

I am working with JASMYN*, and I am a Youth Leader. I take my position at JASMYN very seriously because without them I wouldn't be who I am today. I speak on different panels that deal with topics such as teens in school living with HIV, teens in drug and substance abuse programs, and even my favorite panel where we got to discuss what changes should be made in the school system to protect our LGBTQ youth.

Intersectionality is not invisible, and it's not something that should be overlooked. If you feel like you are being discriminated against, then be the voice and #SpeakUp and #SpeakOut!!

- Kourtnee Armanii Davinnie

**JASMYN, the Jacksonville Area Sexual Minority Youth Network, is an organization based in Jacksonville, Florida, that supports LGBTQ youth ages 13-23 by providing safe space, support, leadership development, HIV prevention, and recreational activities.*

Excerpted from "Power in Partnerships: Building Connections at the Intersections to End the School-to-Prison Pipeline" (Advancement Project, Equality Federation Institute, and GSA Network, September 2015).

The Effects of Discrimination and Stigma on LGBT Adults

LGBT people across the United States face a climate of hostility and discrimination that makes it more difficult to thrive emotionally, economically, and physically. The lack of explicit nondiscrimination protections at the federal level, as well as a patchwork of protections across states and in cities and towns, mean that LGBT people are left vulnerable to discrimination in many areas of life, including employment, housing, public accommodations, health care, credit, and more. This, in turn, increases their chances of encounters with the criminal justice system.

Particularly for LGBT people who are already struggling economically, the pervasive stigma and discrimination they experience can make it even more difficult to stay afloat. Losing a job, being evicted, struggling to find work, or facing a serious health crisis can push poor LGBT people into a downward spiral of financial struggle, poverty, homelessness and reliance on survival economies. Of clients served by the Sylvia Rivera Law Project, which focuses on serving intersex, transgender, and gender non-conforming people (particularly those who are low-income and people of color), an estimated 40% of clients needed assistance with criminal justice issues or had criminal justice issues arise while they were receiving assistance (see *Figure 11* on the next page).[112]

In the following pages, we explore some of the unique problems facing LGBT adults and how they contribute to an increased likelihood of criminalization.

PROBLEM: EMPLOYMENT DISCRIMINATION

LGBT people experience high rates of employment discrimination—when looking for work and on the job.

- Transgender people and people with LGBT-related work or volunteer experience on their resumes

Figure 11: Two in Five Clients Needed Assistance with Criminal Justice Legal Issues

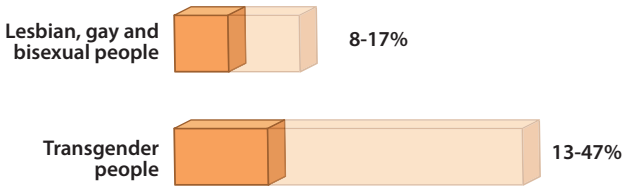
Of Intersex, Transgender, and Gender Non-Conforming Clients at the Sylvia Rivera Law Project



Source: D. Morgan Bassichis, "'It's War in Here': A Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons," New York: Sylvia Rivera Law Project, 2007.

Figure 12: Many LGBT Workers Are Denied Employment or Unfairly Fired

Percent Reporting Being Unfairly Fired or Denied Employment



Source: M. V. Lee Badgett et al., "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination," The Williams Institute, June 2007.

are less likely to be invited for job interviews than similarly qualified applicants.[113] A study conducted by the District of Columbia Office of Human Rights found that employers favored less qualified candidates over qualified transgender candidates in nearly half (48%) of cases.[114]

- Between 8% and 17% of lesbian, gay, and bisexual people report being unfairly fired or denied employment because of their sexual orientation, as do 13% to 47% of transgender workers, as shown in *Figure 12*.[115]
- Six in 10 LGBT workers (62%) report hearing jokes or derogatory comments about LGBT people at work,[116] while 78% of transgender workers report being harassed, mistreated, or discriminated against at work.[117]
- While there is evidence of a wage advantage for lesbian women over heterosexual women, studies conducted over the past decade show that gay and bisexual men earn 10% to 32% less than heterosexual men, even when controlling for important factors like education, occupation, and region of the country.[118] Also, due to the gender pay gap, female same-sex-couple households earn less than opposite-sex-couple households.[119]
- A 2014 resume-matching study found that men whose resumes indicated they were gay received lower starting salaries than those with resumes that did not indicate they were gay.[120]

SPOTLIGHT

Inclusive Job Training for Transgender Youth: Job Corps Centers

Few culturally competent job training programs means that lower-income LGBT people are left unprepared for a competitive job market and lack access to valuable vocational skills. In May 2015, the U.S. Department of Labor released a new policy ensuring equal access for transgender youth to **125 Job Corps Centers**. The Job Corps is a federal program that provides job training, housing, food, medical care, and a living allowance to youth across the country between the ages of 16 and 24. These centers serve an estimated 60,000 youth each year and provide tangible skills that are valued in the job market.

The new Department of Labor policy requires program staff to use a student's preferred name in all situations (except paperwork that requires a legal name) and to avoid outing transgender youth to peers or family members without their consent. It also makes clear that hormone medication and other medical needs of transgender students should be treated like other medical care that is typically provided for students.

PROBLEM: HIGHER RATES OF UNEMPLOYMENT AND POVERTY

For many LGBT people, employment discrimination can result in increased economic insecurity. Several surveys have found higher rates of unemployment among LGBT people.

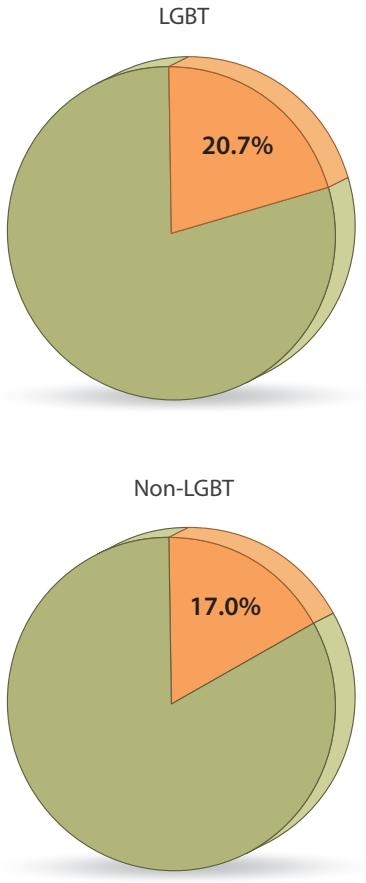
- Data from the California Health Interview Survey show that 13% of LGB people were unemployed compared to 10% of heterosexual adults.[121]
- Transgender individuals reported twice the average national unemployment rate at the time the National Transgender Discrimination Survey was conducted; 14% compared to 7% of the general population.[122]
- LGBT people of color are at a particular disadvantage. Recent analysis by the Williams Institute finds that LGBT people of color have higher rates of unemployment compared to non-LGBT people of color,[123] while the National Transgender Discrimination Survey found that African American transgender people had substantially higher rates of unemployment than white transgender people (28% compared to 12%).[124]

Research also finds that LGBT people are more likely to live in poverty than their non-LGBT peers.

- Only 29% of LGBT adults in the United States report that they are thriving financially, compared to 39% of non-LGBT adults. The gap between LGBT women and their non-LGBT counterparts is even greater (12 percentage points).[125]
- According to a 2012 Gallup survey, 20.7% of LGBT people living alone had incomes less than $12,000—near the poverty line—compared to 17% of non-LGBT people living alone (see *Figure 13*).[126]
- A study of transgender Americans found they are nearly four times more likely to have a household income under $10,000 per year than the population as a whole (15% vs. 4%) with much higher rates for transgender people of color, as shown in *Figure 14*.[127] This is true despite the finding that 87% of transgender people have completed at least some college and 47% have obtained a college or graduate degree—rates that are much higher than those for the general population.

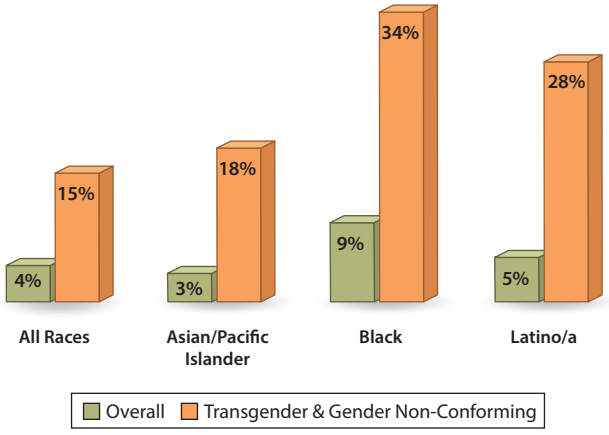
The combination of high rates of poverty and unemployment no doubt contributes to higher rates of incarceration and justice system interactions among

Figure 13: LGBT People Report Extremely Low Incomes
Percent of Respondents Reporting Incomes Less Than $12K Per Year



Source: M. V. Lee Badgett, Laura E. Durso, and Alyssa Schneebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community" (The Williams Institute, June 2013).

Figure 14: Transgender People Report Extreme Poverty
Percent of Respondents Reporting Incomes Less Than $10K Per Year



Source: Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

Figure 15: High Rates of Unemployment for LGBTQ Prisoners Prior to Current Incarceration

Percent Reporting Being Unemployed



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

LGBT people. Lack of economic security and employment opportunities are frequently observed among individuals who are incarcerated. For example, individuals who are currently incarcerated had pre-incarceration median incomes 41% lower than similarly aged non-incarcerated people; the median income for incarcerated adults prior to entering prison was only $19,185. Among LGBTQ-identified prisoners surveyed by Black and Pink, more than one-third (36%) had been unemployed before being incarcerated, as shown in *Figure 15*.[128]

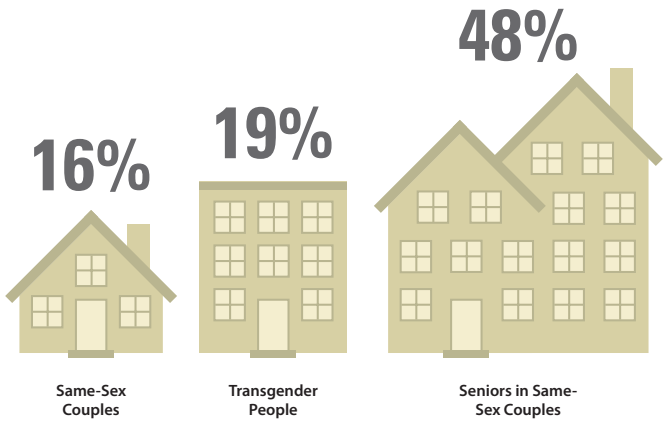
PROBLEM: HOUSING DISCRIMINATION AND HIGHER RATES OF HOMELESSNESS

LGBT people experience housing discrimination that makes it more difficult and expensive to find housing. One result is that LGBT people are more likely than non-LGBT people to live in "unstable housing" or emergency shelters. Several studies have examined housing discrimination against LGBT people, as shown in *Figure 16*.

- In a groundbreaking study commissioned by the U.S. Department of Housing and Urban Development (HUD) in 2013, researchers found that opposite-sex couples were favored over same-sex couples when applying for rental housing 16% of the time.[129]
- A 2013 study focused on the housing experiences of older LGBT adults. It found that in 48% of the cases studied, a same-sex spouse or couple experienced adverse treatment compared to an opposite-sex couple when exploring a move to an independent living, continuing care or assisted living facility.[130]

Figure 16: LGBT People High Rates of Housing Discrimination

Percent Reporting Housing Discrimination



Source: Samantha Friedman et al., "An Estimate of Housing Discrimination Against Same-Sex Couples," U.S. Department of Housing and Urban Development, Office of Policy Development and Research, June 2013; Equal Rights Center, "Opening Doors: Investigation of Barriers to Senior Housing for Same-Sex Couples," 2014; Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

- The National Transgender Discrimination Survey found that 19% of respondents had been refused a home or apartment because of their gender identity/expression, and 11% had been evicted for the same reason.[131] Eviction rates were even higher for African American transgender respondents (37%), respondents lacking a high school degree (33%), and undocumented immigrants (21%).

While the reasons why people end up homeless vary, a lack of housing for LGBT people can be the result of poverty and discrimination or mistreatment. The safety net designed to support homeless people in this country, LGBT and non-LGBT alike, has failed. Because limited housing is available for people experiencing homelessness, they often are forced to live on the streets and rely on shelters and soup kitchens. This limits their ability to regain financial security and often puts them in situations where they may encounter police and enter the criminal justice system.

There is no current estimate of the number of LGBT adults who are homeless or at risk of homelessness, but as of January 2013, there were more than 610,000 homeless people in the United States.[132] Based on survey findings showing high rates of homelessness for LGBT young adults, it is likely that LGBT adults are overrepresented among people who have experienced homelessness. A national survey of transgender people found that 19% had been homeless at some point, as

shown in *Figure 17*.[133] In a survey of low-income LGBT and gender non-conforming people in New York, 69% had been homeless at some point; and 58% were currently experiencing housing instability, living in a shelter, temporary living situation, or on the streets or in the subway.[134]

Unfortunately, transgender people facing homelessness also face discrimination from agencies that should be helping them. A 2010 survey of transgender people found that 29% of individuals who had experienced homelessness had been turned away from a shelter because of their transgender status; 55% had been harassed by shelter staff or residents.[135] Of transgender people in men's prisons in California, nearly half (47%) reported being homeless at some point in their lives, and 20% reported being homeless just before their most recent incarceration.[136] Transgender people are frequently unable to stay in a shelter that matches their gender identity as opposed to their birth sex, making them less likely to seek shelter altogether.[137]

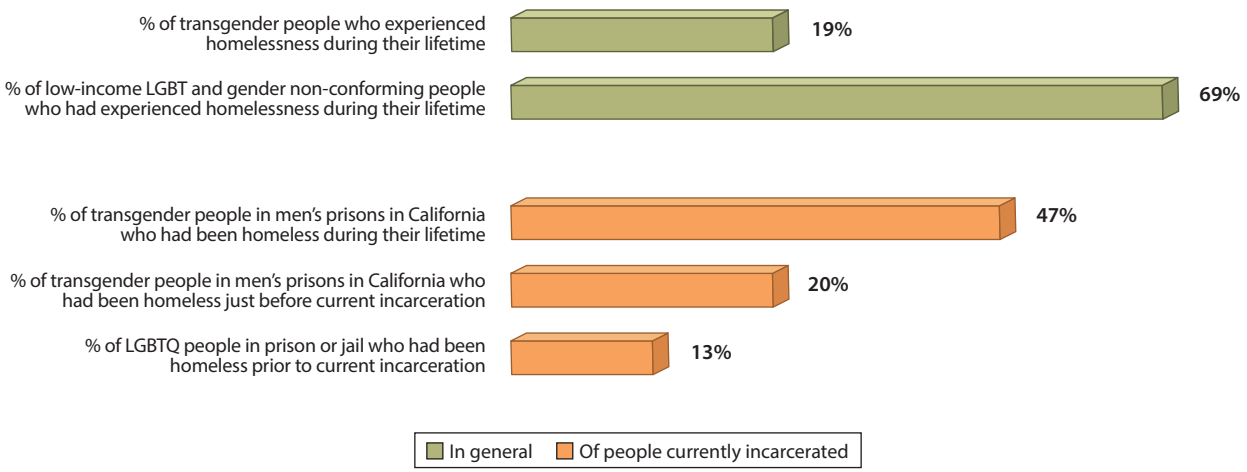
Individuals who experience homelessness are particularly vulnerable to being stopped or arrested by police and having their lives criminalized. As shown in Figure 17, several surveys find high rates of housing instability among incarcerated LGBTQ people. In a recent Black and Pink survey of 1,118 LGBTQ-identified people in prison or jail in the United States, 13% had been homeless prior to being incarcerated, a higher rate than that of the general prison population, and 5% reported being transient.[138] In a study of incarcerated transgender people in California, nearly half (47%) reported being homeless at some point during their adults lives, and over 20% had been homeless just before their most recent incarceration.[139]

Several cities have passed ordinances making it a crime for people who are homeless to sleep in public places. In August 2015, the U.S. Department of Justice argued that such prohibitions are unconstitutional, particularly when there is insufficient shelter space.[140]

If they aren't arrested under these types of laws, people who are homeless often are targeted for enforcement of ordinances that criminalize sleeping outside, loitering, or other activities in public places. Additionally, LGBT people experiencing homelessness may be targeted because they engage in survival economies to try to make ends meet. This means trading sex for shelter, money, or food; selling drugs; or relying on shoplifting or theft as a means to obtain basic necessities.

Between 2012 and 2013, the Urban Institute and Streetwise and Safe interviewed hundreds of LGBTQ young people in New York City who had participated in survival economies, mainly young people who had traded sex for shelter and/or food.[141] As a result of their homelessness, the young people surveyed lacked access

Figure 17: LGBT People Have High Rates of Homelessness



Source: Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011; Dwayne Bibb et al., "A Fabulous Attitude: Low-Income LGBTGNC People Surviving & Thriving with Love, Shelter & Knowledge" (Welfare Warriors Research Collaborative, 2010); Lori Sexton, Valerie Jenness, and Jennifer Sumner, "Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons," University of California, Irvine, June 10, 2009; Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

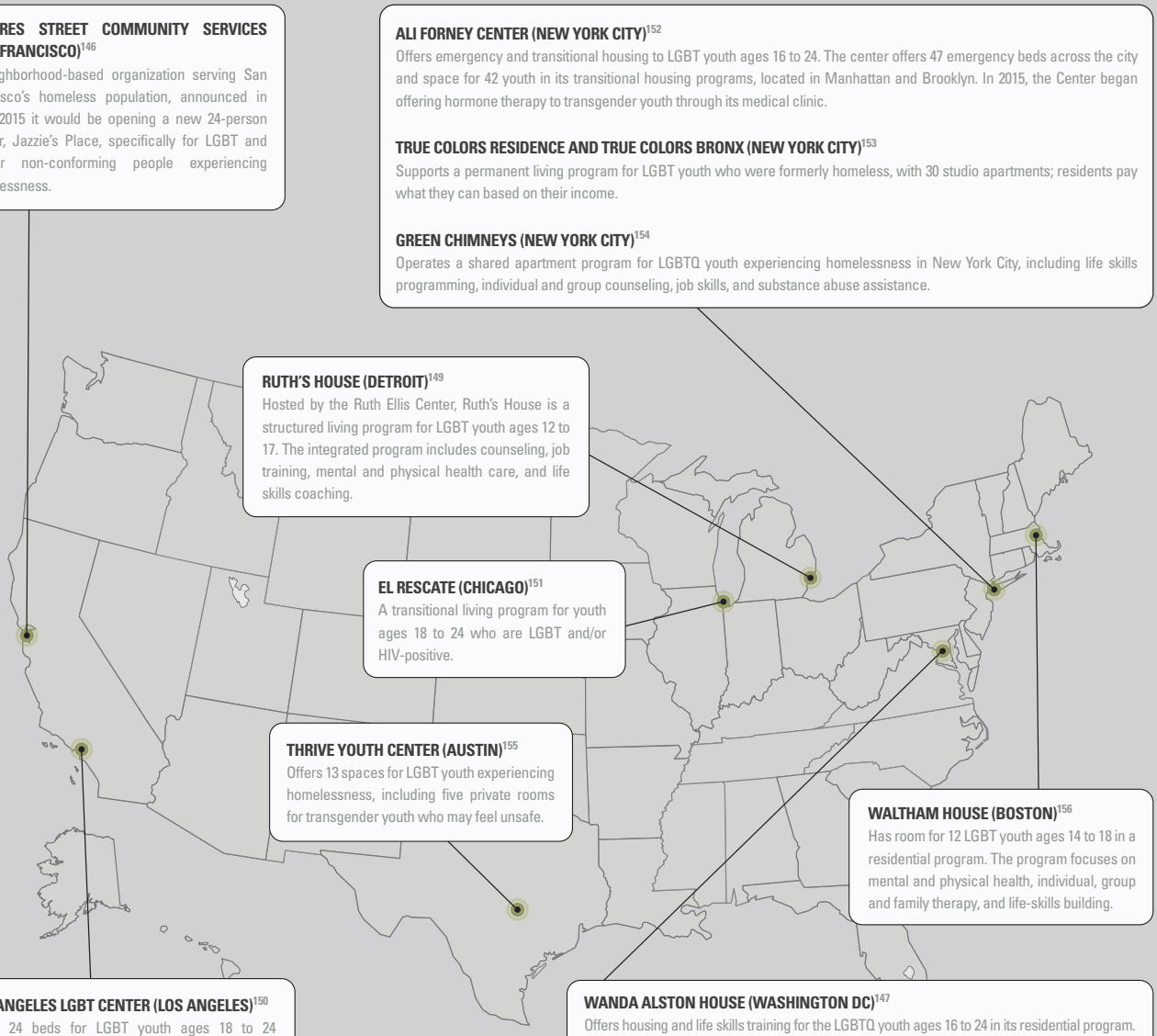
SPOTLIGHT

Across the United States: Homeless Services for LGBT Youth and Adults

Despite a higher risk for homelessness among LGBT people, very few shelters are explicitly LGBT-inclusive or competent when it comes to serving them. Federal law prohibits gender identity discrimination in homeless shelters that receive federal funding, and in November 2015, the federal Department of Housing and Urban Development (HUD) released proposed guidance for emergency shelters requiring them to house individuals based on their gender identity.[144] However, there is no federal law against discrimination on the basis of sexual orientation. In addition, less than half of states prohibit housing discrimination on the basis of sexual orientation or gender identity. In 2015, the Center for American Progress and the Equal Rights Center conducted telephone tests of homeless shelters in four states and found that only 30% of shelters were willing to properly accommodate transgender women.[145]

A patchwork of shelters and programs specifically designed to meet the needs of LGBT people experiencing homelessness has developed across the country, as shown in Figure X. These are all amazing programs, but they barely total 300 spaces for LGBT, HIV-positive, and/or gender non-conforming youth and adults experiencing homelessness.

Figure 18: Map of Services



to necessities and basic services, driving them to survival economies.[142] A 2013 survey of youth experiencing homelessness in New York City found that 23% had traded sex or something of value in order to meet basic needs, such as a place to sleep, money for food, drugs, clothing, or money to support their family.[143]

SPOTLIGHT

There's an App for That: Understanding Federal Housing Rights

Unlike private housing, federally funded housing, including homeless shelters, must not discriminate on the basis of sexual orientation, gender identity, or marital status. But many LGBT people still experience housing discrimination in federally funded housing. In 2013, the Department of Housing and Urban Development created a **Fair Housing App** for Apple devices. The app contains information on housing rights and also provides a means by which to file housing discrimination claims. In disaster situations, the app can help people understand their housing rights and options.



PROBLEM: HEALTHCARE DISCRIMINATION AGAINST TRANSGENDER PEOPLE

For transgender people, even those with health insurance, needed care isn't always covered. Most insurance companies in the majority of states continue to exclude coverage for transition-related care, as shown in *Figure 19* on the next page. These exclusions deny transgender people coverage for a range of vital, medically necessary services (including hormone replacement therapy, mental health services, and reconstructive surgeries) even when the same services are covered for non-transgender people.

To afford this medically necessary care, some transgender people purchase medication or medical services without a prescription or from unlicensed medical providers, putting their health at risk and increasing their chance of being arrested.[157] Others turn to survival economies to afford the high out-of-pocket costs of transition-related care.

In September 2015, the U.S. Department of Health and Human Services released a proposed rule implementing the Affordable Care Act's nondiscrimination provisions. The rule would prohibit any insurer that sells plans on state or federal healthcare exchanges or that receives Medicare or Medicaid from denying coverage to transgender people.[158]

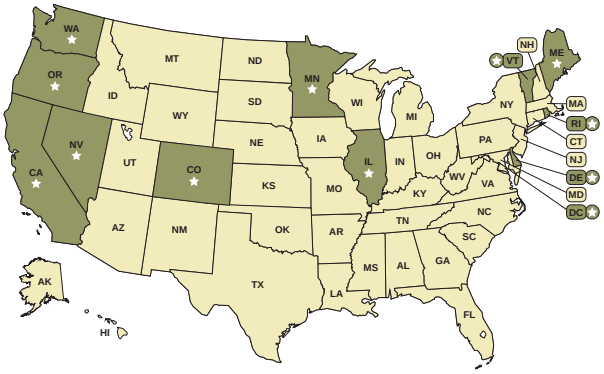
PROBLEM: INABILITY TO UPDATE IDENTITY DOCUMENTS

Transgender people face an ongoing struggle to obtain identity documents that match their lived gender. Many states have requirements that make updating documents difficult or impossible, as shown in *Figure 20* on the next page. Having official, government-issued identity documents is crucial to many aspects of everyday life, including driving a car, paying with a credit card, applying for a job or to school, voting, or boarding a plane.

Without access to accurate identity documents, transgender people struggle to find employment, face challenges accessing social services, and are at increased risk of harassment by law enforcement (see pages 59-62 for more about abuse by law enforcement). When transgender people are stopped or detained, they are often subject to harassment and abuse if the name and

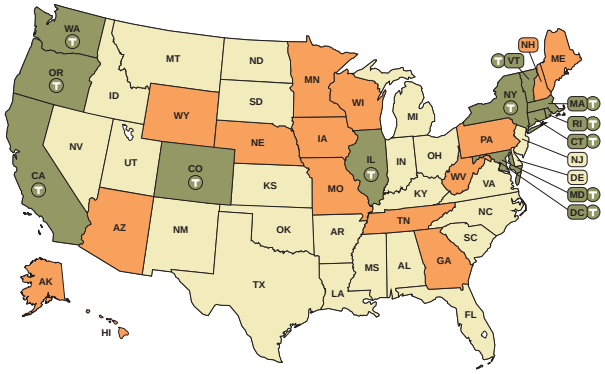
Figure 19: Health Insurance Protections

Private Insurance



- Transgender exclusions in health insurance service coverage prohibited (12 states + D.C.)
- Law prohibits health insurance discrimination based on sexual orientation and gender identity (11 states + D.C.)
- Law prohibits health insurance discrimination based on sexual orientation (0 states)
- No law providing LGBT inclusive insurance protections (39 states)

Medicaid

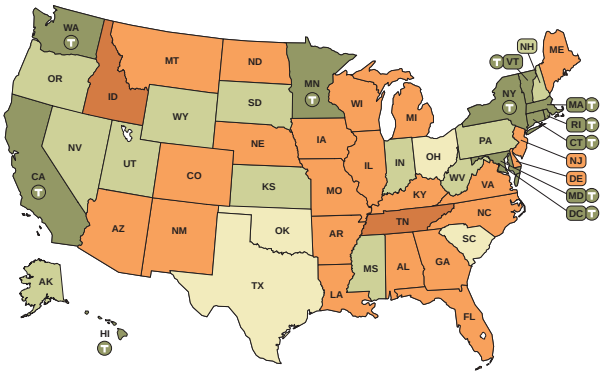


- State Medicaid policy explicity covers health care related to gender transition for transgender people (11 states + D.C.)
- State Medicaid has no explicit policy regarding transgender health coverage and care (23 states)
- State Medicaid policy explicitly excludes transgender health coverage and care (16 states)

Source: Movement Advancement Project, Equality Maps, current as of January 10, 2016. For updates see http://lgbtmap.org/equality-maps/healthcare_laws_and_policies.

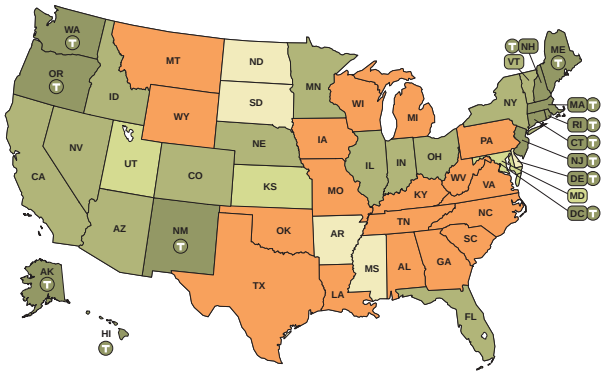
Figure 20: Identity Document Laws and Policies Across the United States

Birth Certificate



- State issues new birth certificate and does not require sex reassignment surgery nor court order in order to change gender marker (9 states + D.C.)
- State is unclear regarding surgical/clinical requirements and/or may require a court order to change gender marker (12 states)
- State has unclear, unknown or unwritten policy regarding gender marker changes (4 states)
- State requires proof of sex reassignment surgery in order to change gender marker (23 states)
- State does not allow for amending the gender marker on the birth certificate (2 states)

Driver's License



- State accepts documentation from a broad range of licensed professionals in order to change gender marker. Does not require sex reassignment surgery (15 states + D.C.)
- State accepts documentation from a limited range of licensed professionals in order to change gender marker. Does not require sex reassignment surgery (14 states)
- State requires burdensome proof of clinical treatment in order to change gender marker. Does not require sex reassignment surgery (3 states)
- State has unclear, unknown or unwritten policy regarding gender marker changes (4 states)
- State requires proof of sex reassignment surgery, court order, and/or amended birth certificate in order to change gender marker (14 states)

Source: Movement Advancement Project, Equality Maps, current as of January 10, 2016. For updates see http://lgbtmap.org/equality-maps/healthcare_laws_and_policies.

gender marker on the document they present don't match the name they use and their gender expression. Additionally, law enforcement may accuse them of committing fraud by giving a name that differs from the one on their identification; they may even be arrested on false impersonation charges.

According to the National Transgender Discrimination Survey, only one-fifth (21%) of transgender people who had transitioned were able to update all of their identification documents and records with their new gender, and one-third did not update any of their documents.[159,f]



Many vital social services that support vulnerable populations—including individuals with physical and mental health issues, young people, and those struggling financially—are chronically underfunded and facing substantial cuts by federal, state, and local governments.

This is happening despite the fact that mental health issues are frequently present among individuals experiencing homelessness and those in the criminal justice system.[160] For example, providers serving young people experiencing homelessness estimate that 75% of transgender youth and 65% of LGBQ youth have a need for mental health care.[161] Between 2009 and 2012, for example, states cut more than $1.6 billion from state mental health agency budgets for services including supportive housing, treatment, crisis services, and access to psychiatric medication.[162] When mental health services dwindle, law enforcement is frequently asked to address situations where individuals are in crisis, pushing more and more people with mental illnesses into prisons and jails.[163]

Accessing social services, such as housing, job training programs, or medical services, can be a special challenge for LGBT people because of discrimination by and lack of competency of providers and business owners.[164]

- As noted elsewhere in this report, very few homeless shelters specifically focus on addressing the challenges facing LGBT young people and adults experiencing homelessness, and shelters remain challenging places for transgender people (see pages 16-18 for more discussion of the challenges facing LGBT people experiencing homelessness).
- Nearly half (48%) of low-income LGBT and gender non-conforming people in New York City reported discrimination by a government or county agency when seeking public benefits, such as food or housing assistance, and many were turned away.[165]
- In the National Transgender Discrimination Survey, 22% of respondents had been denied equal treatment by government agency personnel and 22% had been harassed or disrespected.[166]

This lack of supportive services exacerbates the challenges facing LGBT people in need of assistance, increasing the chances that their lives will be criminalized.

Summary: How Discrimination Leads to Criminalization

As we have described in this section, LGBT youth and adults face an array of unique challenges at home, in schools, when finding employment and housing, and when accessing social services. They also are disproportionately affected by poverty, the frayed social safety net and a lack of legal protections. The result is that LGBT people who experience hardship are often left with very few options to survive. As they are pushed out of schools, jobs, and housing, and as they often have minimal resources and social support to fall back on, some LGBT people become homeless and some are forced to rely on survival economies such as sex work or drug sales. This puts them at increased risk of criminalization.[167]

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[f] Note that not all transgender people wish to change their identity documents, so this number should not be interpreted as the number who wanted to update their documents but were unable to do so.

Story: LGBT Youth Surviving on the Streets Speak Out



In February 2015, the Urban Institute and Streetwise and Safe released a report examining the experiences of LGBTQ youth in New York City who engaged in survival sex. In total, 283 youth were interviewed, sharing their experiences. The following are some of their stories:

My father didn't respect me for who I am because he don't like bisexual people or gay people so from there I came out to him and I told him and then he just kicked me out, because he couldn't take it. – 19 year-old bisexual Latino male

My mom kicked me out … she didn't want me being gay, she wanted grandchildren, she didn't like my lifestyle, she didn't pretty much accept it. She still loved me but she just didn't want me being there. And plus I have a little brother so she didn't want me pretty much influencing him in any form or fashion. – 19 year-old black gay male

When my parents had me they was crack heads and stuff, so I eventually got taken away from them and then I was adopted and my adoptive father was basically raping me. So I went to the cops and they told me to leave the house and stuff like that. And then after that there was nowhere else to go because I didn't know my real family. I just knew all my adopted family. And I knew they wasn't going to believe me. So I was at a friend's house till I ran out. I couldn't go anywhere else. – 19 year-old Native American lesbian female

[I didn't really think about], you know, trading sex for anything whenever I first moved here. And then whenever I got here, I realized that it was just so popular because there were so many people in my situation that were unemployed and they needed money and that it was just so widely, you know, it was so easy to get into. So I was a very conservative person. I didn't really think about doing that but times got really, really hard and I didn't eat for about a week and I didn't have anywhere to stay. I was sneaking on the train and so I decided that I was going to clean myself up a little bit. Decided to go out there and do what I have to do. – 21 year-old white transgender female

I needed the money and my friend hooked me up with a guy who she said would give me money and all I had to do is go out with him on a date. And it turns out that wasn't all he wanted. But he offered me $500 and I really needed the money to pay my phone bills, and pay for school books and everything. – 18 year-old white bisexual female

Excerpted from Meredith Dank et al., "Surviving the Streets of New York: Experiences of LGBTQ, YMSM, and YWSW Youth Engaged in Survival Sex," Urban Institute, February 2015.

SPOTLIGHT

Working Beyond Survival: Economic Empowerment for Transgender People

Many transgender people face challenges when seeking employment, but recent initiatives have emerged to empower transgender people to create economic security for themselves and their families.

In Chicago, Angelica Ross created **TransTech Social Enterprises** to empower transgender and gender non-conforming people to become self-employed independent contractors in the technology industry. Technology skills are, Ross believes, going to be increasingly in demand in our tech-savvy world. She hopes TransTech will set its participants up for "economic improvement," and help ease the "extreme levels of poverty, discrimination, harassment, and violence towards the trans community, especially trans women of color."[168] TransTech offers programs designed to help transgender people gain skills, including graphic design, web development, social media for businesses, coding, and data entry. The organization then pairs clients seeking technology services with trained individuals.

Ross understands firsthand the struggle of unemployment and underemployment. She was discharged from the military when people learned she was transgender, and faced an employment environment that was stacked against her. So she started her own business to invest in people in similar circumstances and to create a powerful group of transgender contractors who can leverage their tech skills for good. Through hands-on training and video tutorials, members at every skill level have the opportunity to increase their tech competence and job prospects.

The **Trans Employment Program (TEEI)** is the nation's first comprehensive city funded initiative designed to combat rampant unemployment in transgender and gender non-conforming communities. Started in 2007, the program currently enjoys national attention for its successful model in San Francisco/Bay Area. TEEI is a collaborative program of the San Francisco LGBT Community Center and the Transgender Law Center.

It is designed to help members of the transgender community achieve financial self-sufficiency through secure, stable employment in safe jobs that provide a living wage and benefits. Services include:

- One-on-one job search coaching and workshops, including résumé development, interviewing practice, and networking opportunities.
- Career Fairs with pre-screened, transgender-friendly companies and organizations committed to diversity inclusion. Including comprehensive employer cultural competency trainings with leading national employers.
- Peer-based mentoring from transgender and allied professionals in the community who can share their job experiences and networks.
- Free legal advice that focuses on rights in the workplace and advocacy to advance public policies that support transgender economic security.

SPOTLIGHT

Human Trafficking and LGBT People

It is estimated that global human trafficking is a $32 billion per year industry.[169] Trafficked individuals are forced, coerced, or deceived into situations where they do work against their will, such as hard labor, agricultural work, sex work, transporting or selling drugs, or serving as domestic workers.[170] Around the world, there are an estimated 20 million victims of human trafficking.[171]

The United States is widely regarded as a hub for human trafficking, with many traffickers using the United States as a destination country. International reports estimate that 14,500 to 17,500 victims are trafficked into the United States each year. This does not include the number of victims who are trafficked within the United States, as those numbers are more difficult to estimate.[172] Within the United States, any young person under age 18 who is induced into trading or selling sex is defined by the law to be a victim of sex trafficking, regardless of whether they were explicitly coerced.[173] This legal definition does not acknowledge the reality of many youth, however, who may not experience coercion but may trade sex to meet economic needs.

Trafficking is a particular concern for LGBT people, particularly LGBT young adults. Traffickers use a variety of tactics, including force, fraud, and coercion, to lure their victims and force them into labor or sexual exploitation. Traffickers frequently look for individuals who are vulnerable for a variety of reasons, including isolation, economic hardship, natural disasters, or political instability.[174] In its 2014 report, *Trafficking in Persons Reports 2014*, the U.S. State Department emphasized that LGBT people can be uniquely vulnerable to trafficking because their very identities are criminalized in many countries.[175] And while identifying as LGBT isn't itself a crime in the United States, the climate of stigma combined with family rejection and legal discrimination means that LGBT people in the United States are also vulnerable to trafficking.[176]

For example, LGBT young adults who are pushed onto the streets because of family rejection, failures of the child welfare system to meet their needs, or unsafe schools, can find themselves in vulnerable situations where they are coerced into trading sex. The scenario is not uncommon: a transgender teen kicked out of her home for being transgender meets someone who offers housing, food, and clothing and eventually forces her to engage in sex work to continue to receive support. In a survey of youth experiencing homelessness in Arizona, LGBTQ young adults who were experiencing homelessness were more likely than their heterosexual peers to experience trafficking.[177]

Given that individuals who are trafficked are often forced into underground economies, such as prostitution, drug sales, or itinerant labor, they may be targets of law enforcement activities. Without proper training of law enforcement, survivors of trafficking can themselves be arrested and pushed into the criminal justice system rather than receiving assistance in gaining safety, freedom, and security. Individuals are placed in foster care if they are minors, or they may be convicted and sentenced to time in prison or jail for activities they were forced to commit.

Many survivors of trafficking endure fear and coercion. They are often hesitant to provide information about their trafficker, meaning they are not identified as a survivor of trafficking. This is of particular concern for trafficked individuals who are undocumented immigrants; they can end up in immigration detention facilities and be deported. Without legal recognition of their trafficked status, they are unable to access pathways to citizenship designed to protect trafficking survivors. New York State passed a law in 2007 that makes it easier for individuals who engaged in illegal activity and are convicted to have their convictions and sentences overturned or vacated if the activity was committed during a trafficking situation.[178]

Discriminatory Enforcement of Laws

Since colonial times, state laws criminalized consensual sex between individuals of the same sex and/or individuals who engaged in certain sexual acts, regardless of sex. These laws are frequently called "anti-sodomy laws." In practice, however, the enforcement of these laws discriminatorily targeted LGBT people. While the Supreme Court struck down state sodomy bans in 2003, LGBT people are still criminalized through discriminatory enforcement of other laws. This section of the report looks at three categories of laws that are disproportionately used against LGBT people:

- HIV criminalization laws that rely on outdated science and stereotypes;
- State indecency laws that frequently are used to target LGBT people engaging in consensual sex; and
- Drug laws that disproportionately impact people of color and low-income people, many of whom are LGBT.

PROBLEM: HIV CRIMINALIZATION LAWS

People living with HIV, including LGBT people, face a patchwork of outdated and reactionary laws that rely on misinformation rather than accurate science about the transmission of HIV, as shown on the maps in *Figure 21* on the next page.[179] These laws, frequently called "HIV criminalization laws," penalize behavior by people living with HIV, even if those behaviors carry no risk of transmission or even if someone unintentionally exposes another to the virus. HIV criminalization laws also criminalize consensual sexual behavior between adults, regardless of whether they use condoms and/or other forms of protection.

The result of HIV criminalization laws is that people living with HIV are at constant risk of being charged with a crime. In some states, individuals convicted under these laws are forced to register as sex offenders, further limiting employment and housing options, among other far-reaching ramifications. If they end up going to jail or prison because they have violated these laws, individuals with HIV face added challenges in receiving adequate medical care while in prison, as discussed in pages 102-103.

Research finds that HIV criminalization laws create a culture of fear and often discourage people from seeking treatment, learning about their HIV status and practicing appropriate disclosure.[180] According to the Centers for Disease Control and Prevention, HIV criminalization laws do not take into consideration prevention measures, including condoms, antiretroviral medications, and pre-exposure prophylaxis (also known at PrEP)—all of which reduce, or completely eliminate, the risk of transmission.[181] A groundbreaking study released in 2015 found that among more than 1,700 couples in which one partner had HIV, antiretroviral therapy resulted in a 0% rate of HIV transmission.[182]

Between 2008 and 2013, there were at least 180 prosecutions of individuals living with HIV for consensual sex or activities that carry no risk of transmitting HIV, such as biting or spitting.[183] Some people have been prosecuted for other conduct because of their HIV status, with authorities equating this conduct with reckless endangerment, assault, terroristic threats, or attempted homicide.[184]

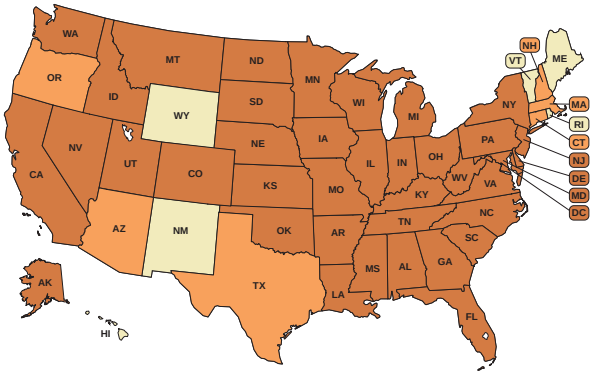
Evidence suggests that prosecutions under HIV criminalization statutes may be racially skewed. Analyzing 322 HIV-related prosecutions, ProPublica found that two-thirds involved individuals who identified as black or African American.[185] A 2015 study examined convictions between 1992 and 2010 under Michigan's HIV criminalization law, which makes it a crime for a person with HIV to have sex without disclosing their status. Among the study's headline findings: black men with female partners and white women overall had a greater risk of conviction, compared to men with male partners overall and white men with female partners.[186]

In 2015, the Williams Institute examined instances where individuals came into contact with the California criminal justice system between 1988 and June 2014. Again, racial disparities emerged; black and Latino/a people comprised two-thirds (67%) of the individuals who came into contact based on their HIV status, while they comprise just 51% of individuals living with HIV in the state.[187] Individuals charged with HIV-related charges were convicted in nearly all (99%) cases, and 91% of individuals were sentenced to time in prison or jail, as shown in *Figure 22* on the next page.

In a survey of people living with HIV, 57% of transgender respondents said they feared false accusations of nondisclosure, which could trigger criminal prosecution. Virtually all of the transgender respondents said it would be very difficult to receive a fair chance in court if accused of nondisclosure.[188]

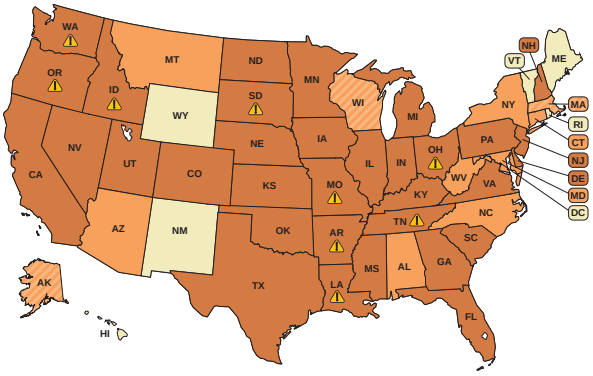
Figure 21: HIV Criminalization

HIV Criminalization Laws*



- State has HIV-specific law(s) (or criminal law concerning sexually transmitted infections that explicitly includes HIV) related to perceived or potential exposure and/or transmission of HIV (38 states)
- State does not have HIV-specific law, but general criminal law has been used to prosecute people living with HIV (6 states)
- No known prosecutions or HIV-specific statutes (6 states + D.C.)

Associated Charges**



- Violations of HIV-specific statute (or HIV-related prosecutions under general criminal code) are charged as felony offenses (33 states)
- Violations of HIV-specific statute (or HIV-related prosecutions under general criminal code) are charged as misdemeanors (8 states)
- State imposes "sentence enhancement" statute that may increase penalties based on HIV status (3 states)
- No known prosecutions or HIV-specific statutes (6 states + D.C.)
- ⚠ Sentence for HIV-related offense includes registration as a sex offender (9 states)

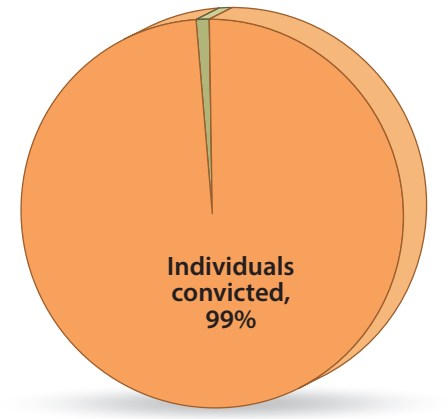
*Note: The extent to which states or individual prosecutors actively prosecute cases under these statutes varies greatly, as do the penalties if convicted (see other map for Misdemeanor and Felony charges). A number of criminal laws on sexually transmitted infections explicitly include HIV, whereas others, such as in New York, contain broad definitions that can encompass HIV. It is important to note that while several states have no known prosecution or HIV-specific statutes, there are also no legal frameworks in place to prevent prosecutions under general criminal codes in these states.

**Note: HIV-related "offenses" can be charged as misdemeanors or felonies dependent on the specific state statute, and the maximum sentences for such charges vary greatly. HIV-specific sentence enhancements are also included in several state criminal statutes. The charges shown in this map are either explicit guidelines or, in the absence of guidelines, recorded charges applied to known prosecutions. When a state has more than one HIV-specific statute and/or known prosecution, the state is categorized by the most severe charge therein—for example, California has several HIV-related statutes on the books and known prosecution with associated charges ranging from sentence enhancement up to felony, and is thus categorized under HIV-related felony states. Iowa HIV statute was revised in 2014 and now has gradations of charges and penalties, depending on degree of intent, risk, and whether or not HIV was transmitted.

Source: Movement Advancement Project, Equality Maps, current as of January 31, 2016. For updates see http://www.lgbtmap.org/equality-maps/hiv_criminalization_laws.

Figure 22: Incredibly High Conviction Rates in HIV Criminalization Cases

Of Individuals Charged Under HIV-criminalization Statutes in California



Source: Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute, December 2015.

KEY TERM: Sodomy Law or Anti-Sodomy Law

A broad category of laws criminalizing non-procreative sexual activity. Laws varied by state, but frequently included oral and anal sex. In some cases, the law only targeted sex between individuals of the same sex, but other states criminalized such conduct between individuals of the opposite sex.

Story: Prison and Sex Offender Registration: Living with HIV in Louisiana



Photo permission from Robert Suttle

After graduating from Louisiana State University, Robert Suttle sought to enlist in the Air Force, but he was rejected when he tested positive for HIV. Suttle overcame his disappointment and began working for Louisiana's Second Circuit Court of Appeal, in Shreveport, as an assistant clerk. After several years, he was well on his way to becoming the first black male deputy clerk in that court.

But then, his life was destroyed. After a contentious relationship broke up, his former partner filed criminal charges against him for not having disclosed his HIV status when they first met. Robert was not accused of transmitting HIV or of lying about his HIV status. But he was still prosecuted under a Louisiana law that effectively requires people with HIV to disclose that status prior to having sexual contact, regardless of whether there was any chance of HIV transmission.

Rather than risk a 10-year prison sentence, Robert accepted a plea bargain and served six months in prison. He is required to register as a sex offender through 2024, and the words "sex offender" are printed in red capital letters underneath his picture on his driver's license.

Excerpted from (Think Having HIV Is Not a Crime? Think Again n.d.).

PROBLEM: LAWS CRIMINALIZING CONSENSUAL SEX

In 1962, Illinois became the first state in the United States to repeal its law criminalizing sodomy. At the time, every other state in the United States had laws on the books that regulated consensual sex between adults.[189] While some of these laws prohibited sexual acts between individuals of the same sex, many didn't specifically target gay, lesbian, bisexual, and/or transgender people at the time they were enacted. However, beginning in the mid-20th century, these laws came to be used almost entirely against gay and bisexual men.

By 2003, 36 states had repealed these laws to remove prohibitions on consensual sex between adults.[190] The remaining states still had laws that were rarely enforced, but when they were, gay and bisexual men were frequently targeted. In 2003, the U.S. Supreme Court ruled in *Lawrence v. Texas* that the government could not legislate personal relationships and private activity between consenting adults. This historic decision, in theory, removed the criminal threat that millions of gay and bisexual men lived with—raids on gay bars, fear of police entrapment, and more.

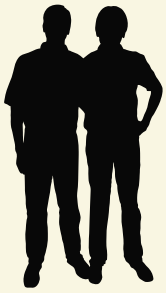
More than 12 years after *Lawrence*, a case that certainly helped pave the way for other advances for LGBT people, 12 states still have not legislatively repealed sodomy laws.[191] While these laws do not discriminate against LGBT people on their face, laws and policies remain in place that seek to regulate and police sexual activity and put LGBT people at increased risk for arrest and for additional charges and harsher sentences.

Gay and Bisexual Men Are Targeted

Gay and bisexual men, and men who have sex with men but who may not identify as gay or bisexual, remain at higher risk for criminalization of consensual sex than other adults. Although anti-sodomy laws were found unconstitutional, gay and bisexual men often are targeted.

Police often focus their attention on areas where men meet or places where they engage in sexual contact, even if similar sexual contact between opposite-sex couples doesn't draw police attention.[192] In 2013, an undercover sheriff's deputy in East Baton Rouge, Louisiana, met another man at a public park.[193] The deputy asked the man if he'd like go back to his place for "some drinks and some fun." Despite the fact that no money was exchanged, the man was arrested. This arrest was part of a series of efforts by law enforcement in the city to single out gay men who visited a public park, even though they were not engaged in any illegal activity. Police in other cities often focus their efforts on public places such as restrooms in transportation terminals, such as the Port Authority Bus Terminal in New York City,[194] or public parks.

Story: Deadly Consequences for Teen Arrested by Police



In 1997, Marcus Wayman, a high school senior, and his 17-year-old companion were sitting in a parked car in Minersville, Pennsylvania, when they were approached by two officers. The police interrogated them despite a lack of any evidence that they were engaged in unlawful activity. The officers proceeded to search the car on the pretext that the young men were in possession of marijuana, demanding that they empty their pockets. When the officers discovered that the boys were carrying condoms, they concluded the two were going to have sex.

Both were arrested for underage drinking and brought to the police station for further questioning. One of the officers subsequently lectured them on his interpretation of the Bible's views on homosexuality, called them "queers," and threatened to tell Marcus' family and friends that he was gay. Marcus died by suicide shortly after he was released. Marcus' family sued the town and the police department for police misconduct, discrimination, and violation of the right to privacy. The court ruled that Marcus' right to privacy was violated, writing "it is difficult to imagine a more private matter than one's sexuality."

Excerpted and adapted from Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, Queer (In)Justice, Queer Action/Queer Ideas (Boston, MA: Beacon Press, 2011).

Frequently, the statutes used to prosecute gay and bisexual men for consensual sex mandate that convicted individuals register as sex offenders; this can have lifetime consequences long after an individual has served a sentence. In addition, when a person is charged with violating a sex-related statute, he frequently receives additional charges or harsher sentences than if the conduct were with a member of the opposite sex under these "crimes against nature" statutes.

LGBT Youth Are Treated Unfairly

LGBT young people are at increased risk for prosecution under statutory rape and other laws regulating sex between minors. Researchers find that LGB young people, in particular, are at risk for criminalization because their sexual behavior is frequently considered less acceptable by family members, teachers, and law enforcement. One alarming result is that many LGB young people are convicted as sex offenders for engaging in consensual sex, even when heterosexual young people would not be charged or convicted under the same circumstances. This can have have a detrimental impact on young LGB people's ability to finish school and find jobs.[195]

In Texas, for example, sexual contact with a minor under the age of 17 is a felony, unless the parties involved are no more than three years apart in age, each member is older than 14, the sexual contact is consensual, and they are the opposite sex.[196] LGBT young people engaged in same-sex sexual contact are excluded from this exception.

A parent who disapproves of their child's sexual orientation or gender identity could report a son or daughter's sexual partner to law enforcement. This is exactly what happened in 2013 to Kaitlyn Hunt. A high school senior in Florida, she was charged with lewd and lascivious battery for engaging in voluntary sexual activity with her girlfriend, a 14-year-old freshman. The girlfriend's parents reported the relationship to the police once Kaitlyn turned 18, and she was at risk for being placed on a sex offender registry. She pleaded no contest and was placed on house arrest and probation.

LGBT young people also receive harsher punishments as a result of society's discomfort about sex between individuals of the same sex. Participants in one study were asked to propose various disciplinary actions for individuals who engaged in sex with a 14-year-old. The participants gave harsher punishments to gay offenders than they did to heterosexual offenders.[197] In the study, a 16-year-old heterosexual offender was much less likely to be made to register as a sex offender than a 16-year-old gay offender. And the 16-year-old gay offender was disciplined in a manner similar to a 35-year-old heterosexual offender.

Story: "I didn't do anything wrong but love somebody"



Like many teenagers, Antjuanece Brown sent a lot of text messages to her friends. In 2009, she started dating Jolene Jenkins, who was 16 and three years younger than Antjuanece. The two spent time at the mall. Antjuanece attended Jolene's lacrosse games.

Like more than half of American teens who have "sexted,"[198] the two exchanged text messages that were flirtatious and sometimes sexually explicit.

Jolene's mother didn't like that her daughter was dating another girl and took Jolene's phone. She turned it over to the police. As Antjuanece told a reporter for *Willamette Week*, "I've never been in trouble in my life. … I'm not a sex offender."

And yet, Antjuanece was arrested and indicted by a grand jury for felony crimes, producing child pornography, sex abuse, and luring a minor. Together, these crimes could have carried a sentence of six years in prison and mandatory registration as a sex offender. The three-year age difference in their relationship wasn't itself against the law, but the fact that the two exchanged sexts was what triggered the police. After being arrested, Antjuanece spent a month in the Washington County jail. She couldn't afford the $50,000 bail set by a judge. "I got called a child molester," she says. "I was told I should kill myself. We were only allowed out of our cells six to eight hours a day. It was lonely and scary."

Facing six years in prison derailing her plans for the future, Antjuanece pleaded guilty to "luring a minor," a felony that doesn't require her to register as a sex offender. She was sentenced to three years of probation, $3,000 in court fees, and was unable to see Jolene until Jolene turned 18. She lost her job at a call center because of her criminal record. And her dreams of becoming a social worker and working with children seem impossible to her now that she has a felony conviction, particularly one involving minors.

After 10 months apart, when Jolene turned 18, the couple reconnected. As Jolene explained, "We had a lot of things taken away and … Look, a lot of things we had to go through, but we're here." The couple started living together and making plans to get married.

Adapted from Beth Slovic, "Sext Crimes," Willamette Week, November 30, 2010; What Are LGBT Youth of Color Facing? (Cross-Coast Youth Discussion - Growing Up Policed), Growing Up Policed: Surveilling Racialized Sexualities Mini-Conference (New York & Oregon), 2011.

PROBLEM: DRUG LAWS

Current drug policy in the United States results in the incarceration of tens of thousands of individuals each year—many of whom were convicted of nonviolent crimes such as possession of marijuana or another illegal substance. On December 31, 2013, there were an estimated 1.57 million people in federal and state prisons in the United States.[199] Sixteen percent of people in state prisons were sentenced for drug-related offenses. A majority of people held in federal prisons (51%) were sentenced for drug-related offenses.[200]

Mandatory minimum sentencing penalties, such as those contained in the federal Anti-Drug Abuse Act of 1986, allow very little flexibility for judges sentencing individuals convicted of drug-related offenses. Three in five individuals incarcerated in federal prisons for drug-related offenses were sentenced under mandatory minimum penalties.[201] Over time, the average length of stay in prison has increased substantially.[202] The average time served for a drug offender in 2011 was twice what it was in 1984.[203] In response to these facts and the adverse impact of "mandatory minimums" on individuals, families and communities (not to mention government spending on prisons), nearly half of Americans (48%) support increasing the use of alternative sentencing programs for people with nonviolent convictions.[204]

The intense war on drugs in the United States has disproportionately impacted urban communities, people of color, and those living in poverty. Drug sentencing laws often punish some offenders more harshly than others, and this has a disproportionate impact on people of color. For example, individuals convicted of selling drugs near schools receive increased sentences, but

Story: A Second Chance for Me, but Not for Her

A couple of days after the New Year in 1997, I cooked up two shots of heroin: one for my girlfriend and one for myself. We injected them, and I watched through clouded eyes as she slumped to the floor. As gone as I was, I knew something was wrong. I tried all of the tricks I knew—ice in the pants, shaking, slapping. No response. I couldn't feel a pulse. I called 911.

In the courthouse a few weeks later, I watched as an even more disturbing scene unfolded. My appearance had been early in the morning. I was lucky. My attorney got my charges dropped to a misdemeanor, and I was put in a pre-trial diversion program. As long as I showed up, did some community service, and managed not to get arrested, I wouldn't have a record. My girlfriend, on the other hand, wasn't given that option. The same judge, in the same courtroom, on the same day, gave her real probation, complete with a probation officer, urine tests, and, worst of all, a record.

I wanted to jump out of my seat, to scream. Even as an 18-year-old heroin addict, I understood what had happened. I was white, she was not. I had a lawyer that knew the judge; she had a public defender with 15 other cases that morning. The judge assumed I'd be successful in diversion, and that she needed closer monitoring. It didn't matter that I had been the one to introduce her to heroin, that my habit had started three years before I met her, that I spent about three times as much money on drugs. The system was set up to punish her more harshly than little white, wealthy me.

I'm grateful that I got diversion. It wasn't that easy, but I managed to do my 21 days of community service in between shifts at my two jobs. And at the end of the day, there were no real consequences. When I applied for jobs, when I applied for college, when I applied for a security clearance, my name came up unblemished. Though it took me a few years to get out of the cycle of drugs and homelessness, I eventually ended up going to community college and then undergrad. I got a master's in business and a law degree. Today, I advocate for changes in criminal justice policy. And every day I'm driven by the knowledge that I could not be where I am if my arrest had resulted in a felony conviction, and that I benefited from structural racism.

- Meghan Maury

given the population density around schools in many cities, people in urban areas, particularly people of color, are more likely to be arrested within these zones.[205] In August 2013, the Department of Justice announced changes to its mandatory sentencing policies to shift the most severe mandatory sentencing penalties to serious, high-level, or violent drug traffickers.[206]

Law enforcement strategy has also focused intently on policing marijuana distribution and use, with a disproportionate effect on arrests of African American individuals. According to a 2013 report by the ACLU examining data from all 50 states and the District of Columbia from 2000 to 2010, African Americans are incarcerated for drug charges at much greater rates than white people even though drug use rates are similar.[207]

Information about rates of arrest of LGBT people for drug-related offenses is limited. However, it is likely that LGBT people are at greater risk of arrest for these types of offenses given that they use substances at a higher rate than the broader population.[208] Research finds that some LGBT people are more likely to abuse substances, including illegal drugs, perhaps as a coping mechanism related to the discrimination and stigma that LGBT people experience.

- Men who have sex with men are more likely than other men to use marijuana, amphetamines, and heroin.[209]
- In a meta-analysis of 18 published academic studies, LGB-identified youth were more likely to engage in substance use than heterosexual youth.[210]
- Bisexual youth and female-identified LGB youth were also more likely than LGB youth as a group to use illegal substances.[211]
- Research has found links between parental rejection during adolescence and negative health outcomes, including substance abuse, for LGBT young adults.[212]

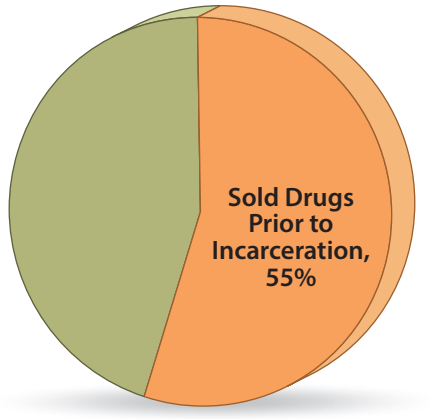
Transgender people may also be unfairly targeted by police for suspicion of drug use if they are found in possession of syringes. Some transgender people inject hormones as part of their transition-related medical care, so they may have syringes in their belongings.[9]

Given higher rates of drug use, homelessness and police stereotyping, it is likely that LGBT people, particularly LGBT people of color, face significantly higher risks of drug-related arrest. For example, as shown in *Figure 23*, in the Black and Pink survey of currently incarcerated LGBTQ people, 55% had sold drugs prior to being incarcerated.[213]

[9] A troubling number of transgender people who lack adequate medical care and/or those who cannot find competent medical care use street hormones and may be at increased risk for blood-borne illnesses if they share needles.

Figure 23: Drug Selling Reported by Currently Incarcerated LGBTQ People

Percent of Currently Incarcerated LGBTQ People



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

SPOTLIGHT



Community-Based Diversion Programs

Recent years have seen an increase in programs designed to provide alternatives to incarceration and conviction for nonviolent and drug offenders. "Diversion programs" vary in their focus and scope, but they frequently seek to address behavioral health issues, including substance use and mental health, and engage individuals in programming rather than putting them in jail.[214] Upon successful completion of the program, in some models, individuals do not receive a permanent criminal record, removing what would otherwise be a significant barrier to success. As of 2011, there were more than 3,000 diversion programs. These include programs focused on pretrial diversion, "drug courts," and intervention programs.[215]

In Seattle, WA, a pilot diversion program for low-level drug and prostitution crimes aims to divert offenders into community-based programs even before the booking process. **Law Enforcement Assisted Diversion** (LEAD) allows law enforcement officers, instead of arresting low-level offenders, to divert them directly into community services including drug treatment programs and mental health support, housing and healthcare assistance, and job training. Offering the diversion in the pre-booking phase saves the city the funds spent in the arrest process, and ensures that participants in the program do not end up with another mark on their record.

Local organizations, including a homelessness advocacy organization, offer case management, financial assistance, legal advocacy, housing assistance, and job training services. In addition, regular evaluations are built into the program. In 2015, an analysis revealed that LEAD participants were 60% less likely to be arrested within six months of participation in LEAD than a "system-as-usual" control group.[216] Since LEAD was established in 2011, participants were 58% less likely to have experienced an arrest than individuals who did not participate.

Despite the success of diversion programs in cities like Seattle, there is very little research about how LGBT people interact with these programs. According to a survey of juvenile justice professionals conducted by the Equity Project, 63% said that diversion programs in their geographic areas were either not suited to working with LGBT youth, or else there were no programs that were appropriate in working with LGBT youth.[217]

Summary: How Discriminatory Enforcement Leads to Criminalization

Bad laws and discriminatory enforcement of laws push LGBT people into the criminal justice system. HIV criminalization laws rely on outdated science and stereotypes. State indecency laws are frequently used to target LGBT people engaged in consensual sex, and drug laws have resulted in high rates of incarceration for low-income communities and communities of color, including many LGBT people.



Harmful Policing Strategies and Tactics

Law enforcement agencies, including city and state police, often enforce laws and ordinances in ways that disproportionately impact low-income people and people of color, including LGBT people. Law enforcement officers also often use policing strategies and tactics that have a disparate impact on these communities.

The various aspects of people's identity, such as race, sexual orientation, gender identity and class, can increase their chances of being subject to police surveillance or put them at increased risk for interaction with police. Another likely trigger for encounters with police is simply congregating in a public place. These identities and situations combine with stereotyping and profiling by police to result in discriminatory treatment for LGBT people, particularly LGBT people of color, transgender and gender non-conforming people, and poor LGBT people.

Over the past several years, the nation's attention has turned to the ways in which police officers and other members of law enforcement engage with the public, particularly black and Latino communities. Surveys show that communities of color have great mistrust of the police as a result of the use of force, implicit bias, explicit racism, harassment, and discrimination.[218] Surveys also show that perceptions of law enforcement, its effectiveness and its integrity vary widely depending on race and ethnicity. For example, a 2009 survey found that many white Americans (78%) believe police do a good job enforcing the law, compared to just 61% of Latino/a people and 55% of African Americans.[219] Poor perceptions of police by people of color, frequently based on a history of negative interactions, result in less trust of the police and can ultimately deter the reporting of crime. Among Latino people, for example, 5% said they would definitely not report being a survivor of a violent crime. They cited fear of repercussions such as immigration enforcement, discrimination, or a lack of police response.[220]

This section explores how and why the LGBT community, including many LGBT people of color, interact with law enforcement, including:

- Impact of quality-of-life and zero-tolerance policing;
- Policing of gender norms;
- Aggressive enforcement of anti-prostitution statutes;
- Disproportionate impact of stop-and-frisk;
- Discrimination and violence when seeking assistance from law enforcement; and
- Abuse and brutality by law enforcement.

The net result of these harmful policing strategies and tactics is disproportionate numbers of LGBT people being pushed into the criminal justice system, increased mistrust of law enforcement, and reduced public safety.



PROBLEM: QUALITY-OF-LIFE AND ZERO-TOLERANCE POLICING

Over the past 30 years, government and law enforcement officials have prioritized a policing strategy called "quality-of-life policing." This strategy is based on the "broken windows theory," which posits that cracking down on highly visible minor crimes and even non-criminal activity can prevent more serious crimes in a neighborhood and restore "order."[221] In some places, quality-of-life policing is part of a broader community policing strategy, which relies on community organizations and community members to be attentive to activities in their neighborhoods and to act as partners in improving safety.[222] However, in many areas, quality-of-life policing is used solely as a tactic to appear tough on crime, with little community engagement or dialogue.

As a policy, quality-of-life policing focuses on policing minor crimes like graffiti, littering, not paying fares for public transit, and unlicensed street vending.[223] These policies also criminalize many public behaviors, such as making too much noise or sleeping or drinking in public.[224] For example, it is increasingly against the law to congregate in public. Police in many places focus

on enforcing these public nuisance statutes as a way to deter more serious crime. "Zero-tolerance" policing is a similar, frequently simultaneous, policing policy where these minor infractions, which previously brought a warning or a citation, now result in arrest, jail time, and/or hefty fines.[225]

Quality-of-life policing grants extensive discretion to individual law enforcement officers. Because of this, underlying biases can easily come to bear in interactions between people and police.[226] Officers look the other way and ignore infractions committed by some people or in some neighborhoods, but cite, ticket and arrest others. In many places, quality-of-life policing has resulted in increased police presence and aggressive enforcement of minor offenses, including minor drug offenses. And research finds that police departments do not use this policy across an entire jurisdiction, but rather in specific neighborhoods, either based on high rates of crime or concern from residents.[227] As a result, young people, people of color, people perceived to be involved in trading sex, homeless people, and low-income people, many of whom are LGBT, are explicit targets of broken-windows policing.

This focus on quality-of-life policing persists despite research showing that improvements in neighborhood safety frequently begin with reductions in violent crimes, such as murder, rape, and aggravated assaults, and economic improvements, rather than focusing on minor crimes. In fact, crime rates across the country have declined in recent years, even in cities that have not employed quality-of-life policing strategies.[228]

LGBT people, particularly low-income LGBT people and transgender people of color, are frequently targeted under these strategies. When law enforcement is tasked with increased enforcement of quality-of-life ordinances, officers are given broad discretion.

For example, groups of LGBT young people congregating near an LGBT center may be targeted through curfew enforcement campaigns or anti-loitering efforts even if they are not violating any laws or ordinances outside of simply being outside.

For some LGBT young people, for whom home is not a safe or supportive place, being "out and about" is their survival mechanism, but it can put them at risk of being criminalized.[229] In particular, young LGBT people of color too often are perceived as "out of place" in traditionally "gay" neighborhoods, which are frequently predominantly white. And people experiencing homelessness, including the estimated 20-40% of homeless youth who identify as LGBT,[230] can find themselves caught in a cycle of arrests and jail time as they are ticketed or arrested for sleeping in public or panhandling.

- In focus groups of young people in New York who identified as LGBTQ and questioning, several youth said they'd been ticketed for putting their feet on a subway seat, sitting in a playground after dark, or dressing in a way that officers found "offensive."[231]
- Of LGBTQ youth engaged in survival sex in New York City, 70% had been arrested at least once in their lifetime, frequently for offenses other than prostitution, such as drug possession, jumping the turnstile, or trespassing.[232] In fact, only 9% had been arrested on prostitution-related charges.

KEY TERM: Quality-of-Life Crimes

Offenses in this category are focused more on how people behave in public environments. This category frequently includes loitering, public drinking, littering, or jumping a turnstile.

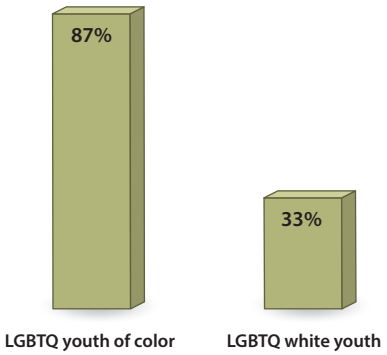
Story: LGBT Youth in Gay Neighborhood Targeted by Police

In the Boystown neighborhood in Chicago, groups of black and Latino LGBT youth have been targeted by neighbors and the police for congregating on the street, listening to loud music, and other infractions such as drinking in public, smoking marijuana, urinating, or vandalism. The youth come from other neighborhoods to hang out and to attend programs at the LGBT community center, the Center on Halsted, but they are perceived to be the root cause of increases in robberies, assaults, and vandalism in the neighborhood. Kloe Jones, a 23-year-old transgender woman, explains, "There's a lot of people from the South and West Side. [Boystown] is a predominantly white neighborhood, but this is all we have. There have been muggings and robbings up here, and [white residents] look at the African Americans who come to the Center, as if somehow it's their fault."

Adapted from Mitch Kellaway, "Working With Laverne Cox, Standing in Solidarity with Trans Women of Color," The Advocate, October 19, 2014.

Figure 24: LGBTQ Youth Interactions with Law Enforcement

Percent of LGBTQ Youth in New Orleans Reporting Interactions with Police



Source: BreakOUT! and the National Council on Crime & Delinquency, "We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color," 2014.

- In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by the police compared to just 33% of white youth, as shown in *Figure 24*.[233]
- Analysis of nationally representative data shows that LGBTQ youth were at increased risk of police stops compared to their non-LGBTQ peers.[234]

These data mirror extensive research finding that people of color are particularly impacted by quality-of-life policing strategies. Not only are police more likely to engage in over-policing in communities of color and low-income neighborhoods, they are also more likely to enforce violations by people of color in predominantly white and upper-class neighborhoods. In New York City, for example, roughly nine out of ten citations citywide for disorderly conduct, loitering, and spitting were issued to black and Hispanic people.[235]

Quality-of-life policing has a particularly detrimental impact on low-income communities as the fines and fees add up and can be insurmountable for low-income and homeless individuals. When individuals, particularly those struggling financially, cannot afford the fines associated with minor violations such as parking infractions, traffic tickets, or housing code violations, cities and counties frequently issue arrest warrants. Thus, individuals are arrested and incarcerated not for serious violations, but rather for failing to pay fines and fees associated with minor offenses in a timely manner.[236] Particularly for low-income people, "poverty violations"—such as driving with a suspended license, expired plates or registration, or failing to provide proof of insurance—threaten their economic security and can land them in jail. Time spent in jail, or even waiting in municipal court, can wreak havoc on the lives of low-income individuals, many of whom have hourly jobs and lose not only income, but their employment, making it even more difficult to pay the necessary fines.[237]

PROBLEM: POLICING OF GENDER NORMS

Law enforcement officers are frequently in situations where they must make judgment calls about when to question or interact with someone. In these situations, underlying biases and explicit prejudice can influence officers' decisions. "Profiling" refers to the practice by law enforcement to rely on an individual's characteristics to make conclusions about whether or not that individual is participating in criminal activity.[238] When law enforcement officials use profiling, they are not focusing on evidence of wrongdoing, but are instead relying on stereotypes and bias.

When police bring their personal biases and stereotypes to their work, research finds they perceive LGBT people as stepping out of line and in violation of social norms. Police use perceived or actual sexual orientation or gender identity as a way to profile people. Officers will draw conclusions about an individual based on appearance and perceived sexual orientation and gender identity—along with other factors such as the location, the race of the person, and what that person is doing.

An Amnesty International report found that transgender and gender non-conforming people in particular, as well as LGBT individuals generally, are subject to increased policing because they are perceived to transgress gender norms.[239] For example, police frequently assume that transgender women, particularly transgender women of color, are sex workers based on their perceived transgender status and their race, as well the fact that they are standing, walking, or driving in a particular area. Among the other possible triggers for police targeting of transgender and gender non-conforming people: use of a restroom designated for what police perceive to be a different gender or the presentation of identity documents that do not match a transgender person's gender expression or the officer's perception of what the person's gender is.

Story: Life for Transgender Women of Color in New Orleans



L'lerrét Jazelle Ailith lives in New Orleans, where she's a college student, blogger, and activist. She recently explained to The Advocate what it is like to be a transgender woman of color in New Orleans. "New Orleans has a really intense problem with police basically stopping anyone who looks 'suspicious.' Basically, they don't think we know our rights, and they take advantage of that. They treat LGBT people—especially trans women of color—like we are inherently criminals. A lot of trans women [find themselves] locked up in prison, in solitary confinement, or put in prisons with men—[placed] in very dangerous situations. And there's no one to advocate for them, no one to fight for them."

Excerpted from Mitch Kellaway, "Working With Laverne Cox, Standing in Solidarity with Trans Women of Color," The Advocate, October 19, 2014.

SPOTLIGHT



Educating LGBT People About Their Rights

In the absence of broader reforms, the best response for LGBT people facing discriminatory policing strategies is to know your rights. Across the country, many organizations are working on campaigns and materials to educate LGBT communities about their rights through "know your rights" campaigns and resources. These efforts strive to educate people, and particularly minority communities such as people of color or transgender people, about their rights as they interact with police and the criminal justice system.

The **National Lawyers Guild** created a series of documents to assist the transgender community, as well as attorneys and service providers, in knowing their rights when it comes to criminal law, immigration law, housing law, and employment law.

The Sylvia Rivera Law Project and the National Center for Transgender Equality published **a guide specifically focused on transgender people participating in direct actions**, such as protests, where they may interact with law enforcement.

In Chicago, the **Chicago Street Youth in Motion Task Force** created a "Street Youth Bill of Rights," which focuses on areas of health care, education, police, and social services.

In 2015, Streetwise And Safe (SAS) and BreakOUT! developed the **Get YR Rights Network**, a national know your rights network for LGBTQ youth and LGBTQ youth-serving organizations. Bringing together over 30 organizations, and growing, the **Get Yr Rights: A National LGBTQSTS Youth Know Your Rights Network** is a vehicle for connection and collaboration among organizations, including sharing materials and strategies, including the victories and challenges in organizations' efforts to end discriminatory policing practices and police profiling. Through conversations with LGBTQ youth organizations across the country, SAS and BreakOUT! sought to address young people's consistently identified needs for media, materials, and strategies in doing Know Your Rights work. In partnership with Network members, SAS and BreakOUT! gathered Know Your Rights materials specific to the experiences of LGBTQ youth with the police on the website, and set out to create a campaign toolkit and curriculum for LGBTQ, questioning, and Two-Spirit youth and youth-serving organizations focused on policing and interactions with law enforcement. Streetwise and Safe has created two workshops, "This is My Truth" and "The Criminal Injustice Machine," which are facilitated by peer youth facilitators.

SPOTLIGHT

Police Department Policies Gaining in LGBT Competency

A growing number of cities and counties have added specific language to their police department policy handbooks about how to best engage with the LGBT community. Frequently, these changes result from dialogue with community advocates, as well as through pressure from lawsuits or consent decrees (see page 55 for more about the use of consent decrees to improve relations between police and the LGBT community). Given the high rates of police harassment that transgender people face, increased training for police officers is crucial. Examples of these changes include:

In 2012, the **Los Angeles Police Department** worked with the Los Angeles transgender community to create guidance for culturally competent, appropriate interactions with transgender people. The guidance makes clear that law enforcement should respect anyone's gender identity and gender expression, and underscores that being transgender is not reasonable suspicion of prostitution or any other crime.

The **Chicago Police Department** issued similar guidance in 2012 for police officers vis-à-vis their treatment of transgender, intersex, and gender non-conforming people. Like the Los Angeles example, the Chicago guidance makes clear that law enforcement should above all respect a person's gender identity and use that person's preferred name and personal pronouns. Among the other elements of the guidance: gender identity cannot be used as reasonable suspicion of criminal activity; law enforcement should never stop, frisk, or detain someone in order to determine gender; and law enforcement should never disclose a person's transgender or intersex status to anyone without a proper purpose.

Also in 2012, the **New York Police Department** updated its patrol guide to address the way police interact with and address transgender and gender non-conforming people. The updates, which resulted from an LGBT advisory group, included guidance on how officers should address transgender people, how transgender people should be searched, and where they should be housed during processing.

The constant threat of arrest is a concrete reality for many transgender people. According to the National Transgender Discrimination Survey, 79% of transgender people who have transitioned have not updated all of their identity documents, which leaves many in the transgender community at risk.[240] There is evidence that when a transgender person "passes"[h] as the gender they present, they are less likely to be stopped or arrested by police, and harassment by police is less severe.[241] (For more on the frequent abuse and harassment by police LGBT people experience, see pages 59-62.)

In a similar way, gay and bisexual men and lesbian and bisexual women can be profiled by police if they are perceived to be disrupting the "order"— especially if they deviate from stereotypical gender norms. As discussed above, when LGBT young people's behavior is seen as gender non-conforming, such as girls who are outspoken or dress in stereotypical masculine clothing, police can see these actions as "disorderly" or out of line– or profile them as being involved in criminal activity. An Amnesty International report found that Latina lesbians in Los Angeles had been profiled by police as being members of a gang because of their appearance, behavior, and clothing items such as baggy pants, which were outside of stereotypical clothing.[242]

[h] The terms "to pass" or "passing" are sometimes used by members of the transgender community to refer to individuals who are not perceived as transgender. Adapted from http://transequality.org/issues/resources/teaching-transgender-guide-leading-effective-trainings.

Recent Federal Guidance and Action on Police Profiling

In late 2014, the U.S. Department of Justice issued an update to its policy prohibiting profiling by federal law enforcement agencies and officers.[243] The updated policy clarified that federal law enforcement officers are prohibited from using sexual orientation and gender identity—among other characteristics, including race and ethnicity—to any degree during routine traffic stops and other "ordinary" law enforcement situations.[244]

In other federal actions on profiling, President Obama's Task Force on 21st Century Policing released its final report in May 2015 aimed at building public trust while effectively reducing crime. The report included the following LGBT-specific recommendations:[245]

- Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.
- Invasive searches should never be used for the sole purpose of determining gender identity, and an individual's gender identity should be respected in lock-ups and holding cells to the extent that the facility allows for gender segregation.
- Law enforcement agencies should implement training for officers that covers policies for interactions with the LGBT population, including issues such as determining gender identity for arrest placement, as well as reinforcing policies for the prevention of sexual misconduct and harassment.
- Law enforcement agencies should establish search and seizure procedures related to LGBT and transgender populations and adopt as policy the recommendation from the President's Advisory Council on HIV/AIDS to cease using the possession of condoms as the sole evidence of vice.

PROBLEM: AGGRESSIVE ENFORCEMENT OF ANTI-PROSTITUTION STATUTES

The sale of sex remains illegal in all states in the United States.[i] In their implementation of quality-of-life policing strategies, many communities aggressively enforce anti-prostitution ordinances.

As described above, some LGBT people who are pushed out of the mainstream economy because of discrimination, poverty, homelessness and other issues end up trading sex for money, food, clothing, or shelter. Research finds that homelessness is a primary driver of reliance on survival sex. This is particularly true for LGBT young people due to the high rates of family rejection and discrimination they face.[246] As described on page 36 (trafficking), some LGBT people also are forced into sex work through trafficking and coercion.

- Nearly half (48%) of transgender people in the National Transgender Discrimination Survey who engaged in sex work also reported experiencing homelessness.[247] In a survey of transgender people in state prisons for men in California (presumably mostly transgender women), over 40% reported having participated in sex work.[248]
- In a survey of nearly 1,000 youth experiencing homelessness in New York City, LGBTQ-identified youth were seven times more likely to have traded sex for a place to stay than heterosexual, non-transgender youth.[249]
- In a survey of LGBTQ youth engaged in survival sex in New York City, virtually all of those surveyed were youth of color; 37% identified as African American or black, 22% as Latino/a, and 30% as multiracial.[250] Only 5% identified as white. More than half (58%) of youth engaged in survival sex were either living on the street or in a shelter.

Because LGBT people may be disproportionately represented among individuals engaged in sex work, they are frequent targets of police and laws criminalizing prostitution and related offenses. Of transgender people in the National Transgender Discrimination Survey who reported trading sex, more than three-quarters (79%) reported interactions with police, and transgender

[i] There are several counties in Nevada where regulated brothels are permitted to operate.

people of color trading sex were more than twice as likely to be arrested than their white counterparts.[251] Police generally have wide discretion under these ordinances, and they often arrest individuals for vague violations such as "loitering with intent to solicit."[252] In a number of cities and counties, police take these laws to an even greater extreme, considering possession or presence of condoms as evidence of prostitution.[253] Not only does this practice infringe on basic rights, but it also discourages individuals from carrying condoms, undermining efforts to reduce transmission of HIV and other sexually transmitted infections. Particularly for transgender women and young gay and bisexual men of color, for whom rates of new HIV infections have been rising,[254] this leaves them in a difficult situation—risking arrest for carrying condoms or endangering their health by not using protection. Among LGBTQ youth in New York City engaged in survival sex surveyed by the Urban Institute and Streetwise and Safe, 15% reported that condoms found during a stop, question, or frisk were used by police to justify lengthy questioning or arrests for prostitution-related offenses.

In a number of cities, advocates, public health agencies, and others have pushed for police to no longer consider condoms as evidence of prostitution. After hearings and community organizing, the City of San Francisco became the first city in the country to stop considering condoms as evidence.[255] New York City's police commissioner announced that officers would no longer be able to confiscate condoms as arrest evidence for several prostitution-related charges in May 2014, although they may still be used for other related offenses.[256]

In 2014, California became the first state to require a court to treat condoms like all other evidence and state explicitly that the presence of condoms is relevant to an individual case before prosecutors can bring them as evidence of prostitution.[257] As initially proposed, the legislation was much broader and would have banned the use of condoms as evidence entirely. Unfortunately, leaving the issue up to a court at the trial phase does nothing to assuage people's fear of carrying condoms or having them available. The fact is, condoms can still be used to justify an arrest and a prostitution-related or lewd conduct-related charge. Explaining the need for the broader legislation banning use of condoms as evidence, Wendy Hill, a staffer for Assembly member Tom Ammiano explained, "There are cases where HIV health outreach workers would go out and distribute condoms and then law enforcement will follow up right behind them as a means of 'cleaning up the streets' . . . . [Police officers] would threaten [the sex workers], arrest them or just scare the crap out of them."[258]

New York State is currently considering legislation that would more effectively ensure access to condoms and other reproductive health tools without fear that they would ever be used to justify an arrest or prosecution for any prostitution-related offense.[259] Last year, a provision banning the use of condoms as evidence of prostitution offenses was passed as part of the Governor's End AIDS initiative. Advocates are continuing to press for a more comprehensive ban including all prostitution-related offenses, including promoting prostitution, permitting prostitution, or lewd conduct to offer critical protections to youth, trafficking victims, and outreach workers.

As discussed previously, police also frequently rely on stereotypes in enforcing anti-prostitution laws, such as assuming that all transgender women, and particularly transgender women of color, are engaged in prostitution-related offenses. In Human Rights Watch's examination of policing in New Orleans, for example, transgender women were subjected to constant harassment, verbal abuse, and stops for suspicion of prostitution; these women also were sometimes asked for sex in exchange for leniency.[260] Transgender women frequently report that police assume they are participating in sex work, simply because they are "walking while transgender" or because condoms are found during a frisk.[261]

When citing LGBT people for prostitution and related offenses, police also may charge them with additional crimes that bring added punishments. Until very recently, LGBT people in Louisiana, in particular African American transgender women, who were arrested for prostitution-related crimes were at risk for being charged under the state's "crimes against nature" statute.[262] This law singled out solicitation of oral and anal sex for harsher punishment, including registration as a sex offender. In 2012, a federal judge found the sex offender registration requirement unconstitutional.[263] And, in 2013, the state agreed to remove hundreds of people from the registry who had been convicted of a crime against nature.[264] In Orleans Parish, nearly 40% of individuals on the sex offender registry in 2011 had been convicted of crimes against nature; 80% of them identified as African American.[265]

Story: Walking While Trans



#1: Bianca's Story

In 2011, 18-year-old Bianca Feliciano was walking with a friend in Cicero, a western suburb of Chicago. They were stopped by police under suspicion of prostitution. The police ordered them into a police car and proceeded to search Bianca's purse. The police officers refused to accept her ID, which had her legal name and gender marker. They then verbally harassed Bianca, saying, "You are not female, you have a dick between your legs." She was threatened with physical violence by the police, and they told her she could be accused of fraud. In 2012, she settled a lawsuit with the police, which included a stipulation that the police department would develop guidelines for respectful interactions with transgender people.

Adapted from "Transgender Woman Sues Cicero Police, Alleging Harassment," The Tran's Women's Healing Justice Project; Clifford Ward, "Transgender woman settles suit with Cicero, attorneys say," The Chicago Tribune, August 7, 2012.



#2: Antonia's Story

Antonia is a transgender Latina woman from Jackson Heights in Queens, NY. She has been stopped, frisked, profiled, and arrested multiple times for allegedly being engaged in prostitution. One day, Antonia was walking in her neighborhood with two other transgender women. While outside of one of their homes, two police officers pulled up in a police car, stopped them, and told them to go home. The officers then drove around the block and saw Antonia and her friends again. This time they did not ask; they just stopped and frisked them. Police told them they were looking for condoms; they said they stopped Antonia and her friends for prostitution. No condoms were found, but Antonia was arrested and taken to the detention center, where she was strip searched to the point that she was nearly naked as officers reportedly laughed at her. As a result, Antonia feels falsely accused, violated, and humiliated.

Excerpted from "Transgender Woman Sues Cicero Police, Alleging Harassment," The Tran's Women's Healing Justice Project; Clifford Ward, "Transgender woman settles suit with Cicero, attorneys say," The Chicago Tribune, August 7, 2012.

PROBLEM: STOP-AND-FRISK

"Stop-and-frisk" is a form of proactive or preemptive policing where an officer stops an individual on the street alleging a reasonable suspicion of criminal activity. If the officer believes that the individual is armed and presents an immediate danger, the law allows the officer to perform a limited pat down of the outer clothing of the person (a "frisk"). Stop-and-frisk is also known as a "Terry stop" after the Supreme Court ruling in the case *Terry v. Ohio*. According to that ruling, police can briefly detain someone whom they suspect is involved in criminal activity and conduct a frisk if they reasonably suspect a person is armed and dangerous.[266]

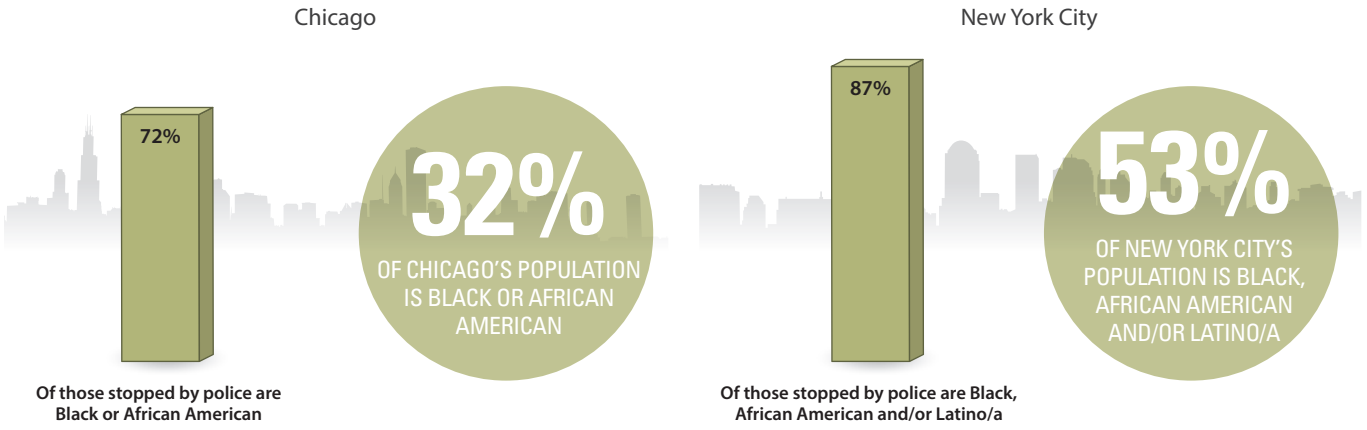
In reality, stop-and-frisk has been grossly abused by police departments, who routinely engage in the practice without sufficient legal basis. Additionally, officers often go far beyond what is legally permissible as a "frisk" to conduct full searches without probable cause to believe that a person is concealing weapons or is involved in a crime.

Law enforcement agencies that regularly abuse stop-and-frisk tactics claim they reduce crime. However, in New York City, only 11% of stop-and-frisks in 2011 were based on police receiving a description of a violent crime suspect; the remainder were random stops.[267] Only 0.02% resulted in discovery of a gun despite law enforcement claims that the tactics were effective at stopping illegal weapon use. In only 6% of stops in 2012 did officers have probable cause to arrest an individual.[268]

While 17 states require data collection for all stops and searches, only 15 require analysis and publication of these data.[269] In one study, 20 of the largest law enforcement agencies in the United States, out of 55 surveyed, were found to have some data on stop-and-

Figure 25: Racial Disparities in Stop-and-Frisk Around the United States

Racial/Ethnic Composition of Stops by Police Compared to Overall Racial/Ethnic Composition of City's Population



Source: Center for Constitutional Rights, "Floyd, et Al. v. City of New York Press Kit: 2012 Stop and Frisk Statistics;" ACLU of Illinois, "Stop and Frisk in Chicago," March 2015.

frisks, including Newark, Philadelphia, Boston, Seattle, and Los Angeles.[270] An important reason why New York City has been the focus of much of the controversy around stop-and-frisk tactics is because the city has required collection and publication of stop-and-frisk data since the 1980s.[271] This, in turn, allows for the analysis of the potential discriminatory effect of stop-and-frisk in certain communities, as well as the efficacy of the practice in identifying people engaged in criminal activity.

Predictably, the available data from New York and other jurisdictions show that not only are these stops rarely effective in reducing crime, but research shows individuals who are stopped are disproportionately people of color, lower-income and homeless people, public housing residents, and LGBT people—including many LGBT people of color. What's more, research finds that individuals who have experienced stop-and-frisk policing and other profiling are left feeling humiliated, depressed, angry and helpless, and that the tactic fosters mistrust and a reluctance to report crimes and cooperate with police.[272]

It is well documented that stop-and-frisk policies disproportionately target people of color, as shown in *Figure 25*. For example:

- In New York City, the Center for Constitutional Rights found that 87% of individuals stopped by police in 2012 were black or Latino/a, while black and Latino/a people make up only 53% of the city's population.[273] Racial disparities persisted across gender.[274] Young people ages 14-21 comprised one-third of stops in the city in 2008 and 2009, even though they comprise only one-tenth of the City's population.[275]
- Researchers in Los Angeles found similar trends, noting that African American and Hispanic people were stopped at much higher rates, were more likely to be frisked, and more likely to be searched despite the fact that both African Americans and Hispanics who were stopped and frisked and/or consensually searched were less likely to be found with a weapon or drugs than white people who had been stopped.[276]
- According to a 2015 study by the ACLU of Illinois, black Chicagoans comprised 72% of all individuals stopped between May and August 2014 despite comprising just 32% of the city's population.[277] Rates were even higher in police districts where the majority of residents were white.

Surveys also show the disproportionate impact of stop-and-frisk policies on LGBT people, particularly LGBT people of color and transgender women.

- Transgender women in New York City reported high levels of interactions with the police, which often included aggressive searches.[278]
- In New York City's West Village, a neighborhood with a predominantly white LGBT community (just 8% of residents are African American or Latino/a), 77% of individuals stopped were African American

SPOTLIGHT

A Successful Campaign in New York City to Challenge "Stop-and-Frisk"

In August 2013, a federal judge ruled that New York City was deploying stop-and-frisk unevenly against mainly young black and Latino/a New Yorkers, and that this disproportionate impact violated the Constitution.[283] Following the election of Mayor Bill DeBlasio in 2014, the city saw a dramatic decrease in the reported use of stop-and-frisk by law enforcement. In some places, such as Harlem, its use dropped by as much as 96%.[284] Many advocates, community members, and others report a shift in how stops are executed and how they are documented by officers, meaning that communities on the ground may not be feeling a shift as dramatic as reported by the decrease in documented stop-and-frisk numbers. Nonetheless, Judge Scheindlin's 2013 ruling represented a major victory for New Yorkers.

The lawsuit and subsequent decline in the reported use of stop-and-frisk were the result of collaborative work by a diverse coalition of organizations and people across the city. Among the leaders of the effort was **Communities United for Police Reform**.[285] Also contributing to the success of the campaign was a 2012 report by the Center for Constitutional Rights (CCR) revealing the human impact of stop-and-frisk.[286] CCR had long advocated for an end to the discriminatory practice, first suing the city in 1999. The organization's efforts helped lead to mandatory data collection by the New York Police Department, revealing the discriminatory impact of the tactics. Reports from the NAACP[287] and the New York Civil Liberties Union[288] also added to the mounting evidence of discriminatory treatment.

Among the many advocacy organizations working to end the use of stop-and-frisk were Streetwise and Safe, FIERCE!, and Make the Road New York. In the end, a calculated mix of legislative advocacy, legal strategy, research and community engagement galvanized the city's conversation around the impact of stop-and-frisk on young people of color, including many young LGBT people of color.

or Latino/a.[279] LGBT youth of color commented that they felt particularly targeted not only because they were African American or Latino/a, but also because they were queer or gender non-conforming.

When individuals are stopped by police, property is often confiscated, including cash, cell phones, cars, and even homes. This can happen even if a person is not charged with a crime or eventually found guilty.[280] In order to have their assets returned to them, individuals must prove those assets were obtained legally.[281] This practice, called civil asset forfeiture, has been shown to be used disproportionately against low-income people and people of color.[282]

SPOTLIGHT



New York State: A Hub of Innovation and Cooperation

Thanks to hundreds of organizations and thousands of activists, New York has recently seen positive action on profiling, stop-and-frisk, and other issues affecting LGBT people at the state and local levels. For example:

- In 2013, a judge ruled that New York's disproportionate use of stop-and-frisk policing was unconstitutional (see discussion on page 53), slowing the reported deployment of the tactic.
- New York City passed the Community Safety Act in 2014, designed to curb racial profiling and add protections against profiling on the basis of sexual orientation and gender identity.
- Also in 2014, New York City announced it would stop considering condoms as evidence in most (but not all) prostitution-related offenses (see discussion on page 50).
- One hundred beds for homeless youth were added to New York City's shelter supports in 2014, including 24 beds for LGBT youth specifically.

The following organizations are among the many that advocated for these changes and continue to advocate for the safety of LGBT people on the streets, in their homes, and when interacting with law enforcement and criminal justice institutions.

Streetwise and Safe (SAS) builds skills, leadership, and community among LGBTQ youth of color who are likely to experience harsh policing and criminalization. The organization's Know Your Rights work aims to educate youth about their rights when interacting with law enforcement and the criminal justice system. In 2012, youth leaders from SAS and BreakOut in New Orleans (see pages 47, 55 and 125) held conversations that turned into the **Get Yr Rights** network, a powerful, multi-state network of organizations doing similar work with and for LGBTQ youth. SAS conducts research on policing and LGBTQ youth, specifically in New York City. SAS also advocates at the city, state, and federal levels for policies that increase safety and self-determination for youth, and that strengthen accountability for law enforcement and criminal justice institutions.

The **Queer Detainee Empowerment Project** (QDEP) started in 2014 to fill a lack of transgender-competent services for people being released from incarceration or immigration detention. QDEP also serves undocumented LGBT youth in state care who, upon aging out of care without family support, would be transferred to immigration detention. QDEP offers a range of direct services to LGBT undocumented immigrants, helping them find employment, educational assistance, safe housing, food stability, and other resources. The organization also has expanded into community organizing against over-policing and unjust detention.

The **Vera Institute** is a national advocacy and research organization with offices across the country; the institute also does a significant amount of work on local issues in New York City. In 2015, Vera began a project to streamline the health intake process for girls entering juvenile justice facilities (see discussion on page 101). Girls and young women entering juvenile justice facilities have a high likelihood of having been sexually assaulted prior to their arrest. A standardized, confidential health assessment is crucial to ensure that these girls and young women feel safe and can access swift, competent medical care. Similarly, LGBT-identified girls and young women may not feel comfortable disclosing their identity to intake personnel, but the information is crucial for continued care and to understand the disparities faced by LGBT youth in juvenile justice systems. Vera is piloting a program using iPads to confidentially collect health data and is working to streamline the health intake process for youth in male and female facilities. The goal is to ensure that LGBT and gender non-conforming youth can provide relevant information and access competent care without compromising their safety.

Sex Workers Project (SWP) was a leading member of the coalition working to end the use of condoms as evidence in New York City. SWP also provides direct assistance to survivors of trafficking and offers legal and social services to individuals engaged in sex work.

Make the Road New York is a multi-generational, multi-issue advocacy organization focused on Latino and working-class communities. As part of a range of robust programming for youth, Make the Road hosts a youth power project and supports 10 New York-based Gay-Straight Alliances that focus on leadership development and critical thinking. Make the Road was active in the campaign to challenge stop-and-frisk in New York City and in the campaign against the use of condoms as evidence of prostitution. Among its work with adults, Make the Road focuses on highlighting the voices of LGBT people and their families in their efforts to reform the immigration system.

Other New York organizations serving the LGBT community, including the LGBT Community Center, the True Colors Fund, Green Chimneys, the Sylvia Rivera Law Project, the Ali Forney Center, FIERCE!, New York Immigrant Family Unit Project, and Communities United for Police Reform are described elsewhere in this report.

Use of Federal Consent Decrees to Improve Treatment by Police

The Civil Rights Division of the U.S. Department of Justice has the ability to sue police departments and compel them to change their practices if there is evidence that police have a "pattern and practice" of using force or violating individuals' civil rights. The resulting agreement, which frequently requires detailed changes to police policies and operations, is called a "consent decree." Consent decrees can be a useful tool for advocates in pushing for policing reform.

Advocates in several cities have used consent decrees to address rights violations by police departments and have specifically cited the treatment of the LGBT community in their requests to the Department of Justice.

For example, in May 2010 the Department of Justice launched an investigation of the New Orleans Police Department for several violations of federal law. These included allegations that transgender women were improperly targeted and arrested for prostitution; and that young people, people of color, and LGBT people frequently were stopped, targeted, booked, and arrested for minor infractions – and disproportionately charged with "solicitation of a crime against nature." Under the latter offense, people were punished for solicitation of oral or anal sex with a five-year prison sentence and mandatory sex offender registration for a period of 15 years to life.[289]

To fight these practices, LGBTQ young people, primarily youth of color, from BreakOUT launched a "We Deserve Better" campaign,[290] providing research, testimony, and resources in support of the consent decree; the youth also participated in a broader effort to advance a "People's Consent Decree." As a result of community engagement, the Department of Justice and the New Orleans Police Department entered an agreement under a consent decree in July 2012. Under the decree, the police department was required to update policies and procedures and give officers clear instructions and training to ensure that they enforce the law effectively and constitutionally.[291] The decree outlined policies related to the proper use of force and the use of canines in vehicle pursuit. It was considered of the most extensive decree issued by the Department of Justice.

Contained in the decree are the requirements that officers no longer stop and frisk individuals without reasonable suspicion of a crime, and that officers cannot use race, sexual orientation, gender, or gender identity (among other characteristics) as the basis for stop-and-frisk policing and arrests, as well as other actions from conducting a warrantless search to seeking a search warrant. The decree explicitly states that the department will treat LGBT individuals with courtesy, professionalism, and respect, and that officers are specifically prohibited from using harassing, intimidating, or derogatory language regarding or toward LGBT individuals.

PROBLEM: DISCRIMINATION AND VIOLENCE WHEN SEEKING ASSISTANCE FROM POLICE

Insensitive and incompetent responses by law enforcement can push some LGBT people unfairly into the criminal justice system. When LGBT people seek assistance from the police, particularly in instances of intimate partner violence or a hate crime, they are often met with a lack of understanding. Sometimes they are even arrested alongside, or instead of, the perpetrator.

Hate Crimes

LGBT people in the United States continue to experience high levels of homophobic and transphobic violence directly because of who they are and whom they love; these situations are often called "hate violence" or "hate crimes." According to a 2014 study by the National Coalition of Anti-Violence Projects (NCAVP), transgender women, transgender people in general, LGBTQ people of color, gay men, and LGBTQ young people are most at risk for severe violence.[292] As shown in *Figure 26* on the next page, for example:

- LGBTQ young people were 2.5 times more likely to be injured due to hate violence than other LGBTQ and HIV-affected survivors of violence.
- LGBTQ and HIV-affected people of color were 2.2 times more likely to experience physical violence than white LGBTQ and HIV-affected people.

In 2013, 20% of individuals involved in hate crime incidents were targeted because of their sexual-orientation and 0.5% because of their gender identity.

However, NCAVP's research shows that only 54% of survivors identified in the study reported their experiences of hate violence to the police, and only 6% of incidents reported to the police were subsequently classified as a bias crime.[293] Law enforcement officials often fail to adequately identify sexual orientation or gender identity-related bias in an incident or look for other possible motives for the offense, such as robbery.[294]

When LGBT people do seek out assistance from law enforcement, they often do not have their complaint taken seriously or are not responded to quickly. Police may try to explain why a perpetrator acted the way they acted, particularly in cases involving transgender and gender non-conforming people whom police officers may see as engaging in "gender fraud."[295] In addition, there have been documented cases where an LGBT person involved in a hate incident was charged with a crime for defending themselves against a perpetrator, while the perpetrator was not charged.[296]

LGBT people who report hate crime incidents to the police may themselves become the targets of police violence. As shown in *Figure 27* on the next page, the 2014 NCAVP survey found that among hate crime survivors, transgender women were 6.1 times more likely to experience physical violence when interacting with police than other violence survivors and 5.8 times more likely to experience police violence, including harassment, threats, bullying, or vandalism.[297] LGBTQ and HIV-affected people of color were 2.4 times more likely to experience police violence than other violence survivors, and LGBTQ and HIV-affected young adults ages 19 to 29 were 2.2 times as likely to experience police violence.[298]

Even with the high levels of violence they experience, NCAVP's report found that transgender women were less likely to report hate violence incidents to the police than were other survivors—probably because of poor treatment by police.[299] White gay men were the most likely to report LGBT-related hate crimes to the police.

It is important to note that evidence demonstrates that hate crimes legislation, like other criminal punishment legislation, is used unequally and improperly against communities that are already marginalized, including people of color, low-income people, and LGBT people.

Figure 26: LGBTQ People At Risk For Hate Violence

LGBTQ YOUNG PEOPLE ARE **2.5x** MORE LIKELY TO BE INJURED BY HATE VIOLENCE THAN OLDER LGBTQ PEOPLE

LGBTQ AND HIV-AFFECTED PEOPLE OF COLOR ARE **2.2x** MORE LIKELY TO EXPERIENCE PHYSICAL VIOLENCE THAN WHITE LGBTQ AND HIV-AFFECTED PEOPLE

Source: Osman Ahmed and Chai Jindasurat, "2014 Report on Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence" New York: National Coalition of Anti-Violence Programs, 2015.

Figure 27: Violence Survivors At Risk for Violence By Police

TRANSGENDER WOMEN ARE **6.1x**

LGBTQ AND HIV-AFFECTED PEOPLE OF COLOR ARE **2.4x**

LGBTQ AND HIV-AFFECTED YOUTH ARE **2.2x**

MORE LIKELY TO EXPERIENCE PHYSICAL VIOLENCE BY POLICE
THAN OTHER HATE CRIME SURVIVORS

Source: Osman Ahmed and Chai Jindasurat, "2014 Report on Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence" New York: National Coalition of Anti-Violence Programs, 2015.

Story: Two Hate Crimes, Two Cases of Injustice (part 1)



Photo permission from Windy City Times

#1: Chicago Woman Charged with Attempted Murder For Defending Herself During Hate Crime

On March 28, 2012, Eisha Love and Tiffany Gooden parked near a gas station in the Austin neighborhood of Chicago, Illinois. Eisha wanted to pick up a birthday present for her mom. Two men approached the women, including one who was verbally assaulting Eisha. As black transgender women in Austin, this wasn't surprising to her and Tiffany. Eisha says she was frequently harassed, but she learned to keep her head down and ignore her harassers.

The men continued bothering Eisha and Tiffany, and then one of the men punched Eisha in the face. When she heard one of the men calling friends for some support, Eisha realized they were in real danger, so Eisha and Tiffany ran for their car and drove away.

After the men gave chase both on foot and by car, Eisha lost control of her car, swerving and hitting one of the men. The man limped away and was later treated for a broken leg. Certain that the men were going to kill them, Eisha and Tiffany left their car and ran, finding a hiding spot from which she called her mother.

Later, Eisha and her mother returned with police to the location where the car had been left and explained what happened. Some of the men who had been involved were there, too. As Eisha arrived, several of the men pointed to Eisha and said, "There's the faggot that did it," and "We're going to get you."

Eisha was told to go to the police station. She thought the police would investigate her attack, but instead she was booked and ultimately indicted on charges of attempted first-degree murder and aggravated battery. Eisha spent three years and nine months in jail without a trial before being released in December 2015 after accepting a plea of guilty for aggravated battery. While in a maximum security men's jail, Eisha was verbally harassed and attacked by a correctional officer.

Several months after the incident, Tiffany Gooden was found dead in an abandoned building. She'd been stabbed. Her mother told a Windy City Times reporter that a friend of Tiffany's told her that someone was looking for Tiffany. "They were saying they was going to kill her. They were saying they were going to 'get his' ass because 'he' was riding in the car." Another transgender woman, Paige Clay, was murdered just a few blocks from where Tiffany's body was found a few weeks earlier.

Adapted from Gretchen Rachel Blickensderfer, "Trans* Woman Claims Self-Defense in Case," Windy City Times, September 17, 2014; Gretchen Rachel Blickensderfer, "A Tale of Two Murders: Connected or Not?," Windy City Times, September 24, 2014; Gretchen Rachel Hammond, "Transgender Woman Released from Jail after Nearly 4 Years without Trial," Windy City Times, December 17, 2015.

Story: Two Hate Crimes, Two Cases of Injustice (part 2)



#2: Transgender Man Imprisoned for Fighting Off Rapist

Ky Peterson, a black transgender man, is serving a 20-year sentence for involuntary manslaughter in the Pulaski State Prison in Georgia. His crime? He defended himself when he was being raped by a stranger.

On October 2011, Ky was walking home from a gas station. He was frequently harassed by strangers and had been raped before, so he kept a gun in his bag for protection. After ignoring the advances of a man drinking outside the gas station, Ky passed some abandoned buildings. There the man, Samuel Chavez, hit Ky over the head and raped him while screaming homophobic slurs. Ky's brothers heard his screams and helped pull Chavez off of Ky. As Chavez came charging toward him again, Ky shot the man.

Immediately, Ky wondered what to do. Would the police see him as a rape survivor who defended himself with the help of his brothers? Or would police see the young black men as thugs?

A rape kit came back positive and confirmed what Ky had told the police – he had been raped and had defended himself. Nevertheless, he was arrested for possession of a firearm and for shooting his rapist. Ky spent 366 days in the county jail awaiting formal charges. He wasn't given an opportunity to meet with a public defender.

Once he was formally charged, Ky met with a public defender who advised him to plead guilty to involuntary manslaughter. Ky's public defender had more than 200 active cases at the time and wasn't able to devote much time to the case. Ky's attorney told The Advocate he thought Ky had two strikes against him. "Number 1, you're African-American," the attorney recounted saying to Ky. "And these little old white ladies in South Georgia think that if [they] see an African-American outside their own neighborhoods, [they] need to be careful." The second strike, the attorney said, was that Ky looked "stereotypically gay." "The fact you're gay will be an issue that I have to address early on," the attorney recalled telling Ky. "That's two strikes that are against us from the get-go. And that factored extensively into my and my investigator's discussions about the case." Ky never told his public defender that he was transgender.

Ky was placed in a women's prison and is frequently harassed. "My identity [as a trans man] has not been respected at all. The officers still address me as 'ma'am,' which I don't like at all. But I have to go by it, because that's their rules that I have to go by," Ky told a reporter for The Advocate. "Here the staff's like 'girl' this and 'girl' that, and I have to catch myself sometimes like, 'You must be talking to someone behind me.' It's just not what I'm used to, even at home. Once I make it known to them [that I'm a trans man], it's always something extra like, 'No, you're just gay.'" Ky struggles with depression, and has yet to receive follow-up care or counseling related to the rape. There are also substantial delays in receiving routine medical care, including asthma medication, which took seven months for Ky to receive. In January 2016, Ky was finally approved to begin testosterone.

Adapted from Sunnivie Brydum and Mitch Kellaway, "This Black Trans Man Is in Prison for Killing His Rapist," The Advocate, April 8, 2015.

Intimate Partner Violence and Sexual Assault

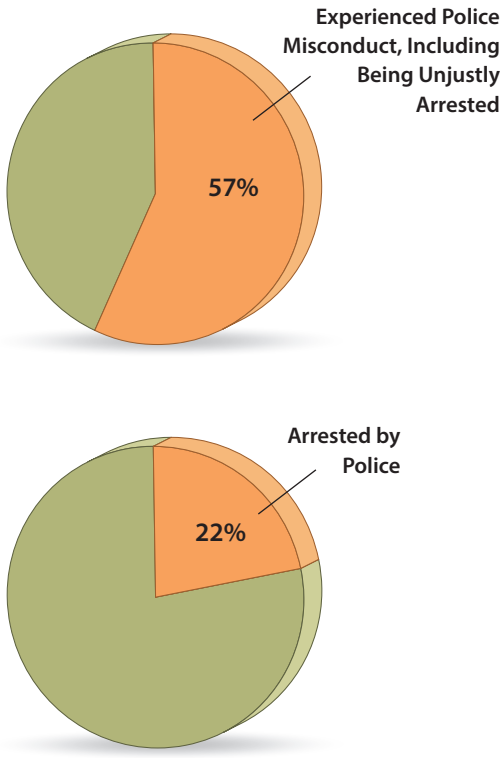
It isn't just hate crimes. Law enforcement also often fails to adequately address cases of intimate partner violence involving LGBT people.[300]

Rates of domestic and intimate partner violence in same-sex couples are similar to the rates in opposite-sex couples.[301] However, LGBT survivors of domestic violence are frequently arrested along with their abusive partners if they reach out to the police for help.[302] As shown in *Figure 28*, in a 2014 report from the National Coalition of Anti-Violence Programs, 57% of intimate partner violence survivors who called the police experienced police misconduct including being unjustly arrested.[303]

Sometimes, the survivor can even be charged with a crime if they use violence against the perpetrator. According to NCAVP, police arrested LGBT and HIV-affected survivors for violence in 22% of all cases of intimate partner violence.[304]

Figure 28: Intimate Partner Violence Survivors Experience Police Misconduct

Percent of LGBTQ Survivors of Intimate Partner Violence Who Called Police



Source: Chai Jindasurat and Emily Waters, "Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2014" (National Coalition of Anti-Violence Programs, 2015).

PROBLEM: ABUSE AND BRUTALITY BY LAW ENFORCEMENT

National attention has recently focused on the abuse, harassment, and discrimination faced by communities of color, particularly black and African-American communities, in the United States. In a nationally representative sample of young people ages 18 to 29 conducted in December 2013 and January 2014, young black people reported the highest rate of harassment by police (54%), nearly twice the rate of other young people.[305]

LGBT people, including many LGBT people of color, have long suffered from discrimination, harassment, and violence at the hands of police. Recent surveys have quantified these experiences, and they highlight the ways in which law enforcement not only targets LGBT people for breaking the law, but also abuses its power and treats LGBT people in deplorable ways, as shown in *Figure 29* on the next page.

Youth

- A survey of LGBTQ youth in New Orleans found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBQ youth.[306]
- In a survey of youth in New York City, some of whom identified as LGBT, 12% reported negative sexual experiences with police, including receiving sexual attention or being touched inappropriately.[307]
- LGBT youth in the New York City survey were more than twice as likely to report negative sexual contact with police in the past six months, compared to non-LGBT youth. With the power dynamic so tilted in a police officer's favor—both because of their ability to use lethal force but also the threat of arrest—these demands amount to sexual extortion.
- Of 1,094 youth surveyed throughout New York City, nearly half (48%) reported a negative experience of some kind with police in the past six months, including negative verbal or sexual experiences.[308] The LGBTQ-identified youth were much more likely to have negative experiences with police than their non-LGBTQ peers and were less likely to report positive experiences. They also were more likely to have negative legal contact, verbal contact, physical

contact, and sexual contact with police. Nearly half (49%) of those who had been arrested said they felt unsafe in the patrol car following their arrest.

- The Young Women's Empowerment Project, a Chicago-based organizing project for girls and women ages 12 to 23, including transgender youth who have current or past experience in the sex trade and street economies, analyzed complaints filed through their "Bad Encounter Line." In 2009, the hotline received reports of 146 encounters with police, 33% of which were bad encounters.[309] Of all complaints about interactions with police, transgender youth comprised 25%.

LGBT Adults

- The 2015 LGBT Health and Human Services Needs Assessment conducted in New York State found one in five transgender respondents (21%) had been unfairly arrested, harassed, or physically harmed with higher rates for transgender people of color (31%).[310]
- In 2015, the Williams Institute reviewed several surveys about LGBT people and people living with HIV and their experiences with law enforcement. The researchers found evidence of pervasive discrimination and harassment.[311]
- In a survey by Lambda Legal, 73% of LGBT people and people living with HIV reported face-to-face contact with law enforcement in the past five years. Among these people, 21% reported hostile attitudes from the police and 14% were verbally harassed.[312]

Harassment and discrimination by law enforcement is higher among LGBT people of color and transgender people. Among Latina transgender women in Los Angeles County, for example, two-thirds report that they have been verbally harassed by law enforcement, 21% report being physically assaulted by law enforcement, and 24% report being sexually assaulted by law enforcement.[313]

SPOTLIGHT

San Francisco Police Department Creates "Safe Zones" at Stations

As part of an effort to encourage LGBT people to report hate crimes and other problems in their community, the San Francisco Police Department implemented a Safe Zone policy in 2013. All of the department's 10 stations have signs indicating that individuals can expect courteous, respectful, and compassionate interactions.

Source: "San Francisco Police Reaching out to LGBT Community with Safe Havens," The San Francisco Examiner, April 16, 2013; Greg Rynerson, "SFPD Stations Declared LGBT Safe Zones," California Bail Bonds, April 21, 2013.

Figure 29: High Rates of Abuse and Brutality by Law Enforcement

Figure 29a: Percent of LGBTQ Youth in New Orleans Reporting Being Asked for Sexual Favors by Police

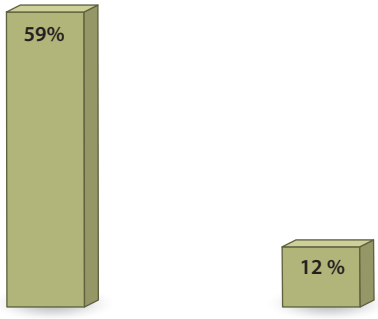
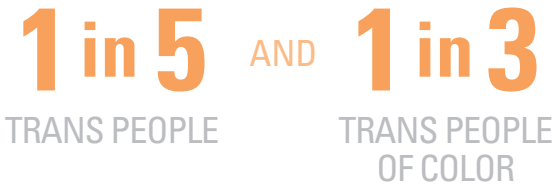


Figure 29b: Percent of Transgender Adults in New York State Reporting Being Unfairly Arrested or Sexually or Physically Harassed by Police



Source: BreakOUT! and the National Council on Crime & Delinquency, "We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color," 2014; Somjen Frazer and Erin Howe, "Transgender Health and Economic Insecurity: A Report from the 2015 LGBT Health and Human Services Needs Assessment Survey" (New York, NY: Empire State Pride Agenda, 2015).

Story: Brutality at the Hands of the Police (part 1)



#1: Transgender Man in Georgia Assaulted by Police

In East Point, Georgia, on October 23, 2014, Juan Evans was pulled over by police for speeding. An African American transgender man, he provided extensive information in response to the officers' questions. Since he didn't have his wallet with him, he offered his birth name, birthdate, social security number, and address. He disclosed to police that he was transgender after one of the officers accused him of lying.

The officer responded by demanding to search Juan and examine his genitals to determine whether he was a man or a woman. When Juan refused, he was arrested and taken to the police station where he was harassed by staff and outed, including being threatened with additional genital searches.

Adapted from Mitch Kellaway, "WATCH: Georgia Trans Man Called 'It' by Police Pushes for End to Harassment," The Advocate, November 2, 2014.



#2: Police Beat Transgender Woman Later Found Shot Dead

After facing discrimination from shelters, drug treatment centers, and employers because she was transgender, Duanna Johnson, a black woman in Memphis, was living on the streets. In February 2008, police arrested her for suspicion of prostitution.

Once at the station, Duanna refused to respond to the officers who called her "faggot" and "he-she." She told a local news station, "I knew he couldn't be talking to me because that's not my name." One of the officers put on a pair of gloves, wrapped a pair of handcuffs around his knuckles, and beat her while the other officer held her down. She was sprayed with pepper spray, held down on the floor, and handcuffed. A security video captured the entire incident.

Both officers were fired, and the officer who beat Duanna pleaded to a single count of violating her civil rights; he was sentenced to two years in prison for Johnson's beating and for tax evasion. In November 2008, Duanna was found dead, shot execution style, the third black transgender woman to be killed in Memphis in two years.

Adapted from Kimberlé Williams Crenshaw et al., "Say Her Name: Resisting Police Brutality Against Black Women" (New York, NY: African American Policy Forum and the Center for Intersectionality and Social Policy Studies, 2015); Robbie Brown, "Murder of Transgender Woman Revives Scrutiny," The New York Times, November 17, 2008.

Story: Brutality at the Hands of the Police (part 2)



#3: Police Officer Sexually Assaults Young Lesbian Couple

After being pulled over for a routine traffic stop in Florida – the result of an illegal U-turn – a 17-year-old teen was placed in an officer's police car and taken to the station, while her girlfriend followed in her car.

Once at the station, the officer put the teen in an empty room and asked her sexually explicit questions. "[He asked me] how do I have intercourse, and I told him, 'Why do I need to answer that? Why is that necessary?'" the young woman told a local news station. "He insisted … so I told him how me and my partner have intercourse. ... After, he asked if I was a virgin. He asked me, if he was to test me right that moment, if I had any diseases on me."

The officer then began touching himself and ordered the girl to take off her shorts. After 15 minutes, she was released, and she and her girlfriend filed a police report.

Adapted from Mitch Kellaway, "Florida Cop Suspended After Allegedly Forcing Lesbian Teen to Strip, Making Sexual Gestures," The Advocate, June 19, 2015.



#4: Gay Man Pulled from House, Beaten By Officers

On June 19, 2015, Louis Falcone, a gay man living in Staten Island, opened the door to find police on his front step. He had been arguing with his brother, and a neighbor had complained about the noise. When Louis asked the police why they wanted to come inside, the situation escalated as he was pulled from his house and beaten on his front lawn. A neighbor caught the incident on video, and officers can be heard screaming while four officers piled on him.

"They threw me against the concrete in front of my house. My first reaction was to try to get up a little bit," Falcone told the New York Daily News. "While I was on the ground, I had mud and blood in my mouth. One [of the cops] said, 'Don't let it get on you, he probably has AIDS, the faggot.'" Louis suffered a broken nose, two black eyes, cuts to his face and body, and needed surgery to his foot, which had recently been operated on before the incident.

Adapted from Chelsia Rose Marcius and Tina Moore, "EXCLUSIVE: Gay S.I. Man Says Cops Beat Him in Yard (VIDEO)," NY Daily News, July 31, 2015.

Summary: How Policing Strategies and Tactics Lead to Criminalization

LGBT people are frequently profiled and targeted by police for quality of life crimes. The result is that LGBT people, particularly low-income LGBT people and LGBT people of color, are pushed into the criminal justice system. When LGBT people interact with police and those interactions are negative—involving misconduct, harassment, abuse, sexual assault, and discrimination—LGBT people, in particular, have weaker trust in law enforcement. In fact, LGBT survivors of violence are less likely to report incidents to police, and when they do report, their complaints are rarely fully addressed.[314] In addition to disproportionately impacting LGBT people, policing strategies and tactics that rely on stereotypes, profiling, and targeting of quality of life crimes inflict serious emotional and physical trauma on individuals and communities, diminish the effectiveness of police in serving communities,[315] and reduce community trust and cohesion.

Recommendations

LGBT people in the United States are at risk of being unjustly stopped and arrested by police, having their lives criminalized, and being pushed into the criminal justice system.

These recommendations are not meant to be comprehensive, but rather high-level suggestions for ways to improve the safety of communities and reduce the forces that result in too many LGBT people entering the criminal justice system without justifiable cause.

Increase support for and acceptance of LGBT young people within families, schools, communities, and institutions.

1. **Family rejection.** Youth-serving organizations, social service organizations, and schools should emphasize the power of family acceptance in reducing negative outcomes for LGBT youth.
2. **Increased support for families.** Policymakers should take steps to reduce family poverty; reform immigration policies to keep families together; provide affordable, safe housing; and reduce mass incarceration to improve the stability and security of families. This will reduce the number of youth who end up on the streets, many of whom are LGBT.
3. **Child welfare.** Policymakers and government agencies serving families and children should increase funding, increase staff and organizational competence, and ensure nondiscrimination in the provision of services to protect LGBT youth. Governments and communities should also encourage LGBT adults to serve as foster and adoptive parents. Governments and foundations should increase funding for programs, including voluntary harm reduction programs, to meet the needs of LGBT youth who are at risk for criminalization.
4. **Safe schools.** Congress should pass legislation ensuring nondiscrimination in education and prohibiting bullying based on sexual orientation and gender identity. State policymakers should pass state nondiscrimination and anti-bullying laws enumerated to include sexual orientation and gender identity. States and the federal government should also require that districts adopt model policies that address incidents as they arise but do so in a manner that ensures student safety while striving to keep young people in school to the extent possible.
5. **Dismantle the school-to-prison pipeline.** Policymakers at all levels should advance policies and initiatives that keep youth from entering the school-to-prison pipeline. Districts and schools should review discipline policies to better ensure student safety while working to keep students in school.

   Schools should implement innovative programs designed to reduce bullying and discrimination while simultaneously working to address the school-to-prison pipeline.

   States and school districts should review school discipline standards to appropriately and proportionally address student behavior.

   School districts and schools should work to create agreements with law enforcement as to when and how officers will be involved in school disciplinary issues, with the majority of issues being handled by teachers, staff, and students through a conflict resolution model. Districts should remove all armed police officers in schools.

Work to eliminate discrimination against LGBT people across many areas of life, including employment, housing, public accommodation, health care, and access to accurate identity documents.

1. Congress should pass federal nondiscrimination legislation.
2. State and local policymakers should pass nondiscrimination legislation.
3. Federal and state regulators and insurance companies should remove insurance exclusions for transition-related care for transgender people.
4. State lawmakers should pass laws allowing transgender people to obtain accurate identity documents; states and localities should issue guidance easing the processes for updating documents.
5. Governments and foundations should support trainings for social service organizations to better serve LGBT people and to better address the unique barriers to economic security and safety experienced by LGBT people.

Work to eliminate homelessness among the LGBT population and ensure that LGBT people have the ability to make choices about how to support themselves.

1. Congress should fully fund and implement legislation such as Federal Plan to End Homelessness, which would expand access to affordable housing.
2. Federal, state, and local governments should expand investment in public and affordable housing, increasing the number of units available and improving the quality of housing.
3. Congress should amend the Runaway and Homeless Youth Act to provide explicit protections for LGBT homeless youth, including prohibiting grant recipients from discriminating against LGBT youth.
4. Congress should pass legislation to reduce homelessness among all youth. Such legislation would improve training, educational opportunities, and permanency planning for older foster care youth.
5. Government agencies should increase funding for direct services to assist LGBT people experiencing homelessness and those at risk for homelessness.
6. Governments and foundations should provide more funding for research on LGBT youth homelessness. Local, state, and federal agencies should implement homelessness data collection that includes data on gender identity and sexual orientation. Researchers and advocates should include LGBT youth in their research to better understand the development needs, health disparities, and educational and workplace challenges facing LGBT youth.
7. States and localities should repeal laws and policies targeting homeless people.

Repeal, replace, and modernize HIV criminalization laws.

1. States should repeal all laws that criminalize the transmission of HIV and other diseases. When examining existing statutes, lawmakers and advocates should take into consideration "unique or additional burdens" these laws place on individuals living with HIV/AIDs and the extent to which existing laws do not take into account the most recent science and research as to the transmission of HIV and the benefits of treatment.[316]

End criminalization of consensual sex

1. State and local law enforcement should not criminalize consensual sex between adults—and should reduce entrapment schemes aimed at gay and bisexual men.
2. State and local law enforcement should ensure that laws policing sex are not discriminatorily enforced against LGBT people.
3. States should pass legislation ensuring access to condoms without fear that their possession or presence will be used as evidence to justify stops, arrest or prosecution for any prostitution-related offense or lewd conduct-related offense.

Enact drug policy and sentencing reform

1. Congress and the states should pass sentencing reforms to allow for judicial and prosecutorial discretion to take into account the circumstances surrounding a crime. Another priority: exploring and implementing alternatives to criminal charges, such as substance abuse assistance, alternative justice methods, and restorative justice programs.
2. Congress, states and communities should increase funding for LGBT-specific and LGBT-inclusive drug treatment facilities.
3. Congress, states and communities should improve drug treatment options. This means increasing funding for public drug treatment programs[317], including in-prison treatment.[318]

Reduce disparities in criminal justice legislation

1. Congress should pass legislation requiring that a proposed new criminal law or modification to a criminal penalty for an existing crime must be examined to determine whether it will have a disparate racial impact and impact on other specific communities.[319]

Adopt less discriminatory policing strategies

1. Government at all levels should build strong boundaries between immigration enforcement and law enforcement to prioritize community safety and to encourage immigrants, regardless of legal status, to report violence and other concerns to police without fear of deportation.
2. Law enforcement should adopt "least harm" practices including issuing warnings and recommendations for diversion programs as opposed to citations and fines for minor infractions. Quotas or benchmarks for the number of citations, tickets, or arrests should be abandoned and not used as a way to generate revenue for localities.
3. Law enforcement should deprioritize enforcement of laws criminalizing prostitution. Efforts should be made to provide supportive services requested by people in the sex trades, including drug treatment and housing, rather than focusing on arrests.
4. Policymakers should pass state and local legislation, and police should adopt department policies, prohibiting the use of condoms as evidence and the confiscation of condoms by police.
5. Law enforcement agencies should collect, maintain, and analyze demographic data on stops, frisks, searches, summons, and arrests.

Reduce profiling

1. Congress should pass a law to end profiling by law enforcement on the basis of actual or perceived race, color, ethnicity, immigration status, language, disability (including HIV status), sexual orientation, and gender identity, among other characteristics, such as the End Racial Profiling Act. Local and state legislatures should pass their own LGBT-inclusive anti-profiling laws.
2. All law enforcement agencies that receive federal funding should implement guidance from the U.S. Department of Justice regarding profiling, which states that federal law enforcement officers cannot use "race, ethnicity, gender, national origin, religion, sexual orientation or gender identity to any degrees, except that officers can rely on the listed characteristics in a specific suspect description."[320] This guidance should be applied to all federal government agencies. Cities and counties should adopt similar guidance.

Address hate crimes and intimate partner violence

1. As part of law enforcement education and ongoing training, officers should receive competency training about how to identify hate crime and intimate partner violence incidents and how to best engage with the LGBT community, including survivors of hate violence and intimate partner violence. The December 2015 guidance from the Department of Justice, "Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence," offers detailed recommendations for local police departments.[321]

Reduce abusive and excessive force by police

1. Police departments should adopt and enforce policies governing interactions with LGBTQ people during stops, arrests, transport, and detention and ensuring non-discriminatory treatment in responses to violence experienced by LGBTQ people.

   The Department of Justice should develop and disseminate a model policy for police interactions with LGBTQ people in collaboration with the LGBTQ Working Group.
2. Police departments should create LGBT Advisory Committees to help craft guidelines for law enforcement and advocate for changes to local, state, and federal laws.
3. Police departments at all levels should have regular cultural competency trainings on how to engage with communities most impacted by excessive police force, including LGBT communities. Trainings should be created in consultation with community-based organizations.
4. Local and state law enforcement agencies should enact and enforce nondiscrimination provisions that prohibit discrimination on the bases of sexual orientation and gender identity.

   Officers should be trained on these policies and held strictly responsible for their enforcement.

5. Police departments should pass and enforce "zero-tolerance" policies toward sexual harassment and assault by police officers.

   The U.S. Department of Justice should promote and disseminate guidance to federal, state, and local law enforcement agencies on documenting, preventing, and addressing sexual harassment and misconduct by local law enforcement agents, consistent with the recommendations of the International Association of Chiefs of Police.

   Agencies should make the process for enforcing these policies transparent and develop external oversight procedures.

6. Agencies should recruit and retain LGBT officers and maintain community liaison units to foster trust between LGBT communities and law enforcement.

Increase Data About the Experiences of LGBT People With Law Enforcement

1. Governments, academics, and advocates should strengthen data collection about the experiences of LGBT individuals with law enforcement through anonymous surveys and other mechanisms designed to ensure the safety of respondents.

2. The Bureau of Justice Statistics should add questions concerning sexual harassment of and misconduct toward community members, and in particular LGBT and gender non-conforming people, by law enforcement officers to the Police Public Contact Survey.

3. The Centers for Disease Control should add questions concerning sexual harassment of and misconduct toward community members, and in particular LGBT and gender non-conforming people, by law enforcement officers to the National Intimate Partner and Sexual Violence Survey.

SECTION 2: IN THE SYSTEM: LGBT PEOPLE ARE MORE FREQUENTLY INCARCERATED AND TREATED HARSHLY

In Section 1, we described how LGBT people are more likely to interact with law enforcement, have their lives criminalized by outdated laws and discriminatory enforcement, and experience abuse and harassment by police and other officials. Unfortunately, the interactions, abuse, and criminalization described in that section frequently mean that LGBT people end up being charged with crimes, spending time in jail, facing trials, and, if found guilty, are forced into correctional facilities. LGBT undocumented immigrants face a separate but related set of challenges and are frequently caught up in immigration enforcement activities, either at the border or after being arrested by police. As a result, they often face lengthy immigration proceedings and detention.

Regardless of whether an LGBT person is sentenced to a correctional or an immigration detention facility, too many LGBT people are treated harshly, abused, disrespected, and subjected to violence in these settings. LGBT people are also disproportionately subject to unfair convictions, physical and emotional abuse, and a lack of adequate medical care. Specifically, this section explores the following issues:



DISCRIMINATION in legal proceedings. When the criminal justice system operates as it should, people are charged, tried, and sentenced without bias. But too frequently, LGBT people are unfairly tried. Their sexual orientation and gender identity often are used against them by prosecutors, judges, and even defense attorneys. LGBT people often do not receive adequate counsel or representation—and they can face substantial discrimination from juries. As a result, LGBT people are more likely than non-LGBT people to spend time in juvenile justice facilities, adult correctional facilities, and immigration detention facilities.



UNFAIR AND INHUMANE TREATMENT in jails, prisons, and other confinement facilities. LGBT people who are placed in confinement facilities disproportionately encounter harsh and unsafe treatment. In this section, we focus on the following issues: discriminatory placement; harsh treatment by staff and fellow inmates; safety issues including sexual assault; insufficient access to comprehensive, competent health care; lack of supportive services; and restrictions on visitation by family. We also explore some of the unique challenges faced by LGBT young people and transgender people.

First, however, we present data about LGBT people in the criminal justice system—including prisons, jails, juvenile justice facilities, and immigration detention facilities. Then we provide an overview of how the justice, immigration, and prison and jail systems function in the United States and how they are regulated. The exploration of how LGBT people are discriminated against in legal proceedings and in jails, prisons, and other confinement facilities begins on page 78.

Data about LGBT People in the Criminal Justice System

There is a general lack of data about the lives of LGBT people in the United States. Few national government surveys ask questions about sexual orientation, and none asks about gender identity. This lack of data carries over to the lives of LGBT people in the criminal justice system; there just has not been a lot of research on the numbers of LGBT people in the system and their experiences. However, academics and researchers at the Bureau of Justice Statistics have recently conducted several surveys that shed some light on the subject. Similarly, recent work by advocates and the Government Accountability Office has advanced understanding of the experiences of LGBT people in immigration detention facilities.

LGBT Youth

As described in Section 1, LGBT young people are pushed into the criminal justice system as a result of discrimination and stigma, outdated laws and discriminatory enforcement, and harsh and discriminatory policing strategies. Several recent surveys and analyses are finally providing data to show what advocates have known for quite some time: that LGBT youth make up a disproportionate share of youth in the juvenile justice system, as shown in *Figure 30* on page 69. The data show that between 12% and 20% of youth in juvenile justice facilities are LGBT, compared to the estimated 7% of youth who identify as LGBT nationally.[322]

- In a survey of youth in six juvenile justice jurisdictions across the United States, 15% identified as LGBT or gender non-conforming, and

IN THE SYSTEM:
LGBT PEOPLE ARE MORE FREQUENTLY INCARCERATED AND TREATED HARSHLY





DISCRIMINATION IN LEGAL PROCEEDINGS

LGBT people face:

- Inadequate Access to Counsel
- Discrimination by Judges, Prosecutors, and Court Staff
- Discrimination in Jury Selection and by Juries



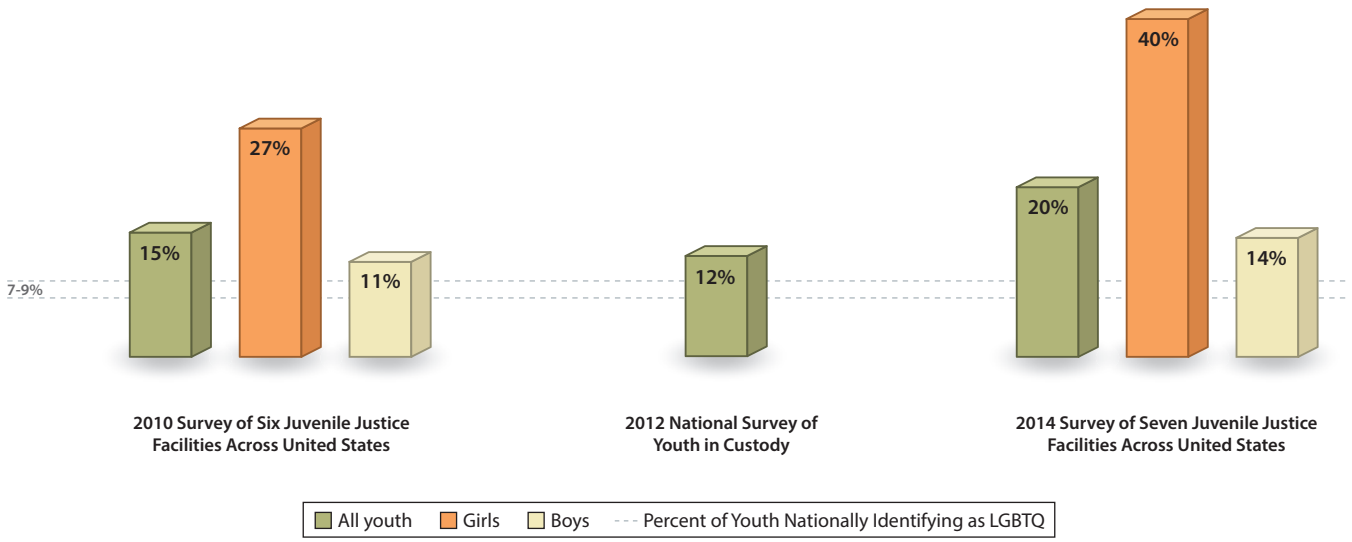
UNFAIR & INHUMANE TREATMENT IN JAILS, PRISONS, AND DETENTION FACILITIES

LGBT people experience:

- Improper Placement
- Harassment and Sexual Assault by Staff and Inmates
- Inadequate Access to Health Care
- Basic Needs Are Unmet, including Overall Respect, Supportive Services, and Visits by Family
- Incarcerated People Lack Recourse

Figure 30: LGBTQ Youth are Overrepresented in Criminal Justice System

Percent of Youth In Juvenile Justice Facilities Identifying as LGBT and/or Gender Non-Conforming



Source: Angela Irvine, "'We've Had Three of Them': Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System," Columbia Journal of Gender and Law 19, no. 3 (2010): 675–701; Angela Irvine, "LGBT Kids in the Prison Pipeline," The Public Intellectual, May 2, 2011; Allen J. Beck, Paige M. Harrison, and Paul Guerino, "Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, January 2010); Angela Irvine, "Dispelling Myths: Understanding the Incarceration of Lesbian, Gay, Bisexual, and Gender Nonconforming Youth," Unpublished, (Oakland, CA: National Council on Crime and Delinquency, 2014).

the proportion held fairly steady by race.[323] The rates of detention varied greatly by sex, however; 8% of males identified as gay, bisexual, or questioning compared to 24% of females. Adding in gender non-conforming youth, the numbers increased to 27% of girls and 11% of boys.

- A survey by the federal Bureau of Justice Statistics found that 12% of youth in juvenile facilities self-identified as non-heterosexual.[324]
- A 2014 survey found that 20% of youth in the juvenile justice system at seven facilities identify as LGBQ or gender non-conforming, including 40% of girls and 14% of boys.[325]

Similar to the numbers for the broader population of people in the criminal justice system, LGBT people in the system are overwhelmingly people of color. In a survey of youth at seven juvenile justice facilities across the United States, 85% of LGBT and gender non-conforming youth were youth of color.[326] High rates of incarceration for LGBT youth of color are not surprising given that youth of color, in particular black youth, are disproportionately likely to be in the juvenile justice system; 40% of incarcerated youth are black compared to 14% of youth overall.[327] Rates of incarceration for Latino/a youth are roughly proportionate to the Latino/a youth population overall, while white youth are underrepresented among youth in juvenile justice facilities (33% of incarcerated youth versus 53% of the overall youth population).[328]

Despite their overrepresentation in the system, LGBT young people of all races and ethnicities are frequently invisible and hide their identities out of fear of harassment by staff and other youth. Surveys show that LGBT youth in the juvenile justice system fear reprisals from other youth, parents, institutional staff, and judges if they disclose their sexual orientation or gender identity.[329] In a survey finding that 15% of youth in the juvenile justice system identified as LGBT or gender non-conforming, two in three of these young people told researchers they keep their sexual orientation or gender identity hidden and are assumed to be straight by their peers and staff.[330]

LGBT Adults

Data about LGBT people in the criminal justice system are scarce. As part of recent data collection efforts required under federal law, federal surveys have begun to ask individuals in prisons, jails, and juvenile facilities about their sexual orientation and gender identity. Two reports released by the federal Bureau of Justice Statistics, one in 2008 and another in 2011-2012, found that 8% of adults in prisons and jails, or approximately 162,000 adults in

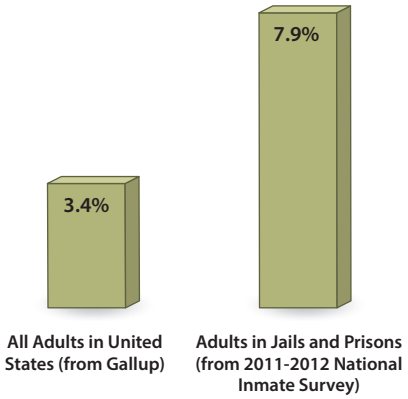
the United States, identified as something other than heterosexual.[331] This is more than twice the percentage of adults in the United States who identify as LGB, as shown in *Figure 31*.[332] The 2011-2012 study also estimated that there were approximately 3,209 transgender adults held in prisons or jails in the United States.[333]

As shown in *Figure 32*, the National Transgender Discrimination Survey, a large national survey of transgender and gender non-conforming people, found that one in six (16%) transgender people have experienced at least one period of incarceration during their lifetimes, with higher rates for black transgender people (47%) and transgender women (21%).[334] Black and Native American/Alaskan Native transgender women were more likely to report having been incarcerated than white transgender women.[335] These high rates of incarceration for transgender people come despite the fact that they have higher rates of education than the general incarcerated population. A 2015 study involving transgender veterans accessing care through the Veterans Administration found that transgender veterans were twice as likely to have been involved with the justice system than non-transgender veterans.[336]

Research finds that transgender people in prisons and jails are more frequently incarcerated for property-related crimes than the general population, perhaps because of the discrimination they experience in many areas of life, making it difficult to meet basic needs.[337]

Figure 31: LGBT Adults are Overrepresented in Jails and Prisons

Percent of People Identifying as LGB



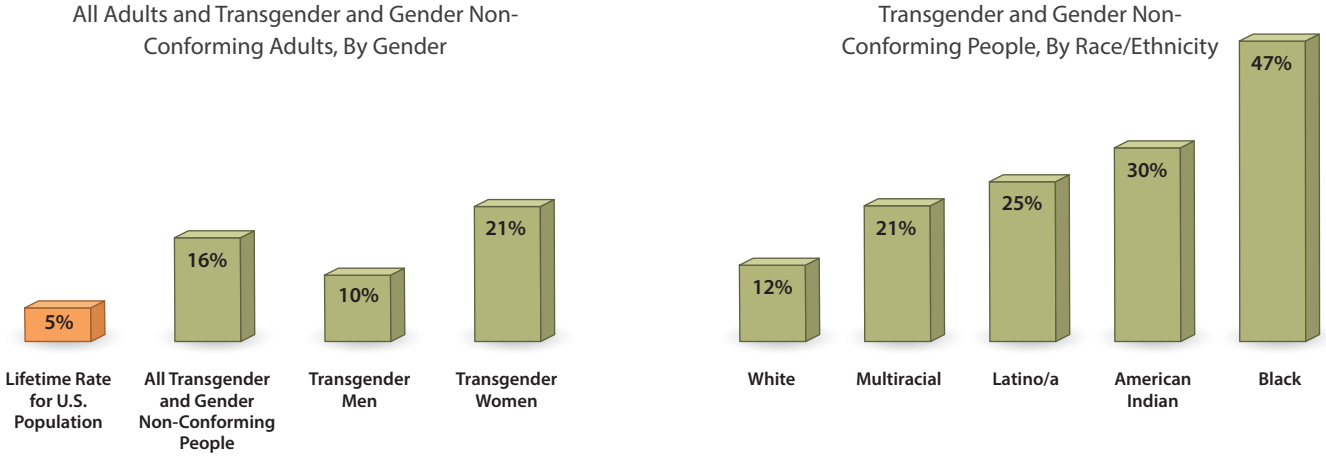
Source: Allen J. Beck et al., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013); Gary J. Gates and Frank Newport, "LGBT Percentage Highest in D.C., Lowest in North Dakota," Gallup, February 15, 2013.

LGBT Undocumented Immigrants

There are an estimated 267,000 LGBT-identified undocumented individuals in the United States.[338] It is likely that LGBT people are overrepresented in immigration detention because of the number of LGBT people who come to the United States to seek asylum based on persecution in their home countries based on their sexual orientation, gender identity, and/or HIV status. There are an additional 637,000 LGBT-identified documented immigrants, including those with green cards.[339]

Figure 32: High Rates of Incarceration Among Transgender Adults

Percent of People Reporting At Least One Period of Incarceration



Source: Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011; Allen J. Beck and Thomas P. Bonczar, "Lifetime Likelihood of Going to State or Federal Prison" (Bureau of Justice Statistics, March 6, 1997).

OVERLAPPING SYSTEMS COMPRISE CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES



Using data from U.S. Immigration and Customs Enforcement (ICE) and the Williams Institute, one article estimates that there are approximately 75 transgender detainees at any given time in ICE custody, 90% of whom are transgender women.[340] As part of an investigation by the Center for American Progress, ICE documents showed that between October 2013 and October 2014, 104 immigrants told ICE they were afraid of being put in detention because of their sexual orientation and gender identity.[341] Of these, 81 were placed in detention anyway.

Portrait of the Criminal Justice System

To better understand how LGBT young people and adults, including undocumented immigrants, interact with the justice system and within detention facilities such as jails, prisons, juvenile facilities, and immigration detention facilities—we provide background information, including:

- How the adult criminal justice system works
- How the juvenile justice system works
- How the immigration enforcement system works
- How these various systems are regulated

On pages 78-113, we explore how LGBT adults, LGBT youth, and LGBT undocumented immigrants are treated in legal proceedings and in prisons and jails, juvenile justice facilities, and immigration detention facilities. We highlight the ways in which these populations have similar, and sometimes very different, experiences.

Adults in the Criminal Justice System

The United States has an extremely high rate of incarceration relative to other countries. It is estimated that one-quarter of the world's prison population is held in U.S. prisons and jails, despite the United States comprising only 4.4% of the world's population.[342] Approximately one in 35 people in the United States is under supervision of the criminal justice system.[343] In 2013, 17 states had prison populations greater than their facilities were designed to house.[344] The rise in prison populations is not explained by crime rates, which are actually declining across the country.[345] Instead, U.S. prisons are at or beyond capacity because of legislation at the state and federal levels designed to "get tough on crime" by implementing mandatory prison sentences, increased sentences for drug-related crimes, and longer sentences in general.

Most adults who are arrested for, convicted of, or sentenced for criminal offenses are placed in correctional facilities or given alternative sentencing such as community supervision. In 2013, an estimated 6.9 million people were under the supervision of adult correctional systems, including in prisons, jails, and community supervision. The majority of these people were supervised by state or local law enforcement and correctional facilities rather than by the federal correctional system.[346] Studies have shown that individuals who are incarcerated are primarily men of color, under age 40 and poorly educated. They frequently lack formal job training or experience, and many have drug or alcohol addiction and mental and physical illnesses.[347]

Individuals awaiting trial or conviction frequently spend time in a local jail. There are more than 3,200 jails in the United States;[348] between July 2012 and June 2013, an estimated 11.7 million people were admitted to these local jails.[349] Upon sentencing, offenders may serve time in a local jail (run by a city or county) or a prison (under the direction of a state correctional department or the federal Bureau of Prisons). In 2013, more than 2.2 million U.S. adults, or one in 110, were incarcerated in prison or jail.[350] These facilities vary in their level of supervision and their design. In general, offenders sentenced to less than a year stay in jail while those with longer sentences are held in prison. Some individuals receive community supervision rather than a prison sentence. States vary in their use of community supervision as opposed to incarceration in jails or prisons. For example, a 2005 report found that Alabama courts rely less on probation and more heavily on incarceration. On a per capita basis, that state had 48% more individuals in prison compared to the U.S. average, as well as fewer individuals on probation.

Individuals who violate federal statutes have their cases heard by federal judges; if convicted, these individuals are sentenced to federal correctional facilities. Far fewer individuals are held in federal facilities relative to state and local jails and prisons. As of May 14, 2015, the federal Bureau of Prisons reported holding 208,656 individuals. Four in five individuals (81%) were held in one of 116 federal institutions, 11% were at privately managed facilities, and the remaining 8% were held in other facilities.[351] Drug offenses are the most frequent offense among federal offenders. Roughly half of individuals in federal prisons (49%) were incarcerated for drug offenses compared to the next largest category, weapons, explosives, and arson offenses (16%).[352]

KEY TERM: Adjudication

When a juvenile court judge determines that a youth committed a delinquent offense, they are adjudicated. This is similar to what happens with an adult criminal conviction, but within the juvenile justice system.

Rise of private prisons. Federal, state, and local governments began contracting with private businesses to operate correctional facilities in the mid-1980s. In many cases, private companies bid to provide secure correctional institutions at lower cost than governments. A 2001 report by the Department of Justice, however, found that rather than the 20% cost savings projected through privatization, the average savings was only 1%; this was mostly achieved through reduced labor costs.[353] In 2013, private prisons housed 8% of all incarcerated people,[354] including 7% of those held by the state and 19% of those held by the federal government.[355] The rise of private facilities has introduced unique issues regarding liability and accountability in the system, including whether incarcerated individuals whose rights are violated in these facilities can sue private prison staff and corporations for violations, and the extent to which states provide good oversight.[356]

Youth in the Juvenile Justice System



After minors are arrested by police, but before they are tried for a crime, they are either released back to their home or are placed in a juvenile justice facility to await adjudication. Placement decisions are made by judges based their analysis of the severity of the crime, the youth's arrest record, support from family, school attendance and grades, among other factors.

In general, young people under age 18 who violate the law are tried in juvenile court. Some youth, however, are moved to the adult criminal justice system. Two states have lower age limits regulating who can be tried as an adult: New York (16) and North Carolina (17). In these states, youth at these lower ages are automatically moved to the adult criminal justice system for pre-trial processing, trial, and incarceration. All other states have laws that allow criminal, adult prosecution of youth in some circumstances—for example, based on the severity of the crime of which they are accused. Decisions on whether or not to transfer a youth into the adult criminal justice system are frequently based on a judge's discretion, a prosecutor's discretion, or state laws (such as laws stating that youth should be tried as adults in all cases of murder or other violent felonies).[357]

A sizeable minority of states have no minimum age for adult prosecution.[358] In 2007, for every 1,000 cases involving youth tried as youth, nine were moved to adult criminal courts through action by juvenile court judges; male and black youth were more likely to have their cases moved to adult courts.[359] Of juvenile cases filed directly in adult criminal courts, either because of laws dictating the charges or prosecutor discretion, the youth involved were overwhelmingly male (96%) and black (62%).[360]

Young people are entering the adult criminal justice system at high rates despite the fact that the U.S. Supreme Court has held in many other areas that youth cannot be treated as adults. For example, the Supreme Court has ruled that it is unconstitutional to sentence minors to the death penalty, to sentence youth convicted of non-homicide crimes to life without parole, or to give mandatory life sentences to youth, regardless of the crime.[361] However, young people who are transferred to the adult criminal justice system are treated as adults during trial, sentencing, and incarcerations.

Very few young people entering the adult criminal justice system are processed in the federal justice system; those in the federal system are usually transferred to state or local authorities. For example, in 2008, only 275 youth were arrested under the federal system, and just 156 of these young people were committed to the custody of the Federal Bureau of Prisons.[362]

Young people who are convicted of crimes subsequently receive sentencing. Some youth are placed in correctional facilities. Others receive supervision, are asked to perform community service, or receive community-based services such as counseling, family assistance, substance abuse education, and other supportive services. In some states, the specifics of where a youth is placed and for how long are determined by a judge, while in other states it is determined by the juvenile correctional department. Youth without strong family support, including many LGBT youth or youth involved in the child welfare system, are more likely to be placed in correctional facilities (see page 80 for more on this disparity). One quarter (26%) of youth sentenced under juvenile delinquency statutes in 2010 were

"committed" to residential facilities that offer varying levels of security, such as training schools, treatment centers, boot camps, drug treatment, or private placement facilities.[363] The other three-quarters of youth were placed under supervision but were generally allowed to return to their homes.

In 2011, there were 41,934 young people in juvenile justice facilities.[364] Many juvenile residential facilities are overcrowded, particularly publicly run facilities, exacerbating existing flaws in the way young people are treated in the system.[365] In addition, many of these facilities resemble prisons in their design and operation, with isolation cells, locked cellblocks, razor wire, and frequent use of restraints. Extensive research shows that these facilities do not meet the needs of youth and do little to ensure their safety and well-being or to provide effective services to help youth when they are released.[366]

Immigration Enforcement and Detention

In 2013, the average number of individuals held at any one time in immigration detention facilities in the United States was 34,000, with a total of 440,600 people detained over the course of the year.[367] Individuals can enter federal immigration custody through immigration raids, being stopped by law enforcement, or other mechanisms. These individuals may be released, although many are detained at one of more of the 250 Immigration and Customs Enforcement (ICE) detention facilities, city or county jails, or private facilities throughout the United States.[368]

ICE has broad authority to detain individuals without legal status to be in the United States, including those who are awaiting a determination of whether they should be deported and those awaiting deportation.[369] There is no limit on the length of time an individual can be detained awaiting immigration proceedings, including deportation proceedings and asylum hearings. On average, individuals are detained for 27 days, although the duration of detention varies greatly.[370]

Immigration detention is not criminal detention. ICE detains people during the processing and preparation of individuals for removal from the United States. The facilities in which individuals are detained, however, resemble prisons in many ways—and many individuals are in fact detained in state prisons and local jails where ICE rents space. The Department of Homeland Security sets standards for the conditions and procedures of immigration detention, but adherence to these standards varies greatly, with private, state, and local prisons and jails showing frequent violations.[371] Unaccompanied immigrants under age 18 are placed in the care of the Office of Refugee Resettlement and may be placed in a range of facilities, from shelters or foster care to juvenile detention facilities.[372]

KEY TERM: Deportation

The formal removal of an individual from the United States who has been found in violation of immigration law.

Of the individuals detained by ICE, many are apprehended at a port of entry or near a border of the United States. These individuals are detained and placed into "expedited removal" proceedings unless they express a fear of returning or an intention to apply for asylum. Individuals seeking asylum can be released on parole or bond, but they can still be detained as they await asylum hearings. The average stay in detention for asylum seekers is 102 days, compared to 27 days for all detainees.[373] Immigration judges set a dollar amount for bond. This amount is held by the court, and if an individual does not appear at court, it is not returned. The cost of securing bond for release from detention is prohibitively high for many individuals, particularly if an individual has been apprehended previously or has a criminal record.

A Broken Immigration System Harms LGBT Undocumented Immigrants



Individuals who enter the United States without legal authorization and who remain without authorization are subject to deportation. They are frequently referred to as "unauthorized" or "undocumented" immigrants. Estimates suggest there are approximately 11.4 million people in the United States without legal authorization.[374] Of these, there are 267,000 LGBT undocumented immigrants in the United States, 71% of whom identify as Hispanic.[375] Additionally, there are an estimated 637,000 documented LGBT immigrants, 30% of whom are Hispanic.[376]

Research shows that undocumented LGBT immigrants face an array of unique challenges. Individuals in same-sex couples who are non-citizens have lower incomes, are more likely to be raising children,

and are younger than the general population.[377] LGBT and HIV-affected immigrants experience hate violence at higher rates than the LGBT population in general.[378]

The U.S. Department of Homeland Security oversees Immigration and Customs Enforcement (ICE), which operates Enforcement and Removal Operations (ERO) and Customs and Border Protection.

Given heightened policing of immigrants, people of color, and LGBT people, LGBT immigrants, particularly LGBT immigrants who are also people of color, are more likely than the broader population to be targets of law enforcement. These interactions with police can result in the detention and deportation of LGBT immigrants, many of whom are returned to countries where they can face discrimination, persecution, and even death.

Under the Obama Administration, deportation has reached a record high. In 2013, the United States deported 240,000 people without criminal records and 198,000 people with criminal records.[379] Many immigrants living in the United States (including 46% of Hispanics) say they worry "a lot" or "some" that they, a family member, or someone close to them will be deported.[380]

In 2012, President Obama created a program to allow qualifying undocumented immigrants the opportunity to live and work temporarily in the United States without fear of deportation. Under the Deferred Action for Childhood Arrivals (DACA) policy, young people born after June 15, 1982 who were brought to the United States before they turned 16 and have lived in the United States continuously since June 15, 2007 and lack legal immigration documentation, are eligible to apply for work authorization and can exempt themselves from deportation.[381] Approximately 1.2 million youth were initially eligible for deferred action.[382] Specifically, this opportunity is available to young people who meet certain other conditions (such as being enrolled in school, having a high school diploma, serving in the military, and not having been convicted of a felony or significant misdemeanor).[383]

The program does not offer any relief to the parents of youth who qualify for DACA, nor are qualifying youth eligible for healthcare coverage through the Affordable Care Act.[384] With a second action in November 2014, President Obama expanded the options available to individuals in the United States without legal authorization, including permitting parents of U.S. citizens and lawful permanent residents to requested deferred action.[385] An estimated 4 million undocumented people would be directly impacted by the executive action, and an additional 290,000 youth would be newly eligible for DACA.[386] However, this executive order is currently on hold pending review by the federal court system. In November 2015, a federal appeals court ruled that the federal government did not have the legal authority to issue these new deferred action initiatives.[387] The administration has indicated it will appeal the decision to the U.S. Supreme Court.

KEY TERM: Asylum

Individuals granted asylum are permitted to immigrate to the United States because they are persecuted or fear persecution in their home country because of membership in a social group, race, religion, nationality, or political opinion. Individuals who receive asylum are eligible for permanent resident status.

Asylum Status. Some individuals enter the United States seeking asylum from persecution and violence in their countries of origin. The climate for LGBT people around the globe varies greatly, and there are many places where LGBT people face discrimination, family rejection, sexual assault, violence, and even death because of who they are.[388]

In 1994, Fidel Armando Toboso Alfonso was permitted to stay in the United States because of the risk of persecution based on his sexual orientation in Cuba.[389] In the years following this case, individuals have been granted asylum based on their identities as gay, lesbian, bisexual, transgender, and/or HIV positive. However, these cases can be challenging to win, and very few LGBT individuals are granted asylum status in a given year.

The asylum process can be challenging for LGBT people. Applications must be completed within a year, but for individuals who have faced extreme persecution in their countries of origin, immediately coming out as LGBT and filing an asylum application can be difficult and even dangerous.[390] By definition, LGBT asylum seekers are fleeing persecution in their countries of origin—often at the hands of the government or at the least without protection from the government. As a result, they may be particularly hesitant to share their identities and circumstances with another government. In addition, some asylum seekers

Story: Fleeing Violence Before Finding a Tenuous Safety in the United States



Johanna Vasquez came to the United States when she was 16 after she'd been brutally raped and harassed in El Salvador. As a transgender woman, she hoped that the United States would be a safer place. When Johanna arrived from El Salvador, she didn't know that she could apply for asylum. As a result, she missed the one-year time limit for applying. She worked as a house painter, in a factory, and on the streets as a sex worker when no one would hire her.

After living without legal documentation for 11 years, Johanna was arrested in Houston in May 2009 for having a fake permanent resident card. She was placed in the men's section of the Harris County Jail.

"From the moment they arrest you they already start treating you differently, as if you're someone from another planet," Johanna told TakePart online magazine in 2015. "They start treating you badly. They don't know how to treat you, like a man or a woman. That's when you start suffering and being afraid."

A month and a half after she was arrested, Johanna was transferred from the county jail to a detention center run by federal Immigration and Customs Enforcement (ICE). Guards verbally harassed her and forced her to expose her breasts. She was placed in solitary confinement for a week but was then placed in a cell with three other men. Despite her request to be transferred, she was forced to stay in the cell, where one of her cellmates beat her with a broomstick. After that, she was again placed in solitary confinement while she awaited an asylum hearing. Even though she could leave her cell for one hour each day, she feared for her life and stayed inside.

Under such bleak circumstances, and with no end in sight, Johanna returned to El Salvador four months after being arrested. Conditions in the country hadn't improved for LGBT people, and after just a few weeks, Johanna made her way from El Salvador back to Laredo, Texas.

Because Johanna had already been officially deported, she was immediately placed in federal prison for re-entering the United States illegally. In September 2010, she was again deported and returned to El Salvador. She faced extreme discrimination and violence there. She was abducted and gang raped and forced to perform oral sex on a local police officer when she tried to report the rape. Again, she decided she couldn't stay in El Salvador. In February 2011, she again entered the United States.

With the help of the advocacy group Immigration Equality, Johanna was able to obtain a judgment from an immigration judge that would allow her to stay in the United States but with fewer protections than asylum. In June 2012, she was released from detention thanks to the help of Immigration Equality, given a worker's permit, a Social Security card, and a government identity document.

Johanna moved to New York City, where she works cleaning offices. Every year she must renew her status and risk potential deportation. She cannot travel outside of the United States, which means she cannot visit her aging mother in El Salvador.

Adapted from Jake Naughton, "Nowhere to Run: Detained Transgender Immigrants Are Abused, Beaten, and Worse," TakePart; Tony Merevick, "Report Details Discrimination Faced By Undocumented Transgender Immigrants," BuzzFeed, October 3, 2013; Johanna Vasquez, "Why the Transgender Community Needs Immigration Reform," Gay City News, October 15, 2013.

Story: Struggling to Make Ends Meet for Gay Immigrant



Rayita left his home in Colombia 21 years ago to find safety in the United States. He came to the United States on a tourist visa and never left. Because he lacks legal work authorization, work is unstable. He's held countless jobs, including factory work, cleaning apartments, selling cosmetics to hair salons, telemarketing for a phone company, a busboy and waiter, and selling ice cream at the beach and empanadas on the street. Despite the difficulties of getting by, he wouldn't return to the discrimination, violence, and harassment he experienced in Colombia.

Adapted from Andres Duque, "The Land of the Free, For Some," The Advocate, March 3, 2015.

Criminal Justice Issues on Tribal Lands

Analysis of data from the National Health Interview Survey conducted by the Williams Institute finds that 2.4% of Native American, American Indian, and Alaskan Native adults ages 18 and older identify as lesbian, gay, or bisexual.[393] The National Transgender Discrimination Survey included approximately 350 respondents who identified as American Indian or Alaskan Native and transgender or gender non-conforming (often using terms such as "Two-Spirit" to describe their gender identity and expression).[j] These respondents were more likely to live in extreme poverty, to report living with HIV, and to have experienced extreme violence or harassment at work, in schools, and when seeking health care.[394]

For LGBT and non-LGBT Native American people living on native lands, such as reservations, their relationship to the criminal justice system is complicated. Federally recognized Native American and Alaskan Native tribes have substantial rights of self-government, including the ability to make and enforce civil and criminal laws, to tax, and to establish membership.[395] Tribal courts generally have jurisdiction over civil issues for both native and non-native individuals living on or doing business on a federally recognized reservation. They also have criminal jurisdiction over crimes committed by tribal members residing or doing business on the reservation, including maintaining a judicial, prosecutorial and defense bar, correctional systems, and law enforcement. Tribes use a variety of forums for handling disputes, including family and community forums, traditional courts, quasi-modern tribal courts, and modern tribal courts that function much like federal and state courts.[396]

Frequently, however, criminal violations in Native American and Alaskan Native communities fall under several jurisdictions, and individuals who commit crimes interact with multiple criminal justice agencies.[397] Who has jurisdiction is dependent on several factors, including the identity of the alleged offender and the victim, the severity of the crime, and where the crime occurred. In general, crimes committed on reservations fall under the jurisdiction of the tribe. However, only alleged offenders who are Native American are covered by the tribe's jurisdiction.[398] Most serious crimes, such as murder, manslaughter, arson, burglary, and robbery, are under the authority of federal law enforcement, including the U.S. Attorney and the Federal Bureau of Investigation. If a Native American alleged offender was involved, the tribe may also have jurisdiction.[399] Tribal courts can sentence individuals to no more than three years in reservation correctional facilities.[400]

Across the country, there are more than 200 police departments operating on reservations ranging in size from two or three officers to more than 200 officers.[401] Some law enforcement departments on tribal land are autonomous and the officers are tribal employees. Other departments are administered by the Bureau of Indian Affairs and the officers are federal employees. In 2013, there were 79 jails or detention centers operating on reservations holding 2,287 individuals.[402]

While the experiences of Native American people within tribal criminal justice systems is outside the scope of this report, several reports indicate that the treatment of Native American people within these systems, particularly in jails and correctional facilities, is poor. For example, a 2004 report by a Department of the Interior inspector found that many tribal jails were over capacity, understaffed, and in need of physical repairs.[403] Individuals in tribal jails received poor medical care and there were higher levels of suicide, attempted suicide, and death of individuals in tribal jails than in comparable prisons and jails.[404]

[j] In some Native American cultures and communities, the term "Two-Spirit" refers to individuals having a blend of female and male spirits in one person. Given that this term emphasizes an individual's gender within a community and culture, it is frequently distinguished from LGBT identities.

may not be "out" to their extended family or friends in the United States; as a result, they may be forced to remain silent about their identity so they can be assured of a place to stay.[391] Adding to the challenges they face, asylum seekers are not eligible for many public assistance programs and cannot work legally for at least 180 days after filing their applications[392]; as a result, they often struggle to make ends meet. Some work in survival economies, increasing their chances of arrest and prosecution and jeopardizing their physical safety. Combined, all of these factors make LGBT asylum seekers reticent about approaching the government for assistance.

What's more, individuals lacking authorization to be in the United States can face substantial barriers to seeking asylum, refugee status, or protected status based on fear of torture if they have been convicted of drug offenses, crimes of moral turpitude, and other crimes. Many immigrants, particularly those who are detained or surrender at a border, are placed in immigration detention facilities while they seek asylum. As described later, the conditions in these facilities vary greatly, with LGBT individuals reporting high rates of abuse, neglect, and assault.



Discrimination in Legal Proceedings

In Section 1, we explored the various reasons why LGBT people find themselves interacting with law enforcement. In this section, we examine why LGBT people are more likely to be incarcerated following their interactions with law enforcement. Specifically, within the legal system, LGBT people face disadvantages that reduce the chances of receiving adequate, fair representation and that increase the likelihood that they will spend time in a detention facility and eventually be convicted of a crime. LGBT people receive less competent representation, face discrimination by court and legal staff, and discrimination by juries as well. They are also less likely to have their cases heard fairly and to receive a just sentence if they are found guilty. This section examines the following problems affecting LGBT people:

- Lack of access to legal counsel and representation;
- Discrimination by judges, prosecutors, and court staff;
- Use of sexual orientation and gender identity in legal cases; and
- Discrimination in juror selection and by juries.



PROBLEM: INADEQUATE ACCESS TO COUNSEL

The U.S. legal system is difficult to navigate; filings, hearings, and appeals all require special knowledge of the law and the ins and outs of the system. But many low-income LGBT people, particularly LGBT immigrants and LGBT people of color, cannot afford to pay an attorney to help them.

According to the Sentencing Project, a research organization working for criminal justice reform, many state programs intended to provide counsel for low-income people, often called Indigent Defense Programs, are sorely underfunded.[405] Also, the right to counsel in criminal trials does not generally extend to proceedings in which the potential penalty is less than a one-year imprisonment, although this varies by state.[406] As a result, low-income people, including many people of color and LGBT people, do not receive adequate defense.

Even when legal assistance is available—for example, through the public defender service for low-income criminal defendants—attorneys are frequently overloaded with other cases or unable to help a defendant with a particular case[407]; consequently, an attorney may push the defendant to take bad deals offered by the prosecution.[408] Adding to the challenges for LGBT people, attorneys frequently lack even basic LGBT competency. They may be uncomfortable discussing sexual orientation or gender identity or may refer to a client by the wrong name or pronoun. Without an understanding of LGBT people and the circumstances of their lives, it is difficult to provide effective counsel.



Young people, in particular, are frequently encouraged to waive the right to counsel, leaving them without a legal advocate during court proceedings.[409] Only 42% of youth in custody in 2007 reported they had legal counsel.[410] For LGBT youth lacking strong family support, lack of counsel can be even more detrimental. And even if they do have counsel, LGBT young people, like LGBT adults, may receive counsel from attorneys who lack basic understanding of LGBT issues and are unable to effectively advocate for their clients.[411]



While criminal defendants, particularly those facing a potential prison or jail sentence, are generally entitled to legal representation even if they cannot afford it, applicants in

civil proceedings, including immigration proceedings, are not guaranteed counsel.[412] Lacking counsel has serious consequences, particularly in complicated immigration cases and cases in which deportation could put an individual at grave risk, such as an LGBT individual from a country where LGBT people are treated harshly. According to a study in New York, a key factor in whether a person going through removal proceedings was deported was access to counsel.[413] Specifically:

- In an examination of immigration cases in New York City, researchers found that 74% of immigrants with representation were successful in their immigration cases and were not detained, compared to just 3% of individuals who lacked legal representation and were detained.
- Individuals facing deportation in New York immigration courts with attorneys were found to be 500% more likely to win their cases compared to those without representation.[414]
- Individuals facing deportation with access to counsel were six times more likely to successfully challenge removal than those without representation.[415]

Some programs, like the Legal Orientation Program,[416] which provides legal education to people moving through immigration proceedings, have helped immigrants better understand their rights. However, programs like these are underfunded and cannot reach every person in immigration proceedings.

For LGBT asylum seekers who have experienced trauma in their countries of origin because of their sexual orientation and gender identity, the need for legal counsel is even more urgent. But when immigration attorneys and judges lack basic competency and understanding of the LGBT community, LGBT people do not receive fair consideration of their asylum requests. Entering an immigration proceeding without counsel, and having to advocate for one's own issues and specific needs, would be daunting under any circumstance. These challenges are compounded in asylum proceedings by frequent language barriers.

Immigration officials are required to ask all detainees if they fear persecution or torture in their country of origin or if they are afraid of returning. Given that these questions are frequently asked while surrounded by other

SPOTLIGHT



Increasing Access to Counsel Helps LGBT People

When LGBT youth lack support from their families and communities, they may be more likely to lack legal representation in the juvenile justice system. In 2014, it was estimated that 98% of low-income youth in Louisiana's juvenile justice system had never been visited by an attorney.[417] Lack of counsel can have serious ramifications, including increased risk of being adjudicated, increased punishments, and difficulties receiving needed assistance while in the system.

Launched in 2006, the LGBTQ and HIV/AIDS Project of the **Juvenile Justice Project of Louisiana** focuses on protecting the rights of incarcerated LGBTQ youth and youth living with HIV/AIDS in secure care facilities. One of the objectives of the project is to ensure that LGBTQ youth in the juvenile justice system receive quality representation in delinquency proceedings.

Similarly, having access to counsel is crucial in ensuring that immigrants receive a fair hearing and can avoid deportation (as outlined on pages 78-79). Started in 2013, the **New York Immigrant Family Unit Project** provides free, high-quality legal representation to every indigent immigrant facing deportation in or near New York City (including in New Jersey).

And while they cannot take on every case, several organizations focus specifically on providing legal assistance and representation to LGBT immigrants in immigration proceedings, including those seeking asylum. Among these organizations are **Immigration Equality**, which provides assistance to LGBT and HIV-positive immigrants, and the **National Immigrant Justice Center**, which provides legal representation through its LGBT Immigrant Rights Initiative.

individuals, many LGBT detainees are uncomfortable and fearful to disclose their identities or their fear of returning to their countries of origin. Unless an individual says yes to either question, they will not be referred to an asylum counselor who can ask them to detail their experiences and determine if they qualify for asylum.

PROBLEM: DISCRIMINATION BY JUDGES, PROSECUTORS, AND COURT STAFF

As explored below, LGBT people face discrimination in the justice system that makes it more difficult for them to have their cases adjudicated in a fair and unbiased manner. Among the problems: LGBT people are less likely to receive pre-trial release; judges, prosecutors, and court staff frequently discriminate against LGBT people in the courtroom; and LGBT people are more likely to receive harsh sentences. The net result is that LGBT people are disproportionately likely to be held in confinement facilities, including prisons, jails, juvenile facilities, and immigration detention facilities.

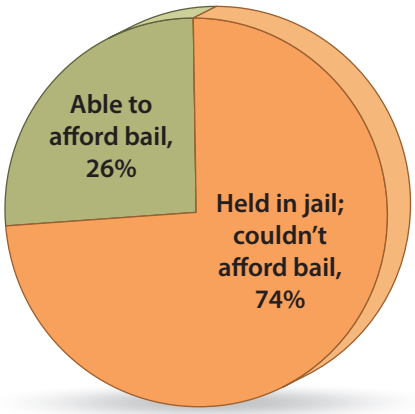
Bias in Pre-Trial Release

Judges, prosecutors, and pre-trial service coordinators make recommendations and decisions about whether an individual can be released before or during a trial. Factors taken into consideration in these decisions include the severity of the crime, an individual's connection to the community, family support, and the risk of the individual not appearing for trial. There is evidence that judges and other legal staff are biased in their assessment of risk for individuals based on non-pertinent characteristics, such as race, sexual orientation and gender identity. For example, black and Hispanic people are more likely to be confined while awaiting trial, compared to white people.[418] Research finds that being confined prior to trial increases the possibility of a prison sentence, even when controlling for the type and severity of the offense.[419]

Frequently, individuals are required to pay money for their release, often in the form of a bond or bail.[420] For low-income individuals, including individuals lacking strong family support, it can be impossible to raise the money necessary to obtain pre-trial release. Given the lack of support from family and higher rates of poverty among LGBT people, particularly transgender people and people of color, LGBT people often face unique barriers in affording bond. In Black and Pink's 2015 survey of LGBTQ prisoners in the United States, 74% of individuals currently incarcerated had been held in jail prior to their trial because they could not afford bail as shown in *Figure 33*.[421] Individuals forced to stay in jail because they cannot afford bond can lose their jobs, suffering additional financial consequences.

Figure 33: Most Incarcerated LGBTQ People Could Not Afford Bail

Percent of Currently Incarcerated LGBTQ People



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

Several states, including New Jersey, have worked to change bail laws to allow for more non-monetary release options. In these instances, judges release lower-risk low-income individuals without bond, with monetary bail set only if no other conditions of release will assure appearance in court.[422] Research finds that unsecured bonds, which do not require individuals to put up any money but have monetary penalties if an individual fails to appear, are as effective as secured bonds in achieving public safety.[423]

Judges in juvenile cases frequently look at an individual's family system, support, school environment, and other factors in determining whether a young person should be detained or released prior to their case being adjudicated. Judges also consider these factors when determining appropriate sentencing for youth. Youth are frequently released into alternative community programs both pre-trial and as part of sentencing, where they may be required to complete community service, attend substance abuse classes, or meet regularly with a probation officer.

LGBT young people face disadvantages in the arraignment process and are also more likely to be

placed in a facility to await trial, rather than being sent home.[424] As described on pages 9-12, LGBT youth are more likely to be disconnected from their families and to have experiences at school that result in lower academic performance, which in turn impacts decision made at pre-trial and arraignment hearings. In focus groups and a survey of LGBTQ-identified youth who had been in Washington State child welfare and juvenile justice systems, several youth told researchers they had been missing school due to bullying and harassment because of their sexual orientation and gender identity. However, they feared coming out to court staff, so they didn't explain why they'd been missing school.[425] LGBT youth are two times more likely to be placed in a jail or correctional facility while awaiting adjudication for nonviolent offenses like truancy, running away, and prostitution, compared to non-LGBT youth.[426] This time waiting in incarceration—before a young person has even been found guilty of a crime—is time away from school, friends, peers, family, and work.

- In a 2008 survey of youth in detention in several sites in California, 40% of LGBTQ youth had been held in juvenile detention for running away compared to 13% of straight youth (see *Figure 34*).[427]
- In a survey of youth in Louisiana, 50% of gay young people arrested for nonviolent offenses in 2009 were sent to jail to await trial compared to fewer than 10% of non-gay peers.[428]

Youth of color face similar disparities when compared to LGBT youth. For example, in Cook County, which includes the City of Chicago, the Cook County Juvenile Temporary Detention Center detained 4,267 youth in 2013, of whom 85% were black.[429] Most of these youth were awaiting trial. In 2007, the facility was taken over by a federal judge after several lawsuits alleged abuse, overcrowding, unsanitary conditions, and inadequate services for youth.[430]



Undocumented individuals who are seeking asylum or are detained by immigration enforcement officials can be released pending deportation proceedings or hearings. U.S. Immigration and Custom Enforcement policies state that individuals who pose no flight risk or are no danger to the community should be eligible for release to await future immigration hearings.[431]

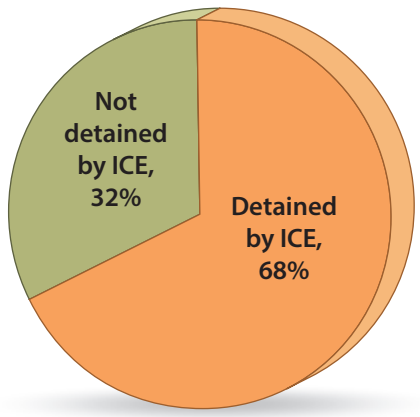
Research shows that LGBT undocumented immigrants, including asylum seekers, are more likely to be detained, compared to the general population of asylum seekers. As shown in *Figure 35*, a 2015 report by the Center for American Progress found that 68% of LGBT asylum seekers were detained, despite the fact that 70% of all cases are to be considered for release.[432] The report also found that individuals who were not detained had an 11.5% greater chance of succeeding in their claim than those who were detained.[433]

Figure 34: LGBTQ Youth Held At Higher Rates
Percent of Youth in California Being Held in Detention for Running Away



Source: Legal Services for Children, National Center for Lesbian Rights, and National Juvenile Defender Center, "The Equity Project," September 2008.

Figure 35: High Rates of Detention for LGBT Asylum Seekers
Percent of LGBT Aslyum Seekers



Source: Sharita Gruberg and Rachel West, "Humanitarian Diplomacy: The U.S. Asylum System's Role in Protecting Global LGBT Rights" (Center for American Progress, June 2015).

Story: Salutatorian and GSA Leader Stuck in Immigration Detention



Yordy Cancino came to the United States from Mexico at age six with his family. As a student at Animo Jackie Robinson High School in Los Angeles, Yordy served as the president of the Gay-Straight Alliance. He graduated as salutatorian of his high school class and was accepted to UCLA, but was unable to attend college or find a job because he lacked legal authorization to be in the United States. "I was depressed. There were days I couldn't eat. There were days I just cried," he told a San Diego new station.

With few options, he returned to Mexico to attend college. However, he experienced such violence and discrimination that he returned to the United States formally seeking asylum. His first attempt was rejected, but with assistance, he was able to restart the process and complete an application. Yordy was held in a San Diego youth immigration detention center. But his case drew the attention of a coalition of groups including the Gay-Straight Alliance Network, the National Queer and Trans Latin@ Alliance, the Immigrant Youth Coalition, the Queer Undocumented Immigrant Project, and SMYAL – DC Regional GSA Network. Through the efforts of these groups, a petition with more than 3,000 signatures was delivered to the White House and Immigration and Customs Enforcement calling for Yordy's release. He received assistance paying his $7,500 bond after serving three months in a youth detention center.

Adapted from Michael Chen, "Gay Asylum Seeker Freed from ICE Detention," 10News, June 14, 2014.

Bias in Court Proceedings

Discrimination against LGBT people is pervasive, and it infiltrates the halls of justice. Judges, prosecutors, and even defense attorneys tasked with representing LGBT people often rely on misinformation, stereotypes, and inflammatory language when interacting with LGBT people.

A 2000 review of Arizona's legal community by the State Bar of Arizona found extensive discrimination against lesbian, gay, and bisexual people.[434] Nearly half of judges and attorneys reported hearing disparaging remarks about gay men and lesbians in public areas like a courthouse.[435] Remarks were addressed to LGB attorneys and LGB litigants alike.[436] Respondents to the survey offered examples of unfair treatment such as: an adoption denied because the mother was lesbian; a man's battery complaint dismissed as "asked for" because the man was gay; and an order of restraint denied to a lesbian woman because the accused was her female partner.[437] In a 2001 study of California state courts, 56% of gay and lesbian litigants reported hearing negative comments or receiving negative action because of their sexual orientation, and one in five court employees heard derogatory or negative comments from judges, lawyers, or other court employees.[438]

Adding to the challenges facing LGBT people in the system, prosecutors and judges often use misinformation and stereotypes during trials to persuade judges and juries of the guilt of LGBT people. This leaves LGBT and HIV-affected people to seek recourse from higher courts. For example, in New York a local District Attorney misrepresented the infectiousness of HIV, likening an HIV diagnosis to a lion attack.[439] The subsequent criminal charge was lessened by the appeals courts.[440] Similarly, an Oklahoma judge cited his belief that transgender people were "fraudulent" for seeking to change their names, and he quoted Bible passages in his opinions.[441] An appellate court later overturned the judge's rulings prohibiting transgender people from changing their names.[442]

In criminal cases, some defendants have claimed that a victim's sexual orientation or gender identity excused the defendant's violent actions; this is known as the gay or transgender "panic" defense. After beating a gay man, Matthew Shepard, to death in 1998, his murderers invoked this defense during their 1999 trial, although it was ultimately unsuccessful.[443] In 2014, California became the first state to bar the use of these panic defenses in court, stating that discovery of someone's actual or perceived gender, gender identity, gender expression, or sexual orientation cannot be used as a defense for violence.[444] Similarly, in 2013 the American Bar Association issued a proclamation urging courts and jurisdictions to ban these defenses.[445]

Historically, sexual orientation has also been used against defendants in court as evidence of "poor character." For example, the prosecutor in a 1994 sentencing hearing for a gay man, Calvin Burdine, told the jury that he should be sentenced to the death penalty rather than to prison. The reason: "sending a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual."[446]

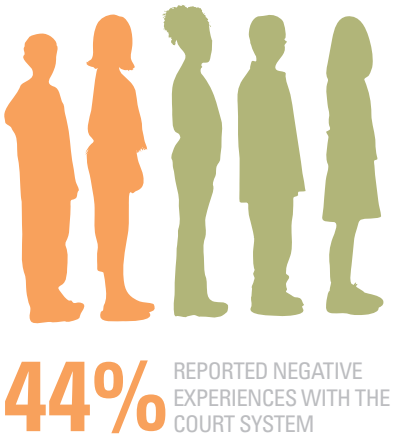
Several courts have ruled that evidence of a criminal defendant's sexual orientation is highly prejudicial if irrelevant to the charged crime.[447] However, courts over the years have made exceptions to the evidentiary rules to permit evidence of an individual's sexual orientation to be brought as "proof" of their tendencies to commit wrongful acts.

In a survey of LGBTQ youth engaged in survival sex in New York City, many youth reported that judges, prosecutors, and court officers refused to use correct pronouns or names during proceedings or made negative comments about their gender identity or expression or sexual orientation.[448] Nearly half (44%) reported their experience with the court system as negative, as shown in *Figure 36*.

LGBT people often seek asylum from countries where they fear violence because of their sexual orientation, gender identity, and/or HIV status. Within the immigration system, immigration judges must make decisions about whether these people should be able to remain the United States or be deported. There are numerous examples of judges showing a basic lack of understanding of the challenges facing LGBT people in other countries, and even within the United States. For example, an immigration judge in California derided an HIV-positive asylum seeker for engaging in sex work, without grasping that the asylum seeker had been forced to engage in sex work because of the economic and social climate in her home country.[449] The judge denied asylum, but the Board of Immigration Appeals overturned the denial, finding that HIV status is not a reason to presumptively deport someone.[450] Immigration attorneys frequently hear judges refer to transgender asylum seekers using the wrong pronoun or using an applicant's legal name even after they have been told that an individual uses a name in accordance with their gender identity.

Figure 36: LGBTQ Youth Report Negative Experiences with Court System

Percent of LGBTQ Youth Engaged in Survival Sex in New York City



Source: Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex" (Urban Institute, September 2015).

Bias in Sentencing

Evidence shows that bias often occurs in sentencing. Prosecutors, for example, are more likely to charge people of color with crimes carrying heavier sentences than whites[451]; once charged, people of color are more likely to be convicted;[452] and once convicted, they face stiffer sentences.[453] Similarly, judges are more likely to sentence people of color to prison and jail rather than community supervision, and judges are more likely to give black and Latino/a defendants longer sentences than whites.[454] There are also large disparities in sentences given to citizens versus noncitizens.[455] These disparities remain even after accounting for relevant legal differences such as crime severity and criminal history.[456] Although there are no data comparing sentences for LGBT adults versus non-LGBT adults, given the general evidence of anti-LGBT bias in the criminal justice system, it is logical to conclude that this bias also extends to sentencing.

Although there are no data tracking placements of LGBT young people after adjudication, it is likely that LGBT youth are disproportionately committed to residential facilities, in the same way that they are disproportionately likely to be placed in facilities while awaiting adjudication. Certainly this holds true for youth of color. In 2014, youth of color ages 10 to 17 comprised just 16% of the total youth population ages 10 to 17. By comparison, they were 34% of youth arrested, 38% of youth adjudicated, and 68% of youth in residential placements.[457]

Story: Discrimination in the Justice System



#1: Harmful Comments from Her Own Attorney

Destiny, a 16-year-old African American transgender girl, became involved with the juvenile court system at age 12. Over the course of the next four years, she repeatedly re-entered the system for shoplifting women's clothing and jewelry and fighting back against abuse at school. Even though Destiny had not committed any violent or sexual offenses, the court ordered that she be housed in the state's highest-security juvenile facility for boys because no other placement would accept a transgender girl.

During the year she was incarcerated, Destiny was regularly sexually assaulted and physically threatened by other youth, harassed by staff, and punished for her gender expression. Destiny's court-appointed attorney never advocated for programs to meet her needs and never challenged the abusive conditions of her confinement. Despite his refusal to advocate on her behalf, the court denied Destiny's requests for a new attorney.

The National Center for Lesbian Rights (NCLR) subsequently agreed to represent Destiny. When NCLR submitted a report with local co-counsel about the sexual assaults perpetrated against Destiny, her court-appointed attorney remarkably suggested to the judge that Destiny was exaggerating. He told the judge, "I think this young man has a lot of things—and I use the word man—to think about so I would just ask the court to be cautious in any decision that it makes."

Not only had the court-appointed attorney demonstrated a complete disrespect for Destiny's gender identity and failed to act when he became aware of Destiny's abuse, he argued in favor of continued commitment in the facility where she was clearly unsafe. As a result, the court continued Destiny's commitment at the facility until she completed the program.

Excerpted fromKatayoon Majd, Jody Marksamer, and Carolyn Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts," Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights, October 16, 2009.



#2: Bias in the Court: "I Just Stood There"

When Streetwise and Safe and the Urban Institute interviewed youth trading sex in New York City, one participant, a 21-year-old multiracial gay man, told the interviewers about this experience in court.

"When I was being arraigned they were like, '[Name of defendant] had an altercation inside the hotel with his lover' and they say his name and everyone started laughing—the whole courtroom, the judge, the bailiff, everybody. They all started laughing. I was so mad. I could only see the people in front of me, so that means that the prosecutors were laughing, the judge was laughing, the bailiff was laughing, the two cops over here were laughing. Everyone was laughing.

The interviewer then asked, "And what did you do, you just stood there?"

He responded, "I was embarrassed. I just stood there."

Excerpted from Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex" (Urban Institute, September 2015).

Boys and young men comprise nearly all juvenile offenders placed in residential facilities (87%).[458] Girls and young women are more likely than boys and young men to be committed to residential facilities for status offenses—instead of receiving supervision or community-based services.[459] Status offenses are noncriminal behaviors that are unlawful because of an individual's age, but that would not be illegal if an adult undertook the same behavior. Examples include running away from home, truancy from school, curfew violations, or possessing substances like tobacco or alcohol.[460] Other examples are technical violations, including violations of the conditions of community supervision, such as failing drug tests or not appearing for scheduling appointments.[461]

In a survey of LGBT young people in Washington State's juvenile justice and child welfare systems, several participants said they experienced discrimination by court professionals. For example, one participant said a judge gave him the most severe, longest sentence possible for his crime and cited the youth's sexual orientation as the reason.[462]



In many cases, courts rely on juries to determine an individual's guilt or innocence and to recommend a sentence. Juries are designed to be cross-sections of the general population—"a jury of one's peers"—although prosecutors, defense attorneys, and judges are permitted to guide the jury selection process. Frequently, jurors are selected or disqualified based on their personal feelings about issues raised by a case, whether they personally know an individual involved, or other factors. Additionally, jurors are given instructions as to what information they can and cannot take into consideration in reaching a verdict. On both these fronts, LGBT people face discrimination that can result in an unfair trial.

Discrimination During Jury Selection

Current federal law prohibits discrimination in jury selection based on race and ethnicity, but there is evidence that jurors are frequently excluded because of their race or ethnicity. A report examining juries in eight southern states found that individuals who are African American are discriminated against when considered for jury service.[463] In Houston County, Alabama, for example, 80% of African Americans who qualified for service from 2005 to 2009 were struck by prosecutors in death penalty cases, leaving all-white juries in half the cases and a single black juror in the other half of cases. In Jefferson Parish, Louisiana, between 2003 and 2012, prosecutors were more than three times more likely to strike a black juror than a non-black juror.[464]

Showing discrimination against LGBT people in jury selection is a challenge because of a lack of data. However, there have been several instances when prospective jurors were challenged and not permitted to serve based on their sexual orientation or gender identity. For example, in a 2000 case a prosecutor challenged a prospective juror named Chris Lewis, a black transgender woman.[465] The prosecutor stated, "I believe that people who are either transsexuals or transvestites … I don't know what the proper term is … traditionally are more liberal-minded thinking people, tend to associate more with the defendants."[466]

In early 2014, a federal appellate court ruled that it is impermissible to base jury-selection decisions on the potential jurors' sexual orientation, due to federal protections prohibiting discrimination in jury service based on sex.[467] The decision arose when a gay man was struck from the jury in a case concerning medication for the treatment of HIV/AIDS. As a result of the 2014 ruling, the U.S. Department of Justice issued a department policy that prohibits striking a juror based on sexual orientation, as is already the case for race, gender, and ethnicity.[468] California passed a law in 2015 to prohibit discrimination against potential jurors based on gender identity; the state already prohibited potential jurors from being dismissed based on sexual orientation.[469]

Despite California's state law addressing LGBT people and jury service, as well as emerging federal protections, discrimination against potential jurors on the basis of sexual orientation and gender identity or expression will likely continue.

Discrimination During a Jury Trial

Despite the fact that defendants are entitled to an impartial jury, jurors may consider factors not related to the case at hand in determining an individual's guilt or innocence or the severity of a sentence. For example, research finds that convictions and sentences are frequently more likely and more severe for defendants of color.

There is little research examining the extent to which juries may discriminate against LGBT defendants. However, there are many documented instances of prosecutors trying to bias juries or leverage jurors' underlying biases against LGBT people to the advantage of cases against them. For example, when arguing for the death sentence for Jay Wesley Neill, a gay man, a prosecutor in Oklahoma asked the jury to disregard the man in front of them and focus only on his sexuality. "The person you're sitting in judgment on—disregard Jay Neill. You're deciding life or death on a person that's a vowed [sic] homosexual. . . . But these are areas you consider whenever you determine the type of person you're sitting in judgment on. … The individual's homosexual."[470] The jury sentenced Neill to death in 2001, and an appellate court upheld the sentence, despite one judge's dissent saying the prosecutor's blatant bias had improperly swayed the jury.[471]



Unfair and Inhumane Treatment in Confinement Facilities

When LGBT people are placed in confinement facilities to await trial or as part of a sentence, they are extremely vulnerable to harassment, discrimination, and inhumane treatment. In many ways, these facilities—including juvenile justice facilities, jails or prisons, or immigration detention facilities—are outside of public view and understanding. Few Americans have ever visited a prison or jail, and many don't want to think too deeply about how individuals in these settings are treated on a day-to-day basis. Yet one in 35 adults in the United States, or nearly 7 million people, are currently under supervision of the criminal justice system—in prison or jail or being supervised by a probation or parole officer.[472] The majority of these people have spent some time in a confinement facility either awaiting charges, pre-trial, or as part of their sentence.

Regardless of why someone is placed in a facility, the conditions of their detention should ensure their overall physical, mental, and emotional safety and offer opportunities to build skills that will help them successfully rebuild their lives upon release. Unfortunately, most confinement facilities in the United States fail at these most basic goals. For LGBT people, life in confinement can be particularly difficult, resulting in greater negative impact on their physical, mental, and emotional well-being.

As noted above, rates of incarceration for LGBT people are high. Even based on patchwork data sources, a picture emerges of LGBT people being pushed into prisons, jails, juvenile facilities, and immigration detention facilities that are ill-equipped to meet their most basic needs for safety and health care, let alone provide support to address issues like job training and rehabilitation. Many correctional professionals receive little training in how best to work with LGBT individuals. LGBT people are also vulnerable to discrimination and harassment by other inmates.

In the following pages, we explore the key issues facing LGBT people in confinement facilities:

- Limited regulation and oversight of jails, prisons, juvenile justice facilities, and immigration detention facilities;
- Improper placement of LGBT individuals;
- Harassment and sexual assault by staff and other inmates;
- Inadequate access to health care;
- Ignorance of basic needs; and
- Lack of recourse for incarcerated people facing discriminatory or dangerous conditions.

Many of the issues are similar across adult, juvenile, and immigration confinement facilities, but key differences will be addressed throughout.



PROBLEM: LIMITED REGULATION AND OVERSIGHT

There is very little federal oversight of state and local criminal justice and juvenile justice systems and facilities. The federal government oversees federal prisons through the Bureau of Prisons and controls immigration detention facilities through the Department of Homeland Security. State correctional facilities are administered by state departments of corrections. State youth facilities are overseen by state departments of corrections or separate youth correctional departments. Local cities and counties oversee their jails. Each jurisdiction is responsible for protecting the safety of individuals in their facilities and developing standards of care.

Several federal agencies provide funding to state and local departments through grant programs, but in general, federal authority over these departments is limited and monitoring is inconsistent and scarce.[473] If a

UNDERSTANDING THE PRISON RAPE ELIMINATION ACT (PREA)

GOALS

TO PROTECT INDIVIDUALS FROM PRISON SEXUAL ASSAULT AND TO UNDERSTAND THE INCIDENCE AND EFFECTS OF SEXUAL ASSAULT IN PRISONS

NATIONAL STANDARDS

PREA CREATED A NATIONAL COMMISSION THAT DEVELOPED NATIONAL STANDARDS FOR THE DETECTION, PREVENTION, REDUCTION, AND PUNISHMENT OF SEXUAL ASSAULT IN PRISONS.

PREA CREATES NATIONAL STANDARDS FOR:

STAFFING

- Training and Education
- PREA Coordinators
- Supervision and Monitoring
- Minimum Staffing Levels

STAFF-INMATE INTERACTIONS

- Searches and Privacy
- Reporting and Investigations
- Discipline

REDUCING RISK

- Risk Assessments and Screenings
- Added protections for youth
- Educating inmates about protections and complaint processes

DATA COLLECTION

- Audits
- Annual review and analysis of incidence and effects by Bureau of Justice Statistics

HOW

LEGAL

Federal facilities are bound by PREA, and other jurisdictions may be legally bound

STICK

Facilities that don't comply risk losing Department of Justice funding

CARROT

States and local governments can apply for additional funding for implementation

ACCREDITATION

Accrediting organizations must include standards or risk losing funding

TRAINING

PREA Resource Center and others provide technical assistance and trainings

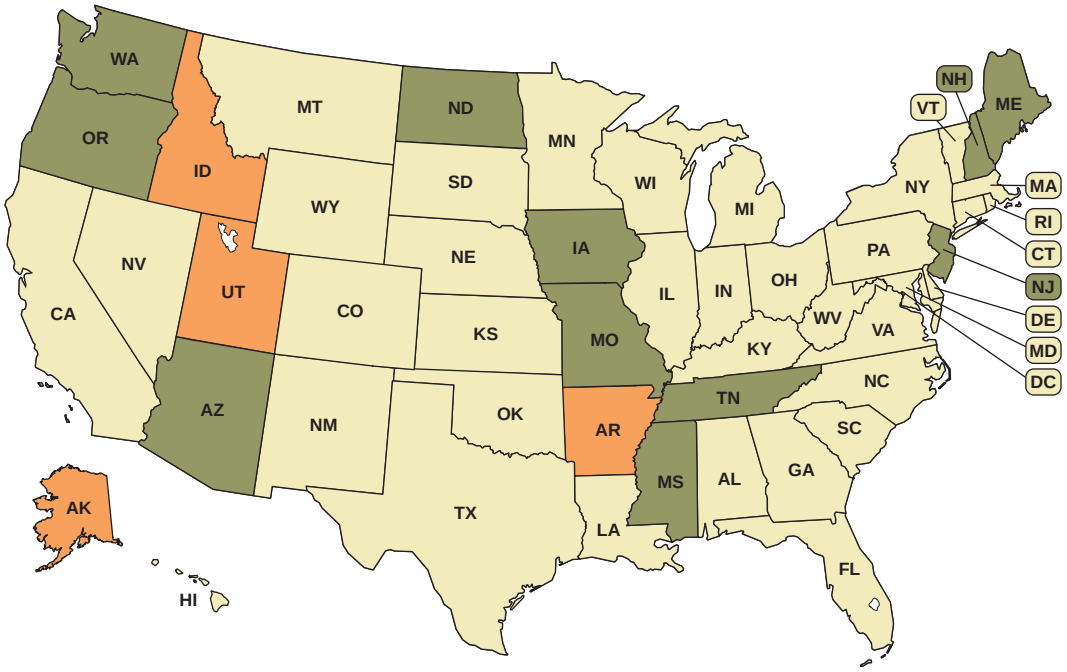
DATA

Analyses examine differences in reports of sexual assault by facility and jurisidiction

UNDERSTANDING THE PRISON RAPE ELIMINATION ACT (PREA)

STATUS

STATES VARY IN THEIR ADOPTION AND COMPLIANCE WITH PREA STANDARDS



CERTIFICATIONS OF COMPLIANCE (11 STATES)

ASSURANCE STATE IS WORKING TOWARD COMPLIANCE (35 STATES + D.C.)

IS NOT IN COMPLIANCE AND DID NOT SUBMIT ASSURANCE OF FUTURE COMPLIANCE (4 STATES)

CAUTIONS

CAUTION

THERE IS DISAGREEMENT AS TO WHETHER PREA IS BINDING ON CITY AND COUNTY-RUN FACILITIES

CAUTION

SOME LGBT INMATES NOTE THAT PREA HAS BEEN USED TO PENALIZE CONSENSUAL SAME-SEX CONTACT IN PRISONS

CAUTION

IMPLEMENTATION ON THE GROUND LEVEL VARIES GREATLY AND INMATES MAY NOT EXPERIENCE IMPROVEMENTS IN DAY-TO-DAY SAFETY

state facility does not receive federal funds, it is generally exempt from federal authority and oversight.

Even within a particular state, various departments at the state, county, and city levels intersect in their oversight. As a result, even among jurisdictions and facilities within one state, there is wide variation in policies, conditions for those in detention, and services and programs such as health care, job training, and education.

Adding to the problems, knowledge about the conditions in prisons, jails, and other confinement facilities is scarce. No national mandatory reporting system tracks basic confinement facility conditions, such as the size or configuration of cells, daily program offerings, or even how long individuals are permitted to be out of their cells.[474] As a result, courts serve as the primary form of oversight,[475] chiefly through the filing of complaints by individuals who have exhausted their administrative options within the correctional system (see below for more about the lack of recourse for incarcerated people).

The Prison Rape Elimination Act (PREA)

An important exception to the lack of oversight of criminal justice facilities are the changes brought about by the 2003 Prison Rape Elimination Act (PREA). PREA is groundbreaking in its increased oversight of federal, state, and local detention facilities. At its core, this law seeks to enforce basic regulations that reduce and eliminate sexual assault within all facilities where individuals are held—both by fellow inmates and by staff.

PREA is significant for LGBT people in detention facilities because it explicitly identifies LGBT people as a vulnerable population and provides specific guidance and regulations as to how LGBT people should be treated and protected (more about the LGBT-specific aspects of PREA will be discussed on pages 91-95). The law applies to both facilities housing adults and those housing young people, though it applies a little differently across different levels of government.

- **Federal facilities.** The law is mandatory for all federal facilities, including prisons, immigration detention facilities, and other confinement facilities operating under contract with the federal government, such as state prisons or county jails that house federal prisoners or detainees.
- **State facilities.** PREA's standards are binding on state prisons, but the federal government has a limited ability to enforce these requirements. States that do not certify that they have adopted the standards and are in compliance across all their facilities—or at least working to be in compliance—risk losing federal funding, but would not face other consequences from the federal government.[476]
- **Local facilities.** Although PREA states that all confinement facilities are required to follow PREA standards, compliance of local jails is difficult to ensure, especially since state agencies do not generally regulate local jails.[477] Local county and city jails that do not contract with federal or state governments will not face financial penalties for noncompliance. However, local jails that house state detainees or that do contract with the federal government (including Immigration and Customs Enforcement) must comply with PREA standards or face financial penalties, including the loss of such contracts.
- **Accrediting agencies.** Agencies that accredit correctional facilities risk losing their federal grant funding if they do not incorporate PREA standards into their accreditation. In other words, if an agency accredits an institution that does not adhere to PREA standards, it risks losing federal funding.

PREA contains many new standards for jails, prisons, juvenile facilities, and all other confinement facilities. The law's provisions fall into five broad categories (as shown in graphic below): data collection; prevention and prosecution; grants; creation of the National Prison Rape Reduction Commission; and adoption of national standards. PREA includes standards for the placement of LGBT and intersex people, how they should be treated by staff and fellow inmates, and standards for ensuring their safety.

As of May 15, 2015, the deadline by which states had to submit certifications or assurances of compliance with PREA, 11 states were fully in compliance; 34 states and the District of Columbia submitted assurances they were working toward compliance (see infographic on the previous page).[478] Four states—Alaska, Arkansas, Idaho, and Utah—declined to submit such certifications or assurances and were subject to the 5% decrease in federal grant funding as a result.[479]

Although there are no financial penalties for noncompliance with PREA at the local level, many county and city jails have worked to incorporate PREA standards into their facilities, including in states that have not certified compliance with PREA standards for

Story: PREA Protections Assist Transgender Maryland Woman



Sandy Brown, who is transgender, spent 66 days in solitary confinement, during which time she was repeatedly harassed by the staff at the Patuxent Institution, a mental health assessment correctional facility in Jessup, Maryland. She filed a complaint, and in September 2015 an administrative law judge found that her rights were violated under the protections of the Prison Rape Elimination Act (PREA).

In February 2014, when Sandy arrived at Patuxent, she was examined by medical personnel to determine if she "had made the transition from female to male." A female officer strip-searched the upper part of her body, then a male officer strip-searched the lower part of her body.

Staff at the facility then determined her placement solely based on the fact that she was transgender and posed a "possible threat to the security of the institution." As a result, she was held in administrative segregation, where she remained for 66 days. Her privileges were very limited, and she was only allowed recreation one time.

Patuxent employees repeatedly taunted and harassed her. For example, a sergeant referred to her as an "it," told her that she was not a real woman, and that she should kill herself. Correctional officers would stare in her cell to gawk and giggle at her, threaten her, and call her names, leaving her in tears.

On at least one occasion, officers pulled back a curtain to stare at her while she showered.

"They didn't see me for the human being I am; they treated me like a circus act," Brown said in a statement through her lawyers. "I understand how animals at the zoo feel now. They gawked, pointed, made fun of me, and tried to break my spirit. These were people I'd never met, people I'd never done anything to."

Sandy was represented by the FreeState Legal Project, a civil legal aid organization that serves low-income LGBT people in Maryland. According to her attorney, Jer Welter, this is the first case in which an incarcerated transgender person successfully found protection under PREA. "It's a huge win," he told ThinkProgress.

As Welter explained to ThinkProgress, "PREA mandates a policy of zero-tolerance of abuse of inmates." Patuxent had no such policies on the books regarding the sexual abuse or harassment of transgender people, nor did any of its employees receive any kind of training with regard to PREA and its impact on transgender people. Thanks to the opinion by Administrative Law Judge Denise Oakes Shaffer, that will now change. Her order stated:

"Patuxent must promulgate comprehensive policies and institute mandatory training regarding transgender inmates, in compliance with the Prison Rape Elimination Act. These policies are to include guidance regarding: strip-search procedures for transgender inmates; housing determinations for transgender inmates; and appropriate interaction between correctional officers and transgender inmates."

Brown was also awarded $5,000 for her mistreatment. According to Welter, it's very unusual for incarcerated people to be compensated when no physical violence took place.

"What our client went through is really degrading conduct that really shakes the conscience," Welter said. "The unfortunate thing is that I don't think her experience is exceptional for transgender inmates." Indeed, according to the Bureau of Justice Statistics, 40% of transgender people in U.S. prisons from 2011 to 2012 reported experiencing sexual assault or abuse by either another prisoner or staff.

Welter also noted that incarcerated people very rarely have legal representation for these sorts of internal grievances. This decision "points to the difference a lawyer can make."

Despite the humiliation she experienced, Brown hopes this victory helps others. "To the other transgender and intersex women behind bars, don't give up," she said. "There is hope out there for us."

Adapted and excerpted from Zack Ford, "Judges Rules Against Jail Whose Staff Systematically Sexually Harassed Trans Inmate," ThinkProgress, September 24, 2015; "FreeState Legal Wins Groundbreaking Victory on Protections for Transgender People in Prison" (FreeState Legal, September 24, 2015); Brown v. Patuxent Institution (Maryland Office of Administrative Hearings 2015).

their state facilities. For example, in Indiana, Elkhart County Sheriff Brad Rogers has worked to bring his jail into PREA compliance. The county has applied for a grant from the National PREA Resource Center to purchase software and equipment to install new cameras, create orientation videos for incarcerated people detailing protections under PREA and how to report violations, and ensure that software is compliant with PREA data requirements. This comes despite the fact that Indiana Governor Mike Pence stated that PREA standards are too costly and the state would not certify that it is complying or actively working toward compliance.[480]

Limited Oversight of Youth Facilities



A 2008 report by the U.S. Government Accountability Office found that states license and regulate public and private youth facilities to varying degrees, with some private facilities freely operating without licenses.[481]

PREA helps set some basic standards for the treatment of youth (including LGBT and intersex youth) within juvenile justice facilities, though as noted above, implementation of PREA standards has been inconsistent, with some states opting out altogether.

In general, PREA standards establish that youth should be involved in determining the best placement given their safety and vulnerabilities, and they should be respected when they identify as LGBT or intersex or express concern that they will be perceived as such.

The federal Juvenile Justice and Delinquency Prevention Act also sets standards and provides funding for preventing youth from being involved in the juvenile justice system and for evaluating and improving youth facilities. The 2002 reauthorization of the law included provisions to protect youth in the juvenile justice system. For example, it stated that young people cannot be placed in secure adult facilities or have contact with adult detainees or prisoners, even if they are being temporarily housed in a jail or adult prison. Additionally, youth cannot be placed in an adult jail or lockup for more than six hours—even if they are being tried as an adult—unless they are being tried or convicted of a felony. Importantly, the law also requires states to gather information to better understand how and why youth of color have disproportionate contact with the justice system.[482] Bolstering these protections, as of 2014, 34 states and the District of Columbia had explicit policies requiring that youth be separated from adult prisoners by "sight and sound," and eight states ban youth from being confined in adult facilities altogether.[483]

Inconsistent Oversight of Immigration Facilities



Because immigration detention facilities are operated by the federal government, they are bound by PREA standards.[484] U.S. Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security, also sets forth its own detention standards through the Office of Detention Policy and Planning.[485] Many immigrants in detention are not held in facilities owned by ICE but operated under contract with ICE, such as private facilities or local jails. These facilities are technically bound by PREA standards, but the Department of Homeland Security has taken a more relaxed approach to requiring them to meet standards. There is great variation in the standards used by ICE across facilities.[486] Some are only required to meet PREA or Department of Homeland Security standards when contracts are renegotiated or there are "substantial contract modifications."



PROBLEM: IMPROPER PLACEMENT

The Prison Rape Elimination Act (PREA) provides standards regarding the placement of individuals in confinement facilities. PREA states that placement decisions in all settings should be individualized and should take into consideration an individual's safety as well as the overall safety and day-to-day operations of the facility. All adult prisons and jails must conduct an intake screening within 72 hours of arrival to assess risk for sexual victimization and abuse, including whether an individual is, or is perceived to be, LGBT or gender nonconforming. This is based on the fact that LGBT people in prisons and jails are at increased risk for sexual assault.

PREA also states that:

- LGBT and intersex people may not be placed in "facilities, units, or wings solely on the basis of such identification or status";
- Individualized decisions must be made in the placement of transgender and intersex people, taking into consideration an individual's health and safety and overall facility management and safety;
- Transgender people must be able to shower separately;

- Placement decisions must be assessed at least twice a year for transgender and intersex people;
- Staff may not search or examine a transgender or intersex person with the sole purpose of determining genital status.

Despite PREA regulations, two key problems arise when it comes to placement for LGBT people in confinement facilities. First, LGBT people are frequently placed in segregated units or solitary confinement. Second, transgender people are placed in cells according to the sex on their birth certificate rather than their gender identity.

Placement of LGBT People in Segregated Units or Solitary Confinement

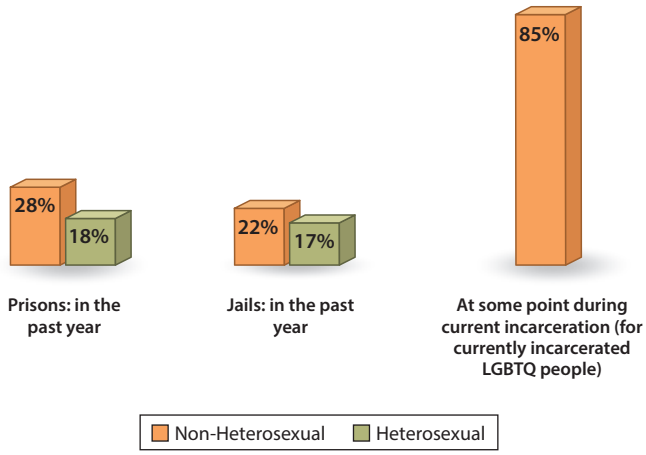
In many cases, placement decisions are not made on a case-by-case basis, taking into consideration an individual's safety, but are based solely on an individual's identification as LGBT. However, emerging research shows that LGBT people are more likely to be placed in solitary confinement. For example:

- A 2015 report from the U.S. Bureau of Justice Statistics found that people in prisons and jails who identified as LGB were more likely to report being placed in solitary confinement during the past year than heterosexual-identified people. According to the report, 28% of LGB people in prisons and 22% of LGB people in jails had been placed in disciplinary or administrative segregation or solitary confinement in the past 12 months, compared to 18% of heterosexual people in prisons and 17% of heterosexual people in jails (see *Figure 37*).[487]
- In Black and Pink's 2015 survey of 1,100 LGBTQ prisoners currently incarcerated, nearly all (85%) had been placed in solitary confinement during their time in prison or jail.[488]

Correctional officers often incorrectly think that segregating LGBT people or placing them in solitary confinement is best either for the individual's own safety or because the officers believe that LGBT people are a danger to others.[489] In many cases, these placements are made automatically and without facility personnel thinking through the best way to ensure an individual's safety and overall well-being. For example, correctional staff often automatically place LGBT people in segregated units for sex offenders. These types of placement decisions are in direct contradiction with PREA regulations. Nevertheless, prison officials have

Figure 37: High Rates of Solitary Confinement for LGBT People

Percent of Adults Reporting Time Spent in Solitary Confinement



Source: Allen J. Beck, "Use Of Restrictive Housing In U.S. Prisons And Jails, 2011–12" (Bureau of Justice Statistics, October 23, 2015); Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey."

discretion in how they run their prisons. Many decisions are justified as being in the best interests of either individuals or the prison as a whole.

Vast research shows the negative impact of segregated units and isolated units on incarcerated people's mental health.[490] Segregating or isolating incarcerated people limits their ability to access programs and services available to the general prison population. Segregation also further stigmatizes LGBT people—highlighting their status as LGBT and increasing hostility toward them.[491] Additionally, when individuals are placed in protective custody or isolated, they are at increased risk for harassment and abuse by correctional officers because of reduced visibility and oversight.

Research also finds a link between isolation and risk of suicide, particularly in young people.[492] In a study of incarcerated individuals in New York City between January 2010 and January 2013, individuals placed in solitary confinement were 2.1 times more likely while in solitary confinement to commit an act of self-harm, and were 6.6 times more likely to commit an act of self-harm in the days following such confinement.[493]

In January 2016, the U.S. Department of Justice released policy guidance to the Bureau of Prisons limiting the use of solitary confinement for adults and prohibiting its usage for juveniles in federal prisons.[494] These changes do not impact state or local confinement

facilities, but provide a model for further curtailing the use of solitary, restrictive housing. They also direct the Civil Rights Division to ensure state and local facilities follow existing laws around the treatment of youth and individuals with mental illness.

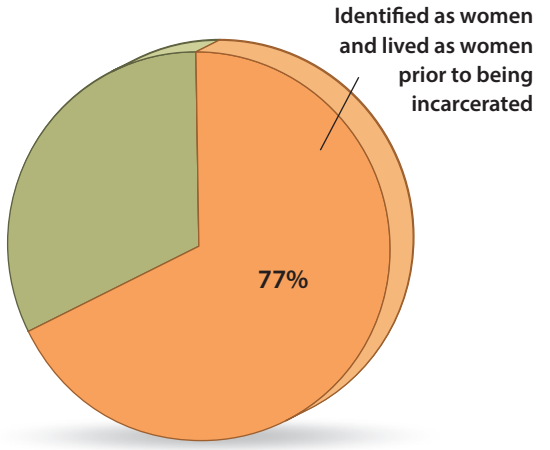
Placement of Transgender People According to the Sex on their Birth Certificates

Although PREA standards call for individualized placement determinations that take into consideration an individual's identity as transgender, transgender people are almost exclusively placed in facilities in accordance with the sex recorded on their birth certificates. In other words, transgender women are frequently placed in men's facilities and transgender men are frequently housed in women's facilities. According to a study of California Department of Corrections facilities, over three-quarters (77%) of transgender women in men's prisons identified as women and lived their lives as women outside of prison, as shown in *Figure 38*.[495]

Placing transgender women in a men's prison not only ignores how these women understand themselves and live their lives, it also increases the risk of harassment, violence, and sexual assault by fellow inmates and staff. In every interaction with correctional officers, transgender people may have their gender identity ignored.[496] The majority of showers in correctional facilities are open, and lack of privacy is particularly troubling for transgender people, as it makes it difficult for them to shower safely.[497] Incorrect placements also make it more difficult for transgender people to receive appropriate services, including access to gender-specific clothing, personal care products, and medical care such as hormones (see pages 100-107 for more about access to health care).

Figure 38: Transgender Women Frequently Placed in Men's Prisons in California

Percent of Transgender Women in Men's Prisons in California



Source: Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey."



PREA contains specific standards for placement of LGBT and intersex young people. For example, placement determinations must occur at least twice a year and must take into account not only a youth's identification as LGBT or intersex, but other considerations including: the young person's perception of their safety and vulnerability; medical records; conversations with staff; answers to an initial intake screening; and medical practitioner evaluations. Youth are only to be placed in isolation or segregated units if no other means would ensure their safety—not as a default simply because they are LGBT or intersex. Additionally, LGBT and intersex youth should have an individualized assessment and not be automatically placed in a segregated unit or in units for sex offenders.[498] Transgender and intersex youth, specifically, are to be permitted to shower separately from other residents.



In immigration detention facilities, LGBT detainees, particularly transgender detainees, are frequently placed in isolation or in segregated units. In some cases, this placement happens immediately when an individual identifies as LGBT or is identified by staff as LGBT; it also happens in response to a safety concern.[499] Complaints about the treatment of LGBT detainees prompted ICE to create a specialized facility to house LGBT immigrants at the Santa Ana City Jail in California.[500] Staff in this facility have received specialized training, but the number of beds is limited and individuals are transferred there only when space permits and it has been determined that the unit is the only safe option for a particular detainee.[501] For LGBT detainees housed at the other hundreds of ICE facilities around the country, including many contract facilities in county or city jails or state prisons, being placed in isolation or in units that do not correspond with one's gender identity is a frequent occurrence.

Despite PREA regulations, which are binding on the federal government, transgender detainees in immigration detention facilities are frequently housed in units according to the sex on their birth certificate rather

than their gender identity, putting their physical safety at risk.[502] According to the Government Accountability Office, 20% of substantiated assaults in immigration facilities involved transgender detainees.[503] This is true despite transgender people representing only one in every 500 individuals in immigration detention.[504] When transgender detainees are placed in units that do not reflect their lived gender, it can present challenges in seeking asylum. For example, if a transgender woman detainee is unable to wear clothing in accordance with her gender identity, it can make her asylum case less persuasive to judges, many of whom conduct hearings via videoconference.

Story: Gay, Bisexual, and Transgender Prisoners Sue San Bernardino County For Discriminatory Treatment

In October 2014, the ACLU of Southern California sued San Bernardino County Sheriff John McMahon and the county, alleging discriminatory policies at the West Valley Detention Center.

In general, individuals held in the jail's general population area have access to myriad services, including work and rehabilitative programs that allow individuals to earn time credits and reduce their sentences. However, people who are gay, bisexual and transgender are housed in the "alternative lifestyle tank," where they are denied access to those same programs. They have no access to drug treatment, educational programming such as GED classes and occupational or vocational classes, nor are they permitted to participate in work programs. They are limited in their time with visitors and are given less time outside than other inmates.

For example, Ilich Vargas, a bisexual man, was placed in the alternative lifestyle tank in December 2013. He's confined to his cell for 22 to 23 hours a day, so he is unable to participate in educational and vocational classes and he is prohibited from attending religious services.

Christopher Crawford, a gay man, and Veronica Pratt, a transgender woman, were both confined to their cells for 23 hours a day, and were unable to participate in the work program. As a result, they couldn't earn money or work credits, so they served longer sentences as a result of the placement.

Individuals who are gay, bisexual and transgender are forced to serve longer sentences than other inmates convicted of the exact same offense because they can't receive the sentence reduction benefits that come with programs they cannot access. Ultimately, denying access to these programs also means that formerly incarcerated LGBT people are less prepared to succeed upon release.

Adapted from McKibben v. McMahon (U.S. District Court of Central California 2014); "McKibben v. McMahon," ACLU of Southern California, October 22, 2014.

SPOTLIGHT



New Transgender Unit on New York City's Rikers Island

In November 2014, Rikers Island, which houses nearly 11,400 individuals held by the New York City Department of Corrections, opened a 30-bed facility specifically for transgender women. As deputy commissioner for the city's Department of Corrections, Erik Berliner, explained, "We are finding ways to keep people safe, giving them a place where they don't have to worry about being themselves. This is a place that can be sensitive to them. It is the right time for it. We are reassessing everything about safety and security."[506]

Several LGBT advocacy and legal organizations, including the ACLU and the Sylvia Rivera Law Project, provided input and advice in the design of the facility. Placement in the facility is voluntary. Staff have been trained on transgender issues, and the facility is designed to provide supportive and social services to the transgender women housed there.

Adapted from from Andy Humm, "Exclusive: Rikers Ready With Housing Unit for Some Trans Inmates," Gay City News, November 18, 2014.

In June 2015, ICE released guidance on the treatment of transgender detainees.[505] Specifically, the guidance requires officials to explicitly ask detainees if they identify as transgender. If the answer is yes, officials are advised to consider placing transgender detainees in facilities that have capacity to provide medical care and appropriate placement for transgender people.

Advocates argue that LGBT people, particularly transgender women, cannot be detained safely by ICE and should therefore be released to await hearings or deportation proceedings. This would not be unusual; many undocumented immigrants, including those seeking asylum, are released while awaiting immigration hearings.

PROBLEM: HARASSMENT AND SEXUAL ASSAULT BY STAFF AND INMATES

LGBT people are particularly vulnerable in confinement facilities. They experience harassment and discrimination by staff and inmates; they frequently experience sexual assault and violence; and, all too often, they are poorly protected because of a lack of staff training and insufficient oversight.

The Prison Rape Elimination Act (PREA) has been an important advance in protecting people in prisons and jails from sexual assault, but it is not enough. In 2012, the Department of Justice released final PREA rules that were binding on all federal prisons. As noted above, within 72 hours of intake, prisons and jails are required to screen prisoners to assess risk for abuse or sexual assault; the screening must take into consideration whether the individual is LGBT or is perceived to be. Administrators are required to consider this assessment when making housing and program assignments, with the goal of protecting incarcerated individuals.[507] Additionally, the law requires more stringent protections for individuals who report sexual assault by staff and other inmates; provides grants to jurisdictions to conduct trainings; and supports the sharing of best practices and standards designed to reduce sexual assault in confinement settings. The passage by Congress of PREA is a positive step in ensuring the safety of incarcerated people. However, the need for increased protections against sexual assault—by other inmates and staff—remains, particularly for LGBT people.

Below we look separately at the dangers to LGBT people from staff and other prisoners, as well as the overall impact of sexual assault in prisons in the United States.

Interactions with Staff

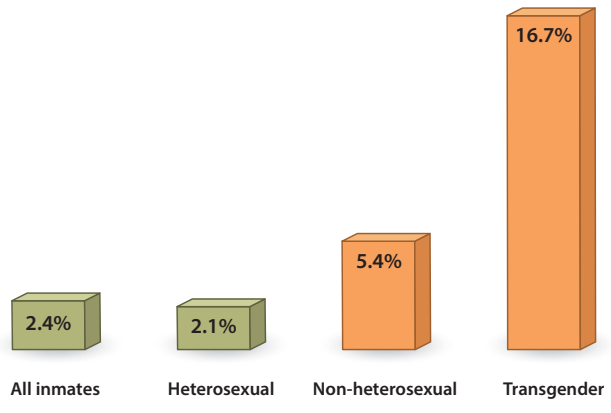
Given the power dynamic in confinement facilities, incarcerated and detained people lack agency and too often are the victims of sexual and physical assault by staff. Individuals who choose to have sex with other inmates are targeted for harassment, labeled gay, and prevented from living or working with their sex partner.[508]

Incarcerated transgender people, in particular, report high levels of unnecessary searches, including strip searches, which are demeaning and can increase the risk of harassment and violence by other inmates and correctional staff.[509] As shown in *Figure 39*, in a Bureau of Justice Statistics survey conducted in 2011-2012, 5.4% of inmates identifying as LGB or other had been sexually assaulted by facility staff, compared to 2.1% of heterosexual inmates.[510] The same survey found that 16.7% of transgender people in prisons and jails reported being sexually assaulted by facility staff compared to 2.4% of all inmates.[511] This mirrors findings from a survey of transgender women in men's prisons in California in which 14% reported being sexual assaulted by a correctional staff member.[512]

In a 2001 visit to Albion Correctional Facility in western New York, incarcerated women said they were frequently harassed by correctional officers, and that "lesbians, particularly those who appear masculine," were targeted for harassment.[513]

Figure 39: High Rates of Sexual Assault by Facility Staff in Prisons and Jails

Percent of People in Prisons and Jails Reporting Sexual Assault by Facility Staff



Source: Allen J. Beck et al., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013); Allen J. Beck, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 – Supplemental Tables" U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2014.

SPOTLIGHT

Kentucky Stands Up For Its LGBT Policy in Juvenile Detention Centers

In June 2013, the Liberty Counsel threatened to sue the Kentucky Department of Juvenile Justice (DJJ) over its policy that protects LGBT and other youth held in state facilities from hate speech or other language that may demean LGBT people. According to the policy, this includes telling youth they are "abnormal, deviant, sinful, or that they should change their sexual orientation or gender identity." Rather, the policy requires "fair and equal treatment without bias."

The Department defended the policy, stating that it was crucial in "developing a trusting, therapeutic relationship with the children in DJJ custody, which requires an environment of unconditional acceptance." This policy is an important component of protecting LGBT youth in Kentucky, particularly given that the state lacks any nondiscrimination provisions explicitly covering sexual orientation and gender identity.

Adapted from John Cheves, "Kentucky Juvenile Justice Department Says It Won't Change Policy Prohibiting Anti-Gay Comments," Lexington Herald Leader, July 31, 2015.

SPOTLIGHT

A Model Approach in the Santa Clara Juvenile Division

Santa Clara County (CA) is considered a model site nationally for the treatment of LGBT youth in the juvenile justice system. The Santa Clara County Probation Department underwent a system-wide transformation to improve care for LGBT youth.

As Lorie Brisbin, a program specialist with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, noted, "Santa Clara County is phenomenal. … Santa Clara probation has worked hard to redefine juvenile corrections. Now when a youthful offender who is LGBTQ comes in, they are processed much differently, providing the best possible outcome for the general population and the staff."[520]

Specifically, system-wide change was implemented through a steering committee, which oversaw the work and identified priorities, and three workgroups: policy, training, and youth and family engagement. The Chief Probation Officer attended all steering committee meetings, and her leadership was essential to implementing the work. The workgroups represented a cross-section of juvenile justice stakeholders, including judges, public defender, prosecutor, probation (both institutions and services), and community providers.

The policy workgroup first created a policy for housing and services to trans youth in the juvenile hall, and then created a broader policy for LGBTQ youth across the system. The Juvenile LGBT Policy released in 2013 outlined core principles and detailed policies.[521] One important aspect of the policy is the guiding principles, which clearly state the department's values and mission. Among the key provisions, LGBT-affirming materials will be available to youth; discrimination, harassment, and violence are not tolerated; and all youth are to be respected and made to feel safe. The policies detail issues from names and language to housing placement to training for employees, volunteers, and contractors. The policy also spells out processes for responding to harassment and discrimination.

The training workgroup worked initially with The Equity Project staff to develop a "train the trainer" model. They have trained several local trainers from different parts of the system, who have trained over 700 personnel across county public systems. They have adjusted the curriculum over time in response to feedback from attendees, and to make it specific to Santa Clara County.

The youth and family engagement committee was formed later in the process to ensure that youth and families were part of the reform process. They created materials for families about the critical role that family plays in promoting the well-being of LGBT youth. They also recruited young adults with systems experience to serve on the Steering Committee.

Written in consultation with Shannan Wilber, Youth Policy Director, National Center for Lesbian Rights.

Story: Enduring Six Months in Detention as Transgender Asylum Seeker



In October 2014, Nicoll Hernandez Polanco, a transgender woman, entered the United States seeking asylum from Guatemala. She was placed in a male detention facility in Florence, Arizona, where she was subject to harassment by other inmates and guards. Guards patted her down multiple times a day, intentionally groping her breasts and buttocks, making sexual comments, and pulling her hair. She was frequently called homophobic names and "the woman with balls" in front of other inmates. She was sexually assaulted by one inmate and threatened by another. When Nicoll complained about the treatment, she was placed in solitary confinement.

U.S. Immigration and Customs Enforcement refused to release Nicoll even though local organizers working with Mariposas Sin Fronteras in Tucson, Arizona, had arranged for housing and support. After spending six months in an immigration detention facility, Nicoll was finally released. Mariposas Sin Fronteras helped raised money to pay her $3,000 bond. In May 2015, an immigration judge granted her asylum.

Adapted from Caitlin Donohue, "Immigration and LGBTs: Central Americans Limbo," The Advocate, March 10, 2015; Mitch Kellaway, "Immigration Advocates Demand Release of Abused Trans Asylum Seeker," The Advocate, January 14, 2015; Matthew Bultman, "Transgender Woman From Guatemala Secures Asylum," Law360, May 1, 2015.

Other research shows that incarcerated LGBT people are treated more harshly by staff for the same behavior, compared to incarcerated non-LGBT people.[514] Touching by or between LGBT people is often perceived by staff to be sexual and triggers a harsher response, when the same action by a non-LGBT person is not seen in the same way or is punished less harshly. As part of punishment for these behaviors, LGBT people are placed in isolation or solitary confinement or have food or medical care withheld. Research suggests that people of color, including LGBT people, are particularly at risk for punishment by correctional staff. For example, incarcerated people of color are confined in long-term isolation at higher rates than their white counterparts.[515]



Several surveys of young people find high rates of sexual misconduct and assault by staff in juvenile detention facilities. Of all youth in juvenile justice facilities, half of those reporting sexual assault identified facility staff as their assailant.[516] LGBT youth are particularly vulnerable to sexual assault by staff. In a survey of LGBT youth, more than one in five non-heterosexual youth reported sexual victimization involving another youth or facility staff member compared to slightly more than one in 10 heterosexual youth.[517] Staff may also implicitly condone abusive behavior on the part of staff and other youth towards LGBT youth.[518]

LGBT youth also report that staff frequently overreact to displays of affection, between girls in particular.[519] They say they are unfairly disciplined compared to other youth.



Transgender women, in particular, face safety concerns within immigration detention facilities. In a U.S. Government Accountability Office study of substantiated sexual abuse and assault allegations in Immigration and Customs Enforcement detention facilities between October 2009 and March 2013, 20% of cases involved transgender detainees.[522] This is despite the fact that transgender detainees comprise a small percentage of individuals detained overall (less than 10%).[523]

Interactions with Fellow Inmates

LGBT people are at high risk of harassment, assault, and violence from other inmates. In most facilities, such incidents occur under the surveillance of correctional staff, suggesting a lack of attentiveness or commitment to ensuring the safety of LGBT people.[524] Among inmates, it is not uncommon for some who are incarcerated to espouse extreme views, such as racial intolerance or hostility toward gay men, lesbians, and bisexual people.[525] For LGBT people, this can create a climate of danger and fear.

LGBT adults, as well as those perceived to be LGBT, are at increased risk for sexual abuse from fellow

inmates in prisons. In a 2008 study by the Bureau of Justice Statistics, 11.2% of people in prisons and jails who identified as something other than heterosexual—including lesbian, gay, bisexual, or other—reported sexual victimization by another inmate, compared to 1.3% of heterosexual people.[526] As shown in *Figure 40*, data from the 2011-2012 National Inmate Survey also found higher rates of sexual victimization: 12.2% of individuals who identified as lesbian, gay, bisexual, or other had been sexually assaulted by other inmates, compared to 1.2% of heterosexual people.[527]

Transgender people in particular report high levels of harassment and violence by fellow inmates, in large part because of their frequent placement in facilities that disregard their gender identity and expression.[528]

- The 2011-2012 National Inmate Survey found that 24.1% of transgender people in prisons and jails reported being sexually assaulted by another inmate, compared to 2.0% for all people.[529]
- Of those transgender people who reported being incarcerated at some point during their lives, nearly half (47%) reported being victimized; black, Latina, and mixed-race transgender women were more likely to be victimized than white transgender women.
- In a survey of transgender women placed in men's prisons in California, more than half (59%) had been sexually assaulted compared to 4.4% of all male respondents—meaning that transgender people were 13 times more likely to be assaulted than other incarcerated men.[530] Officers and guards were less likely to be aware of the incidents involving transgender people (29% compared to 61% of incidents involving all inmates). In a follow-up study two years later, researchers found that the same percentage of transgender people reported sexual victimization (59%).[531]

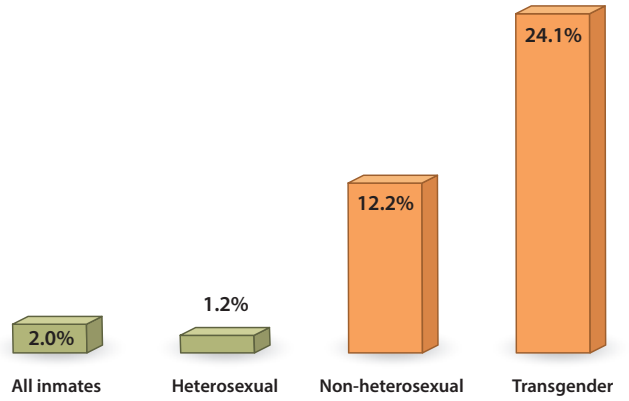


Physical assault and sexual violence are an enormous problem in juvenile justice facilities across the nation. Studies find that girls, in particular, who are in juvenile justice facilities report incredibly high rates of sexual violence, and they rarely receive adequate support or protection within facilities.[532] In some instances, staff may "blame the victim" of a sexual or physical assault for being open about their sexual orientation or gender identity.[533]

- In a national survey of youth in 205 residential juvenile justice facilities conducted between 2003 and 2005, more than one-quarter (29%) of youth reported being a victim of physical assault or facing threats of physical violence during their stay.[534] Four percent of youth reported being sexually assaulted, 41% of whom were forcibly penetrated. Of youth reporting sexual assault, 60% reported being assaulted by another resident—with some indicating they had been assaulted by both a staff member and another resident.
- In a 2010 survey of youth in juvenile confinement facilities across the country, 20.4% of non-heterosexual youth had experienced forced sexual activity with another youth or had sexual contact—either consensual or nonconsensual—with a staff member, compared to 11.1% of heterosexual youth.[535]
- A 2009 report by the Department of Justice found that LGBT youth were 12 times more likely than non-LGBT youth to be sexually assaulted by a fellow inmate.[536]
- In another study, youth who identify as lesbian, gay, bisexual, or other were almost 10 times more likely to report they'd been sexually abused by other youth while in custody than heterosexual youth (12.5% vs. 1.3%).[537]
- When youth are placed in adult facilities—for example, when they are charged or convicted as adults—they are five times more likely to be sexually assaulted than youth in juvenile facilities.[538]

Figure 40: High Rates of Sexual Assault by Other Inmates in Prisons and Jails

Percent of People in Prisons and Jails Reporting Sexual Assault by Other Inmates



Source: Allen J. Beck et al., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013); Allen J. Beck, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 – Supplemental Tables" U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2014.

Story: Passion Star's Fight For Safety in a Texas Prison



Self portrait printed with permission from Lambda Legal

Passion Star, a black transgender woman, has been in Texas Department of Criminal Justice prisons since 2003, when she pleaded guilty to a felony and was sentenced to 20 years in prison. Since that time, Passion has been in at least six male facilities, where she has endured sexual assault with little response from correctional staff.

For example, a gang member threatened to hurt her if she didn't perform sexual acts or pay him with commissary items. Passion complained to prison staff, telling them she feared for her safety. They did nothing, but instead disciplined her for refusing to leave her cell out of fear. In another incident, Passion was harassed by her cellmate. Guards did nothing, and a few days later, she was raped. She was moved to solitary confinement for two weeks after reporting the incident. In another facility, after telling staff about her fear for her safety, a guard told her, "You can't rape someone who's gay." Multiple sexual assaults have followed, and she once was violently attacked with a razor blade, requiring 36 sutures to her face.

Passion wrote to prison officials in November 2013: "I am gay and have been taken advantage of in the past. … TDCJ does not control the gang-influenced general population enough to ensure … homosexual offenders' safety from being assaulted, threatened or extorted." In July 2014, she wrote again to officials: "I have been told that I will be killed if I remain in population." A prison official responded to her fears by telling a committee, "It's a man's prison. You can't expect to walk around acting like that and not have problems."

After meeting with an attorney for Lambda Legal about her experiences in the prison in July 2014, Passion was placed in solitary confinement and remained there for more than 80 days. She was unable to attend church or work, or to speak with her family.

In November 2014, Passion was transferred to a different prison and again placed in the general population. In March 2015, after legal advocacy by Lambda Legal, Passion was finally placed in safekeeping, a status that increases attention paid to her safety but is not solitary confinement.

Adapted from "Complaint: Star v. Livingston," Lambda Legal, October 23, 2014.



LGBT people, particularly transgender people, are extremely vulnerable within immigration detention facilities. Many are seeking asylum from their home countries where they are persecuted for who they are, and yet they are placed in detention facilities with individuals from those same countries and who may carry the same hatred toward them. According to a study by the Center for American Progress, more than half of the complaints by LGBT detainees to the Department of Homeland Security's Office of Inspector General over a five-year period included reports of sexual or physical abuse.[539] A 2013 analysis found that transgender people comprise one out of every 500 individuals in immigration detention, but one out of every five confirmed sexual assault incidents involved a transgender person.[540]

Impact of Sexual Assault in Prison

Beyond the obvious physical and emotional harm that the threat or experience of being assaulted can have on an individual, research shows that people in prisons and jails who are victimized in these ways are at increased risk of many other negative outcomes. For example, people who have been victimized in prisons and jails have been shown to have higher rates of disciplinary infractions, requests for services, or requests for housing transfers.[541]

To cope and defend themselves, incarcerated individuals often take steps such as carrying a weapon, engaging in aggressive, protective behavior, joining a gang for protection, or taking drugs. All of these activities can have detrimental and harmful impact on life while in detention and can result in increased disciplinary action, as well as negative consequences for release.[542]

Given the incredibly high rates of sexual and physical assault reported by LGBT people in detention facilities, the trauma they experience while in prison can also have substantial, debilitating impacts on their ability to rebuild their lives after they are released.

For individuals who were assaulted in prison (often without adequate medical and mental health assistance), who lived in fear of victimization, or who witnessed violence, the impact can be profound.[543] In a survey of 1,600 formerly incarcerated individuals over two-and-a-half years, researchers found that those who reported violent victimization while in prison were more likely to be rearrested than those who did not (53% were rearrested compared to 45%) and more likely to return to prison (51% vs. 37%).[544] They were also more likely to struggle during parole, receiving violations or having their parole revoked or terminated. Individuals who witnessed violent victimization, particularly sexual assault, but were not themselves victimized while in prison, were also at increased risk for recidivism or struggles with parole conditions.



Because many people who are incarcerated are economically and medically disadvantaged prior to incarceration, prisons, jails, and other facilities have become responsible for addressing a wide range of physical and mental health issues in their populations.[545] In many parts of the United States, prisons serve as *de facto* public health institutions.[546] For example, three-quarters of women in state prisons in 2004 had symptoms of a current mental health problem, as did 55% of men.[547] At the Cook County Jail, which serves Chicago and the surrounding area, it is estimated that one in three prisoners has a mental illness.[548] Among young people in the juvenile justice system, it is estimated that 70% have a diagnosable mental health or substance use disorder, and 30% have attempted suicide at least once.[549] At their best, prisons can be places where people receive quality treatment and are released with a treatment plan. At their worst, prisons struggle to provide minimal care to a large population amid overcrowding, underfunding, and other pressures.

Voluntary accreditation organizations provide standards of care and model policies for prisons. However, it is estimated that only 17% of correctional facilities are accredited by these organizations.[550] A 2007 study found that just 53 of the approximately 3,500 juvenile justice residential facilities in the United States (roughly 1.5%) received voluntary accreditation[551] despite the recommendation to do so from the American Academy of Pediatrics.[552]

A 1976 Supreme Court decision found that indifference to the medical needs of incarcerated people violates the Eighth Amendment's prohibition on cruel and unusual punishment. Since then, courts have been the primary oversight body for correctional facilities when it comes to health care.[553]

Prisons must pay for health care for incarcerated people out of their own budgets. Incarcerated people cannot receive health care through federal or state programs for lower-income individuals, such as Medicaid. In fact, the federal government prohibits the use of Medicaid funds to pay for healthcare services for adults and young people in correctional facilities through the "inmate exclusion," even though most adults and youth entering and leaving facilities are likely eligible for Medicaid and related programs designed to provide health insurance to low-income people (see more about the barriers for individuals leaving facilities in section 3).[554] In some places, incarcerated people must pay to see a physician. This can be incredibly burdensome, particularly for people who lack familial financial support or the opportunity to work while in prison. In the Black and Pink 2015 survey of LGBTQ prisoners, 43% of

respondents didn't seek medical care when they needed it because of the cost.[555] The bottom line: Prison health services are generally under-resourced,[556] especially given the cost of treatment for chronic illnesses such as hepatitis, an aging prison population, and increased need for mental health services.

Lack of Competent, Respectful Health Care

LGBT adults in general report healthcare discrimination and lack of competency on the part of medical practitioners.[557] This is particularly true within confinement facilities, where the experiences of LGBT people accessing medical and mental health care vary greatly.[558] Frequently, medical staff in prisons are outside contractors or experience high turnover. In addition, there is inadequate training and education to ensure 1) that medical staff treat LGBT people with respect and dignity; and 2) that staff can address health concerns that LGBT people have.

Compounding the lack of quality medical care for LGBT adults in prisons is the increasing number of older adults in these facilities. Between 1999 and 2007, the number of individuals ages 55 or older in state and federal prisons increased by 77%.[559] Health care for older adults in prisons can be costly,[560] and older adults frequently require care that exceeds what prisons regularly offer.[561] As a result, older adults in prisons and jails may face long waits and travel time for care.[562] A minority of states have created confinement facilities specifically for older adults.[563] These facilities may include access to skilled nursing care, hospice, and more advanced medical care.[564]

Despite the large number of individuals in prisons and jails who have substance use dependence, very few individuals receive treatment while incarcerated. According to a 2012 study, fewer than one-third of individuals in prisons received clinical or non-clinical treatment,[565] even though 65% of people held in prisons and jails are estimated to meet the clinical criteria for alcohol or drug abuse or addiction.[566] Despite studies finding that evidence-based substance use treatment services reduce recidivism, these programs remain severely underfunded and are not offered in many facilities. In one study, individuals who participated in an in-prison treatment program and completed an aftercare program had the lowest three-year recidivism rate (31%) when compared to those who did not receive treatment and only received some after care (79%).[567] And even as advances are made in medically assisted detoxification, very few incarcerated individuals are given pharmacological therapy, such as methadone or Suboxone to assist with opiate addiction, or even professional counseling.[568] According to a 2011 survey of prison systems nationwide, 55% offer methadone, half of which offer it only to pregnant women or patients with chronic pain.[569]

Individuals with untreated mental illness are at increased risk for incarceration, and despite the growing number of incarcerated people with mental illnesses, prisons and jails are ill-equipped to address their needs. It is estimated that 37% of individuals in prisons and 44% of those in jails have been diagnosed with a mental health disorder, compared to 4% of the general population.[570] Individuals may not receive appropriate treatment and reports find they are frequently placed in solitary confinement or shackled.[571] Facilities rarely have sufficient numbers of qualified mental health staff.[572] Since 2000, suicide has been the leading cause of death in local jails; one-third of deaths in local jails were due to suicide.[573]



Under the Prison Rape Elimination Act, youth facilities are required to conduct mental and physical health screenings. But a 2007 study found that fewer than half of juvenile detention facilities conducted a screening for healthcare needs upon admission.[574] The quality and level of care for LGBT young people vary despite many of them having unmet physical and mental health needs. For example, LGBT youth can be at increased risk for suicide, and many transgender youth need to receive medical care, including hormones, related to gender dysphoria. Inadequate transgender health care in these facilities goes against the recommendations of the National Institute of Corrections, which states that it is important for a medical professional with experience in transgender health care and gender dysphoria to evaluate transgender and gender non-conforming youth, as recommended by leading health organizations. If an experienced practitioner is not available, the institute states that whoever evaluates the youth should be educated appropriately.[575]

While in juvenile justice facilities, or as part of community supervision, some LGBT young people have been forced to undergo counseling or treatment that punishes them for expressing, or that aims to change, their sexual orientation or gender identity. In some instances, LGBT youth are required to undergo sex offender counseling based solely on their sexual orientation or gender identity.

SPOTLIGHT

Cook County Makes Changes to Better Help LGBT Youth

In 2007, a federal judge appointed new leadership for Cook County's Juvenile Temporary Detention Center, which is one of the largest youth facilities in the entire country.[576] Substantial policy and leadership changes took place at the facility. As part of those changes, staffing was increased, mental and physical healthcare services were improved, and staff received increased training. Integral to that work was how LGBT youth were treated within the center.

In 2010, Illinois created the Illinois Court-Involved LGBTQ Youth Task Force, which has led trainings for all front-line staff and has informed policy change within the facility. In 2013, the center adopted a 12-page LGBTQI policy document, which created an LGBTQI Multidisciplinary Team that makes individualized recommendations about placement, clothing, name and pronouns, medical care, and other services for all youth who identify as LGBTQI.[577]

As part of its commitment to improved health care for LGBT youth, the center established a collaboration with Stroger Hospital.[578] All youth receive a medical exam upon entrance, and LGBT-identified youth receive weekly care at the "Same-Gender Loving Clinic" operated through Stroger.



In immigration detention facilities, medical care for all detainees, including LGBT people, has been consistently considered substandard, even for basic care. In July 2015, several organizations filed a complaint with the Department of Homeland Security about the lack of adequate medical care provided to individuals detained in facilities in Texas and Pennsylvania.[579] Included in the complaint were examples of individuals waiting up to 14 hours for medical care, never receiving follow-up care, and not receiving prescribed medications.

Limited Access to HIV Testing and Care

Individuals held in confinement settings are at increased risk of acquiring and transmitting HIV and other sexually transmitted infections, such as hepatitis and tuberculosis, given the close living quarters and the high rates of sexual assault within these facilities. That said, the majority of individuals with HIV in correctional settings acquired the disease before they were incarcerated.[580] In fact, 20-26% of Americans living with HIV have spent time in a correctional facility.[581] In 2008, 1.4% of the total adult prison population (state and federal combined) were living with HIV, with slightly higher rates for female prisoners (1.7%) and lower rates for male prisoners (1.3%).[582] The proportion of prisoners with HIV was 2.4 times the rate of the general population in 2007, the latest year for which data are available.[583] In New York State, 3.0% of men and 10.7% of women in state prisons had HIV, the highest reported rate among state prison populations in the United States.[584] At the California Medical Facility, which has a transgender health clinic, rates of HIV for transgender women in the male prison ranged from 60% to 89%.[585]

Testing. During initial screening and intake, the Centers for Disease Control and Prevention recommends testing all incarcerated individuals for HIV as part of their routine medical care. Federal and state prisoners in 2004 reported relatively high rates of being tested (77%), with much lower rates in local and county jails (18.5%).[586] Testing rates are generally lower in states that only test when an individual requests it, compared to those states that conduct mandatory testing or that test incarcerated people unless they explicitly state they do not wish to be tested.[587] For this reason, the CDC recommends opt-out testing for all incarcerated people, ideally with tests administered upon entry into a facility and then offered as part of routine medical care.[588]

Confidentiality and discrimination. Privacy is a general concern in prisons, but particularly when it comes to medical care. Maintaining confidentiality about incarcerated people's health can be challenging in confinement facilities, given that many spaces within facilities are open and visible for safety reasons.[589] An incarcerated person's medical records are frequently handled by many staff members, including non-medical personnel.[590] Some courts have held that prisons must maintain a high level of privacy when it comes to certain personal information, including transgender status and HIV status.[591]

In some instances, facilities offer HIV-specific care on particular days or at specific times; as a result, a person's participation effectively discloses her status. For example, in 2009, the Massachusetts Department of Correction no longer allowed incarcerated adults to keep HIV medications themselves, rather requiring them to report to the infirmary for medication, sometimes multiple times each day.[592] Doing so enabled other inmates and correctional staff to identify these individuals as HIV-positive. For individuals with HIV, verbal harassment, isolation, limitation of access to services (including work assignments), and assault are not uncommon.[593] Courts in the United States are split as to whether disclosing an incarcerated person's HIV status constitutes a violation of privacy.[594]

Access to medication. For many individuals with HIV, prison can provide access to antiretroviral therapy (ART). In a study of HIV-positive prisoners in Connecticut, two-thirds received ART for the first time in prison.[595] As noted above, medical budgets are included in prison budgets, so medication for treating HIV comes out of that budget. HIV drugs can be expensive, especially as they require daily doses or multiple doses each day. Some advocates have suggested this presents an adverse incentive for facilities when it comes to testing patients.

Furthermore, it can be very difficult to ensure adherence to a medication regimen for patients with HIV in prison settings. Some drugs need to be taken at certain times each day, and this can be challenging in a prison context. Additionally, continuity of care is challenging for individuals with HIV and other chronic diseases—incarcerated people are often transferred or moved—and there can be delays in medications arriving and being stocked.[596] As discussed in Section 3, access to medical care upon release is particularly problematic for individuals with HIV.



Individuals with HIV have reported difficulties continuing their medical regime while held in immigration detention facilities. For example, Bamby Salcedo, a transgender Latina immigrant from Mexico, was placed in the San Pedro Detention Center in California for 45 days. She'd been taking an HIV antiretroviral drug, which she needed to take twice a day. Even after notifying authorities upon arrival of her medication needs, she did not receive the drug for two weeks.[597]

Poor Access to Transgender-Related Care

Transgender people in the United States face discrimination, insurance refusals, and other challenges in accessing competent, medically necessary health care. For transgender people in prisons, the challenges are even more substantial. An article published in the *Journal of Correctional Health Care* examined letters written by transgender people in state and federal facilities to the *TIP Journal* (Trans in Prison).[598] Of 129 letters examined, 55% addressed transgender health issues and 42% reported abuse (23% involving physical abuse or harassment and 19% involving sexual abuse by other inmates, corrections officers, or both).

In a survey of transgender people in the New York City jail system currently receiving transition-related hormone therapy, more than half (60%) had filed a medical care complaint, many related to previously not receiving hormone therapy.[599] Virtually all respondents reported that health staff lacked familiarity and sensitivity. Six months after LGBT trainings for all clinical staff, complaints by incarcerated transgender patients in the jail system dropped to zero.

Even when hormone therapy or surgery is deemed medically necessary, officials may give an incarcerated person antidepressants and/or counseling instead. Some prisons and jails will only permit hormone therapy if an individual received such therapy before being incarcerated under a so-called "freeze frame policy."[600] Transgender people who were already receiving hormone therapy prior to incarceration cannot be denied necessary medication unless there is a clear medical reason to do so.[601] However, limiting hormone therapy only to these circumstances is not considered best practice. Access to transgender-related health care varies across the country (see sidebar on the next page).

The federal Bureau of Prisons ended its "freeze frame policy" in May 2011 in a memorandum regarding the treatment of transgender people.[602] According to this memorandum, individuals with a possible diagnosis of Gender Identity Disorder (GID) (now frequently referred to as gender dysphoria following changes to the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*[603]), including those who "assert they have GID," will receive medical and mental health evaluations by medical personnel who have received training. Incarcerated people who receive a diagnosis of GID will receive a treatment plan that "promotes the

Access to Transgender-Related Health Care Across the Country

Individuals in state prisons and local jails have varied access to transgender-related care. For example:



California is home to the only two prisons in the country that have a physician dedicated to providing competent care for transgender people, including hormone therapy.[604] They are: the California Medical Facility, a California Department of Corrections facility located in Vacaville that provides medical and psychiatric health care for male prisoners in California prisons ; and the California Men's Colony in San Luis Obispo.

California also is leading the country in other ways. In August 2015, the California Department of Corrections and Rehabilitation and the Transgender Law Center reached a settlement in the case of Shiloh Quine, a transgender woman held in a male prison (see page 106 for more about Shiloh's case). As part of the settlement, the state agreed to revise its policies regarding transgender people's access to medically necessary health care, including hormones and surgery. Incarcerated individuals' requests for transition-related surgery are now reviewed by a committee, and requests can be reviewed annually.[605]



Until recently, Wisconsin had a ban on providing hormone therapy to incarcerated individuals who were biologically male at birth but identify as female. In 2010, however, a federal judge found this state law was unconstitutional because it violated the equal protection clause and constituted cruel and unusual punishment by not taking into consideration an individual's medical needs or the judgment of their physicians.[606] This decision was upheld by the Seventh Circuit Court of Appeals.[607]



In 2013, the Illinois Department of Corrections issued an administrative directive regarding the evaluation and treatment of people with Gender Identity Disorder (GID).[608] It states that individuals who self-identity as transgender or who may have GID should undergo a detailed medical and mental health examination within 24 hours of arriving at a facility. Based on these examinations, the Gender Identity Disorder Committee makes decisions about placement, hormone therapy, clothing, showers, and searches. However, any surgery for the purpose of gender confirmation is prohibited unless "in extraordinary circumstances"; and hormone therapy is to be offered only with prior approval from the medical director.

physical and mental stability of the patient," rather than using treatment prior to incarceration, or lack thereof, as a benchmark.

Given the incomplete or inadequate medical care that confinement facilities often offer to incarcerated transgender people, some have turned to courts to seek the care they need (see the stories on the next page).



Similar to the situation for adult transgender people in prisons and jails, medical care for transgender youth in confinement varies greatly; obtaining appropriate care may be very challenging. Research finds that a majority of juvenile justice professionals do not understand the medical needs of transgender youth.[609] Medically necessary medical care for youth may include transition-related hormones or hormone blockers to delay puberty. However, young transgender people in confinement may have to seek a court order, with the assistance of legal counsel, to receive this medical care.



In some instances, transgender detainees in immigration detention facilities are required to prove they had been receiving medical care related to gender dysphoria, such as hormone therapy, before entering the United States. But, particularly for individuals seeking asylum from home countries where they face persecution for being transgender, this is frequently an impossible standard. Additionally, because of the geographic and physical isolation of immigrants in detention facilities, it can be very difficult to obtain medical records, if they even exist.[610] The result is that transgender detainees are regularly denied medically necessary care.

Story: Safety and Health Care in Confinement



Courtesy: Southern Poverty Law Center/Robin Henson

#1: Ashley Diamond's Fight for Safety and Adequate Medical Care

Ashley Diamond, a black transgender woman from Georgia, was sentenced to 12 years for violating probation for a previous conviction related to a nonviolent offense.

Ashley notified the staff that she was transgender and was receiving hormone therapy upon admission. But despite PREA standards and the Georgia Department of Corrections' own guidelines, she was not evaluated for gender dysphoria, referred for adequate medical care, or given an appropriate placement. Instead, Ashley was placed in a series of facilities designated for violent and dangerous male felons.

Less than a month after her incarceration began, Ashley was sexually assaulted by six inmates and knocked unconscious. She was subsequently moved to prisons considered equally if not more dangerous. At one facility, she was told to guard her "booty" and be prepared to fight. She suffered repeated physical and sexual assaults while in prison—eight sexual assaults in all. Each time she reported the incidents to the staff, but correctional staff did not take steps to ensure her safety. After one sexual assault in early 2014, even after she reported the incident, Ashley continued to be housed with her assailant.

In addition to denying Ashley safekeeping, Georgia corrections officials refused to provide Ashley with transition-related care, despite the fact that she started receiving hormone therapy at age 17 and medical staff recommended that she receive hormone therapy. Correction officials acknowledged Ashley's gender dysphoria and that hormone therapy was necessary treatment, but staff refused to provide her with proper medical care. She was also forced to shave her head. One prison official told Ashley that she had "forfeited the right to receive hormone therapy when she became a prisoner." As a result, Ashley's body underwent extreme hormonal and biological changes, and Ashley experienced mental stress. She attempted suicide and self-castration several times. Ashley explained while incarcerated, "I continue to feel trapped in the wrong body and look more 'male' than I have in my entire life."

Ashley has been harassed and punished for her female gender identity, including being thrown into solitary confinement for "pretending to be a woman." She was frequently told to look and act like a man, and she had her female clothing and undergarments confiscated. One prison official called her a "he-she-thing" in front of other staff and inmates. Another told her, "I am not going to refer to you as Inmate Diamond, you ain't no miss, you're an it."

Even after she filed legal complaints against the State of Georgia with the assistance of the Southern Poverty Law Center, Ashley was sexually assaulted by a cellmate. After reporting the incident, she was threatened and was afraid to leave her dormitory, including for meals.

Under widespread media scrutiny and attention following the lawsuit's filing, Ashley was released from prison in August. In September 2015, a court denied the state's motion to dismiss, finding that Ashley's case seeking safety and healthcare can move forward. And in February 2016, Ashley and her attorneys reached a settlement with the Georgia Department of Corrections.

Adapted from case materials available at *Diamond v. Owens*, et al., available at Southern Poverty Law Center, https://www.splcenter.org/seeking-justice/case-docket/ashley-diamond-v-brian-owens-et-al.



#2: Whitney Lee's Fight for Health Care in an Ohio Prison

Whitney Lee, a black transgender woman, is serving a sentence in the Mansfield Correctional Institution in Ohio. Despite having received continuous hormone therapy since 1999, in 2012 the Ohio Department of Rehabilitation and Correction refused to continue her health care. A prison psychiatrist stated that Whitney did not meet the criteria for gender dysphoria, and that the health care she requested was not necessary. As a result of the treatment stoppage, Whitney's voice deepened, she began growing facial hair, was increasingly irritable and angry, and was placed on suicide watch.

In 2014, with the assistance of the Ohio Justice and Policy Center, Whitney sued the Department of Rehabilitation and Corrections. A federal judge ruled that the prison must provide her with medically necessary hormone treatments for the remainder of her sentence.

Adapted from "Whitney Lee to Receive Hormones for Her Entire Sentence," Equality Ohio, accessed May 3, 2014; Associated Press, "Transgender Inmate in Ohio Asks for Hormone Treatment to Be Continued," The Guardian, May 1, 2014.

Story: Safety and Health Care in Confinement *(continued)*



#3: Incarcerated Transgender People Fight in the Courts for Medical Care

Individuals in prison who are diagnosed with gender dysphoria frequently seek medical care to affirm their gender. In some cases, that care includes hormones; for others, it may include surgeries, frequently called "sex reassignment surgeries" or "gender-affirming surgeries." For transgender people in prison, such medical care can be incredibly difficult to obtain. Several recent legal cases highlight the challenges for transgender people.

In California, the Transgender Law Center represents Michelle Norsworthy, a transgender woman serving in Mule Creek State Prison in California. In 2000, Michelle was diagnosed with gender identity disorder, now referred to as gender dysphoria. Shortly after being diagnosed, she began hormone treatment, which has continued to the present. The prison allows Michele to shower out of sight from other prisoners, let her hair grow long, purchase and wear brassieres, and use her name Michelle, rather than her legal name.

In 2012, her psychologist concluded that Michelle was still suffering from debilitating symptoms related to her gender dysphoria, including anxiety, sleeplessness, cold sweats, panic attacks, and mood swings. The psychologist affirmed the necessity of a "sex change medical operation before normal mental health can be achieved for this female patient." Despite these recommendations, the Department of Corrections has refused to authorize treatment for Michelle.

On April 2, 2015, a federal judge ruled that the prison's denial of medical care violated Michelle's right to adequate medical care under the Eighth Amendment's prohibition of cruel and unusual punishment. The court ordered the state to provide her with medical care, including surgery. However, just a day before a federal court was scheduled to consider the state's appeal, Michelle was released on parole. She served 28 years and was released to a halfway house.

Just prior to Michelle's release from prison, the California Department of Corrections and Rehabilitation settled a case with another transgender woman held in a men's prison, Shiloh Quine. As part of the settlement, Shiloh will be moved to a women's prison and will receive medically necessary transition-related care, including surgery. The state also agreed to improve conditions for transgender people across its system, including allowing them to purchase clothing and commissary items consistent with their gender identity and to have access to medical treatment for gender dysphoria.

Upon hearing the news of the settlement, Shiloh told the Transgender Law Center, "After so many years of almost giving up on myself, I will finally be liberated from the prison within a prison I felt trapped in, and feel whole, both as a woman and as a human being. I'm just overwhelmed, especially knowing that this will help so many other people. I know I can never truly make amends for what I've done in the past, but I am committed to making myself a better person, and to helping others so they don't have to struggle the way I have. I'm so grateful to Transgender Law Center, to my lawyers, and to California Department of Corrections and Rehabilitation (CDCR). I will appreciate this from the bottom of my heart, forever."

Earlier in 2015, the U.S. Supreme Court refused to hear the case of Michelle Kosilek, a transgender woman serving time in a men's prison in Massachusetts since 1994. When a Department of Corrections physician recommended that Michelle receive hormone treatment and potentially transition-related surgery, the Department of Corrections terminated its relationship with that physician. Nevertheless, in 2003, Michelle began receiving hormones, and she was provided with gender-appropriate items, such as undergarments and makeup. A court in 2012 ruled that the prison's refusal to grant Michelle surgery was unconstitutional, and the prison was required to provide her with sex reassignment surgery as quickly as possible. The state appealed, and Michelle's care was put on hold. In 2014, the First Circuit Court of Appeals affirmed the ruling, but the state appealed to the full court, which reversed its decision. Given that the Supreme Court refused to hear the case, Michelle's avenues for further medical treatment are currently closed.

Adapted from Norsworthy v. Beard et al (N.D. Cal. 2005); "State of CA and Transgender Law Center Reach Historic Settlement over Trans Prisoner Health Care," Transgender Law Center, August 7, 2015; Kosilek v. Spencer (1st Circuit 2014); "Kosilek v. Spencer," Gay & Lesbian Advocates & Defenders, May 4, 2015.

Story: Teen Paves the Way for Improvements in Transgender Health Care



In 2006, Alyssa Rodriguez, with assistance from Lambda Legal and the Sylvia Rivera Law Project, sued the New York Office of Children and Family Services. While she was in state custody in the male facility at Red Hook Residential Center and other juvenile detention facilities in New York State, Alyssa was denied prescription hormone medication and was punished for expressing her gender identity as a transgender youth. She experienced severe health consequences and emotional trauma as she went through withdrawal when she didn't receive hormones.

As part of the settlement, the Office of Children and Family Services agreed to evaluate their policies. Two facilities within the system have since been designated as facilities specifically trained to care for gay, bisexual and transgender youth, including Red Hook Residential Center. That center now has medical and support staff trained to assist youth who have experienced trauma. Youth are permitted to access items from both the male and female commissaries, effectively deeming Red Hook's grooming products gender-neutral.

Source: Aisha C. Moodie-Mills and Christina Gilbert, "Restoring Justice: A Blueprint for Ensuring Fairness, Safety, and Supportive Treatment of LGBT Youth in the Juvenile Justice System" (Center for American Progress, The Equity Project, FIRE, December 17, 2014); "Red Hook Residential Center," New York State, Office of Children and Family Services.

Story: Physically Isolated with No Medical Care: Barbra's Story



Barbra Perez came to the United States from Cuba at age four. She worked and cared for her elderly father. After being convicted for writing fraudulent checks, she was picked up by immigration authorities. For a month, she was held in immigration detention. Although she is transgender, she was placed in a men's facility where the other detainees made gestures at her and the guards called her "it." When she was initially detained, she was placed in the Davidson County Jail in Tennessee. Facility staff took away her bra and underwear and forced her to wear men's boxers. She was placed in a holding tank with eight other men, and she was denied her hormone medication.

Once in an immigration detention facility, she was told that she could receive testosterone blockers but that receiving her hormone medication, estrogen, would require approval by a review board. Despite taking medication for 15 years consistently, she did not receive hormones for a month, until her last day in detention.

When she told a guard she was afraid of the other detainees, the facility responded by putting her in solitary confinement. She spent 20 days alone in a cell. "When you're in solitary confinement it starts to break you down," she told a reporter for *Fusion*. On several occasions, guards and staff told her that she had few options and should just self-deport—signing an order for her removal from the United States.

After nearly a month of detention, she was released. Her paperwork stated that her detention was "no longer in the best interest of the government."

Adapted from Cristina Costantini, Jorge Rivas, and Kristofer Rios, "Why Are Transgender Women Locked up with Men in the Immigration System?," Fusion, November 19, 2014; affidavit obtained from Olga Tomchin.

PROBLEM: BASIC NEEDS ARE UNMET

As described in the previous sections, confinement facilities may fail to meet even the most basic needs of LGBT people—their safety is constantly in question, they do not receive appropriate medical care, and they are frequently harassed and abused. But there are numerous other, less blatant ways in which LGBT people in confinement facilities have their needs ignored. Facilities rarely ensure that incarcerated people, and particularly transgender people, can maintain their dignity or have opportunities to gain needed skills that will help them successfully rebuild their lives after being released. People in detention are also seldom permitted to maintain connections with their families.

Overall Lack of Respect for Transgender People

In addition to denying transgender people access to medically necessary health care, many facilities do not allow transgender people the ability to express their gender.[611] For example, some states prohibit incarcerated people from changing their names and having access to cosmetics and gender-appropriate clothing, such as bras for transgender women housed in men's prisons, even if such items are available to individuals of the opposite sex.[612] If incarcerated people have prohibited items, they can be punished if they are discovered. As part of a survey of transgender, gender non-conforming, and intersex prisoners by Sylvia Rivera Law Project, a transgender woman reported she'd received a 30-day sentence of solitary confinement for possessing a bra.[613]

But there is some progress, particularly in California. For example, San Francisco jails have a proposed model policy allowing gender-affirming access to clothing, underwear, and bras.[614] A case in California held that prisons must balance safety concerns with an individual's medical needs and the psychological harm of denying gender-specific items such as bras.[615] And, as part of an August 2015 settlement in a case involving a transgender woman housed in a male prison, California prisons now permit transgender individuals to purchase commissary items and obtain clothing consistent with their gender identity.[616]

Adding to the challenges for transgender people, prisons and other confinement facilities often have grooming standards by which incarcerated people must abide. Transgender inmates placed in facilities in accordance with the sex on their birth certificate rather than their lived gender can face constant struggles. For example, in many prisons there are limitations on hair length for individuals in men's prisons, and male prisoners are not permitted access to grooming products listed in the catalog available in the women's prison.

Staff in confinement facilities also often refuse to use a transgender person's name if it differs from their legal name. Compounding the problem, individuals in confinement struggle to obtain the legal name changes that correctional institutions often demand.[617] Without a legal name change, they are often subject to constant harassment and humiliation as staff and other inmates refuse to use their current name. The ability to access a name change is crucial for transgender individuals seeking employment, housing, and other necessities upon release.

In May 2012, the Sylvia Rivera Law Project won a case affirming the right of incarcerated transgender people to change their names in New York. When an inmate legally changes their name, prison officials have to call them by their updated, legal names.[618] In June 2015, Delaware passed legislation allowing inmates in state prison to seek a name change.[619] The legislation was the result of advocacy efforts after a transgender man, placed at a Delaware state women's correctional facility, petitioned the Delaware Supreme Court to change his name with the help of the ACLU of Delaware.

SPOTLIGHT

Select County and City Jails Make a Commitment to Working with Incarcerated Transgender People

Ensuring the safety of transgender inmates is more than simply thinking about where they are placed (that is, according to birth sex or lived gender). A number of county and city jails across the country have developed policies that seek to address the broader needs of transgender inmates, including placement, access to health care, appropriate clothing, and more, including:

In June 2012, the **Denver Sheriff's Department** issued a policy that prohibited discrimination against and verbal or physical harassment of transgender inmates. The policy also instructed staff to use inmates' preferred names and pronouns.[620] The policy also created a Transgender Review Board to address the medical, psychological, and housing needs of transgender inmates.

In 2006, the **King County Department of Adult and Juvenile Detention (WA)** adopted a policy requiring the use of preferred names, access to medical and mental health care, processes to ensure individuals' privacy, and access to commissary to purchase gender-appropriate clothing for transgender people in confinement.[621]

Shawnee County (KS) requires that transgender inmates receive an evaluation to determine the best housing placement and other services needed by transgender inmates. Decisions are made in consultation with an evaluation team comprised of health experts and a community liaison. Shawnee County corrections director Brian Cole explained that placing transgender inmates in segregation was both "unfair and humiliating."[622]

In **Cumberland County (ME)**, transgender inmates may dress, groom, and use names/pronouns that are consistent with their gender identity. A Transgender Review Committee reviews housing placements and other services.[623]

By the end of 2015, S**an Francisco County (CA)** will place transgender inmates according to their stated placement preference in collaboration with a review committee. Transgender inmates are also able to access education and substance use programs and women's empowerment classes, if appropriate.[624]

SPOTLIGHT

Juvenile Facility in New York Strives to Do Better by LGBT Youth

Located north of Poughkeepsie in New York State, Red Hook Residential Center houses youth between the ages of 12 and 18 who were adjudicated by the New York State Family Courts. Though a male facility, Red Hook has become a leading facility in working effectively with gay, bisexual, transgender, and questioning youth.

The staff have made a strong commitment to soliciting feedback and input from youth about programs and services and integrating their suggestions. For example, all youth in state Office of Children and Family Services facilities are permitted to wear undergarments that correspond to their gender identity. But youth at Red Hook complained that they were unable to access gender-appropriate items through the commissary. The facility now permits youth to purchase gender-specific personal care items, such as deodorant. Several transgender youth were interested in hosting a voguing night, and Red Hook provided the space for that program to occur.

Using a positive youth development framework, they emphasize building relationships with the youth and focus on rehabilitation rather than punishment. As Judy Yu from the Correctional Association of New York wrote after visiting Red Hook, "We were impressed by the positive, caring relationships between staff and youth that we saw on our visit. … Their work shows that it is possible to transform a punitive discriminatory facility into one that supports and affirms LGBTQ youth."[631]

Lack of Supportive Services

Funding for educational and vocational programs in prisons has declined, even as the prison population has increased across the nation. Legislation passed in the 1990s prohibited the use of federal grant money on education for incarcerated people.[625] Most prisons offer some academic or educational programs, such as GED programs, basic literacy programs, or special education programs, but many fewer offer college courses, particularly after legislation was passed in 1994 to make inmates ineligible for Pell Grants.[626] As part of a pilot program announced in July 2015, a limited number of inmates may be able to use Pell grants to take college courses.[627] Inmates are also often barred from participating in educational and vocational programs for disciplinary reasons or because there is excess demand.[628]

Without education or vocational training, inmates lack skills needed upon release, leaving them disadvantaged when rebuilding their lives. This is particularly detrimental for LGBT inmates, who already face discrimination because of their sexual orientation and/or gender identity in many areas of life, including employment, housing, and public accommodations. Also, when LGBT inmates are placed in solitary confinement or segregated units simply because they are LGBT, they are unable to access the limited supportive services offered in prisons.



Juvenile facilities are required to offer educational programming to youth in their care. This is vitally important, particularly for LGBT youth, for whom education may be able to serve as a protective factor against discrimination. Research finds that more than half of incarcerated youth have reading and math skills significantly below their grade level, many have been suspended or expelled from school or dropped out, and at least one in three youth are in need of learning support services.[629] Yet a 2015 survey by the Council of State Governments finds that in many states, youth do not receive access to the same educational and vocational services as youth not in state facilities.[630]

Restricted Visitation by Family

Maintaining connections with family can be incredibly important for individuals who are detained. Research finds that when inmates keep up their connections with family, they are less likely to return to prison.[632] And the benefits extend beyond just the individuals in prison. When children, in particular, can regularly visit a parent who is detained, outcomes for the child are improved.[633]

Despite this research, prison administrators have broad discretion in the ways in which they allow inmates to receive visitors. From facility to facility, policies regarding visitation vary greatly.[634] For example, the Federal Bureau of Prisons requires that inmates place individuals on a visiting list; individuals added to the list must be approved by the bureau.[635] For visiting purposes in federal prisons, individuals who are not legally related and are not visiting an inmate for a specific purpose—such as a member of the clergy, civic group, an attorney, or an employer—are limited to 10 "friends or associates." In a study examining state bureau of prison regulations, 32 states limit the number of visitors an inmate is permitted have, with South Dakota restricting inmates to only two individuals plus immediate family.[636]

Several court cases have addressed the ability of inmates in a same-sex relationship to see their partners or spouses. In general, agencies that permit conjugal visits cannot prohibit conjugal visits for legally married same-sex couples if other married couples are provided opportunities for conjugal visits.[637] And inmates in state prisons cannot be denied the right to marry someone of the same sex given that the Supreme Court's ruling in June 2015 extended the freedom to marry to all couples across the United States.[638] However, given the lack of protections from abuse and harassment by both staff and fellow inmates, some LGBT inmates may be too afraid to have partners or spouses visit.

Added challenges to maintaining family connections include facilities that are often far from family and the high cost of phone calls. In a survey of families with an incarcerated family member, 34% families accrued debt as a result of the high cost of phone calls and visits.[639]

Visitation for children of LGBT inmates. It is estimated that 1.7 million children in the United States have at least one parent in prison; 52% of state inmates and 63% of federal inmates have a child under age 18.[640] Black children are more than seven-and-a-half times more likely than white children to have a parent in prison; for Hispanic children the ratio is two-and-a-half times. More than one-third of minor children with a parent currently in prison will turn 18 while the parent is incarcerated. Many young people in juvenile or adult detention facilities are also parents. An estimated 30%

Story: Prison Visit With Partner Turns Into a Nightmare



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In May 2014, Thomas Hamm visited his partner, to whom he is engaged, at Rikers Island, a men's correctional facility. While waiting for his partner to be brought to the visitation room, several guards called Thomas anti-gay slurs. While other couples hugged, held hands, and even kissed, Thomas was told that he could not embrace his partner. After holding hands, guards told them, "We don't want that faggot, gay shit in here." The guards ended their visit early and required Thomas to leave the facility.

As Thomas was leaving, several staff continued to verbally harass him. Then, he was grabbed from behind, hit in the head, and kicked repeatedly while being called anti-gay slurs. As he lay bleeding on the ground, begging the officers to stop, one said, "Don't touch him. He might have AIDS."

As a result of the beating, Thomas suffered a broken eye bone, a broken nose, and head trauma. The officers involved claimed that Thomas had attacked them. He was arrested and taken into custody after receiving medical treatment. He was subsequently charged with assault and harassment, but the charges were dismissed.

As Thomas explained, "I went to Rikers to visit my loved one, and left beaten, my face shattered, in shackles, and charged with a crime I did not commit. The corrections officers' anti-gay hate crime against me was covered up."

Adapted from "Complaint: Hamm v. City of New York," Lambda Legal, accessed February 16, 2016; "Lambda Legal Joins Federal Lawsuit After Antigay Attack at Rikers Island," Lambda Legal, October 29, 2015.

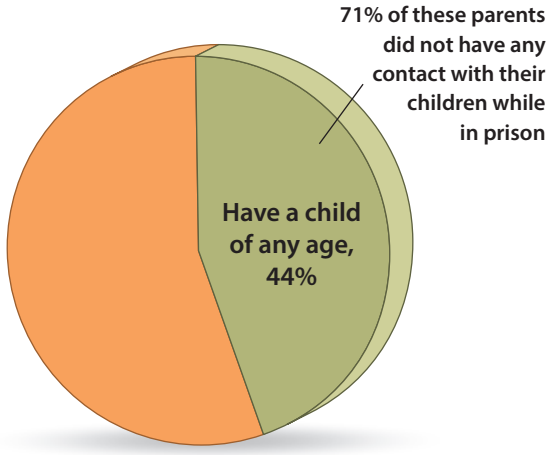
of incarcerated teen boys have children of their own.[641] While similar estimates are not available for LGBT people in prisons and jails nationwide, 44% of LGBTQ-identified prisoners surveyed by Black and Pink in 2015 reporting having children of any age, as shown in *Figure 41*.[642]

It can be challenging for children to visit a parent who is in jail, in prison, or detained. The spaces for visitation are frequently not child-friendly, making it difficult for children to remain seated and calm. Telephone calls are expensive and difficult, particularly for young children. Of LGBTQ inmates with children in the Black and Pink survey, nearly three-quarters (71%) did not have any contact with their children during their time in prison, as shown in Figure 41.[643]

For LGBT inmates, there can be added challenges. First, there are repercussions resulting from the difficulty of creating legal ties to children. Prior to the availability of marriage nationwide, many LGBT couples were raising children together but only one parent was legally related either through biology or adoption. In addition, it was difficult or impossible for the second parent to obtain legal rights. In theory, such parents can now access stepparent adoption if they are legally married to the child's legal parent, but there are still difficulties.

Figure 41: Many Incarcerated LGBTQ People Are Parents

Percent of Currently Incarcerated LGBTQ People



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

Particularly for non-legally recognized parents who are currently in prison or jail, they may be unable to petition for a second-parent or stepparent adoption. In addition, avenues for securing legal ties between children and their LGBT parent can be costly.

SPOTLIGHT

Connecting LGBT People in Prison with the LGBT Community

People serving time in prison can be extremely isolated. For LGBT people, who may not be connected to family or who may not be "out" to fellow inmates, isolation can be more severe. Several programs currently work to connect LGBT people in prison with members of the LGBT community on the outside through "pen pal" programs and newsletters. These resources can provide individuals in prison with important information about health care, legal rights, and more. For example:

Black and Pink, which supports LGBTQ prisoners and allies, offers a pen pal program and a holiday card program. In 2014, parties were held in 150 cities and every Black & Pink member received an individualized holiday card. Black and Pink also publishes a free newspaper distributed to more than 7,600 prisoners. The newspaper includes submissions from incarcerated members, news, history, and opinions.

The **California Coalition for Women Prisoners** publishes and circulates a quarterly publication to more than 2,800 women, transgender women, and gender non-conforming prisoners throughout California prisons. The newspaper allows these individuals to communicate with each other and the public about the issues and experiences they face through articles, art, and poetry.

The **Transgender Gender-Variant & Intersex Justice Project**, also in California, publishes Stiletto, a newsletter for transgender, gender non-conforming, and intersex people in prison.

In Colorado, the **Gender Identity Center of Colorado** publishes *The Transgenders in Prison Journal* each quarter, which is sent to 600 individuals in Colorado prisons.

The **Transformative Justice Law Project** in Illinois runs the Write to Win Pen Pal Project, which connects transgender and gender non-conforming people in Illinois prisons with allies and activists who help provide support, resources, and friendly communication.

In 2015, the **Sero Project** in association with Prison Health News published "Turn It Up! Staying Strong Inside," a single-issue magazine for people living with HIV and/or hepatitis in prison.

LGBT parents in the criminal justice system who lack legal ties to the children they have been raising may be denied all visitation from those children. In 2003, in *Overton v. Bazzetta*, the U.S. Supreme Court upheld restrictions on prison visits by legally unrelated children if they are not accompanied by a legal parent or guardian.[644] The unique burdens facing LGBT parents in maintaining contact with their children can add to the challenges they face in confinement.

Maintaining legal ties to children. Even when an LGBT inmate is a legal parent, the federal Adoption and Safe Families Act of 1997 makes it difficult for incarcerated parents to maintain custody of their children. Some children enter the foster care system when the parent from whom they'd been receiving care becomes incarcerated. If a child has been in foster care for 15 of the last 22 months, states are required to begin the process of terminating parental rights. Given the long sentences for drug crimes, including non-violent offenses, many parents see their rights terminated, particularly if they were parenting on their own prior to being incarcerated or if there isn't another legally recognized parent to care for the child.

- In a study of child welfare adoption cases from 1997 through 2007, researchers found that 54% of the children adopted from foster care in San Francisco in those 10 years had mothers incarcerated in local jails, juvenile halls, or state prisons.[645]
- A 2014 survey of formerly incarcerated individuals found that 39% of formerly incarcerated parents either lost custody or had their parental rights terminated.[646]



Many LGBT youth who have had negative experiences with their families are cut off from their families entirely and do not receive any visitors during their confinement—further disconnecting them from a support system. At the same time, many young LGBT people are not "out" to their parents but understand themselves to be LGBT. For these individuals, visits from family can mean that they will be "outed" to the family. For example, if they share their sexual orientation or gender identity with correctional staff, perhaps as part of conversations related to safety or health care, this information is not always treated with respect in terms of interactions and conversations with parents or other family members. Social workers assisting youth, particularly those who are leaving the system, may share information about the youth with family members, which may violate a youth's privacy.[647]



PROBLEM: INCARCERATED PEOPLE LACK RECOURSE

Under the U.S. Constitution, inmates are protected by the Eighth Amendment's prohibition against cruel and usual punishment. For example, prison officials who fail to protect inmates from violence at the hands of other inmates despite having knowledge of the potential danger can be found to have violated the inmate's Eighth Amendment protections.[648]

However, in reality, inmates in correctional facilities have very little recourse even when their basic rights are violated. For example, inmates cannot individually sue other prisoners or prison officials for violating the Prison Rape Elimination Act.[649] Inmates who are sexually assaulted must follow the reporting procedures and, in many ways, are at the mercy of the system. In 1995, the Prison Litigation Reform Act greatly limited incarcerated people's access to the courts to challenge the conditions of their confinement.[650] Under this law, incarcerated people must exhaust all administrative routes first and cannot recover monetary damages. They can only seek an improvement in conditions. Inmates, and especially LGBT inmates, who are disproportionately the victims of violence and abuse, risk retribution for filing complaints and have little protection against such retaliation.

Adding to the challenges for inmates, they have very limited access to legal support while in prison, so accessing the courts as a way to enforce their rights is difficult, even when their rights have been violated.[651] Inmates also have limited recourse under state laws, such as those applying to assault or battery, as they must prove that a correctional officer acted intentionally.[652] Courts generally give great leeway to correctional officers.

Despite these challenges, many of the improvements in the conditions of confinement for LGBT inmates, and inmates generally, have resulted from legal challenges and courts finding that the correctional and detention systems have violated inmates basic rights. As noted above, for example, several courts have held that denying transgender inmates medical care violates their constitutional protections.[653] Additionally, individuals in states with legislation prohibiting discrimination based on sexual orientation and/or gender identity may have recourse through state human rights commissions. In some states, prisons, jails and juvenile facilities are considered public accommodations or are covered by laws prohibiting discrimination in housing, particularly government-funded housing.[654] For example, in 2007 the Vermont Supreme Court ruled that the state's public accommodation law applied to state prisons because the legislature intended to make "all government entities" subject to the law.[655]

Story: The Public Supports Reforming Prisons and Jails

Americans agree that the criminal justice system needs reform. In 2014, seven in ten Americans thought the system needed major improvements or a complete redesign.[656] Half of voters agree that there are too many people being held in prisons.[657] Of young people ages 18 to 29, fewer than half think the legal system treats people fairly across race and ethnicity; only 27% of black youth, 37% of Latino/a youth, and 41% of white youth think the system treats people of different races and ethnicities fairly.[658]

There is broad support for rethinking whether prisons and the criminal justice system are effective at addressing the underlying causes of crime and helping individuals turn their lives around. A 2013 survey found that more than three-quarters (78%) of Americans think the criminal justice system does a poor or "just fair" job rehabilitating criminals, and 68% believe the system does a poor or "just fair" job discouraging people from committing crimes.[659] Almost half (46%) of Americans think that society would be better served by investing in efforts to rehabilitate people convicted of crimes.[660]

Recommendations

LGBT people frequently face challenges in receiving a fair chance in the justice system. They face discrimination by judges, court staff, attorneys, and juries, which means they are more likely to be placed in a confinement facility. Once within those facilities, LGBT people face an array of indignities and abuses that jeopardize their physical and mental safety, their relationship with their families, and their very lives.

Reduce the number of people held in confinement facilities—including adults in prisons and jails, youth in juvenile justice facilities, and undocumented immigrants in detention centers.

1. Federal and state legislators should revisit mandatory sentencing guidelines, mandatory minimums, and increased penalties, especially for non-violent offenses, including non-violent drug crimes.
2. Federal and local jurisdictions and judges should reduce reliance on bail and increase the ability of individuals to be released pre-trial.
3. Federal, state, and local agencies should use risk assessment instruments to determine whether individuals should be released while awaiting trial and to determine the least burdensome bail amount, including nonmonetary pre-trial release options.
4. Federal, state, and local legislators should increase funding for the expansion of community-based alternatives to incarceration, including drug treatment programs and mental health programs.

Improve access to counsel for youth, adults, and immigrants.

1. Federal, state, and local governments should increasing funding for legal aid organizations and indigent defense programs.

Reduce discrimination in the justice system.

1. Federal and state governments should fund and provide cultural competency training for judges and attorneys. Cultural competency training may help reduce discrimination and stigma on the part of judges, attorneys, and court staff.
2. Legislators should pass federal and state laws prohibiting discrimination in jury selection on the basis of sexual orientation and gender identity.
3. Legislators should pass federal and state laws requiring courts, upon request of a party in a case, to instruct the jury not to let bias, sympathy, prejudice, or public opinion about sexual orientation or gender identity influence its decision. Courts also should improve juror guidance to reduce discrimination by juries. Juries should be given clear guidance and instructed not to consider the race, ethnicity, national origin, sexual orientation, gender identity, or other factors unrelated to the case in their determination of guilt or during sentencing.
4. Legislators should pass federal and state laws and policies to eliminate the use of the "gay panic" and "trans panic" defenses. Judges also should provide explicit guidance that a non-violent sexual advance or the discovery of an

individual's sexual orientation or gender identity may not legally mitigate the crime of murder to manslaughter, for example.

Improve conditions of confinement for LGBT people.

1. **Intake procedures in jails, prisons, and detention facilities should be individual-centered and in compliance with PREA's requirements for addressing safety for LGBT individuals.** Departments of corrections should develop and implement intake processes to identify individuals who are or who are perceived to be LGBT, as they are more vulnerable to physical and sexual assault.
2. **Implement PREA requirements for placement of LGBT people based on an individual's concerns about safety.** All confinement facilities should implement and enforce PREA regulations for placement of LGBT people. LGBT individuals should be consulted about their needs and safety concerns in determining the most appropriate housing assignments.[661] In particular, transgender individuals should be housed based on the gender identity they express rather than based on anatomical sex or the sex on their birth certificate. Some transgender individuals may prefer single rooms or showering in a private room for safety. LGBT individuals should not be placed in solitary confinement based solely on their sexual orientation and/or gender identity.
3. **Reduce sexual assault in prisons and improve systems for addressing assault when it occurs.** Departments of corrections should improve training for correctional staff to proactively address safety concerns to reduce instances of sexual assault; educate incarcerated people about their rights to safety and procedures for reporting misconduct and sexual assault by staff and fellow prisoners; and allow incarcerated people to quickly and easily file complaints and do so without fear of retribution or punishment.
4. **Develop and implement nondiscrimination policies with education and ongoing training for staff.** Departments of corrections should develop policies and implement training for the treatment of incarcerated LGBT people, including procedures for searches and prohibitions on harassment, violence, abuse, or discrimination.
5. **Improve health care in prisons.** Medical personnel in confinement facilities should provide consistent, research-based medical care according to approved standards of care, including prompt access to HIV medication and transition-related health care for transgender people. All staff should ensure confidentiality for all inmates by protecting medical records and allowing only necessary information to be shared with non-medical staff. This includes an individual's HIV status and identification as LGBT.
6. **Provide access to appropriate clothing and grooming products for transgender people.** Agencies should give all inmates the ability to choose between available clothing and grooming items so they can express their gender identity through choice of clothing, name, hairstyle, and other means of gender expression.
7. **Improve visitation polices to help inmates remain connected to loved ones.** Departments of corrections should update policies to permit individuals who may not be legally related to an inmate, but who have a family-like relationship, to visit. For example, policies should include children for whom an inmate may have served as a *de facto* parent or another non-legally recognized parent, such as a spouse or partner of a child's legal parent. Programs that provide assistance to families to visit a loved one in a detention facility should also take a broad approach to defining family to ensure that LGBT parents and children remain connected.

SECTION 3: LIFE AFTER CONVICTION: LGBT PEOPLE FACE ADDED CHALLENGES TO REBUILDING THEIR LIVES

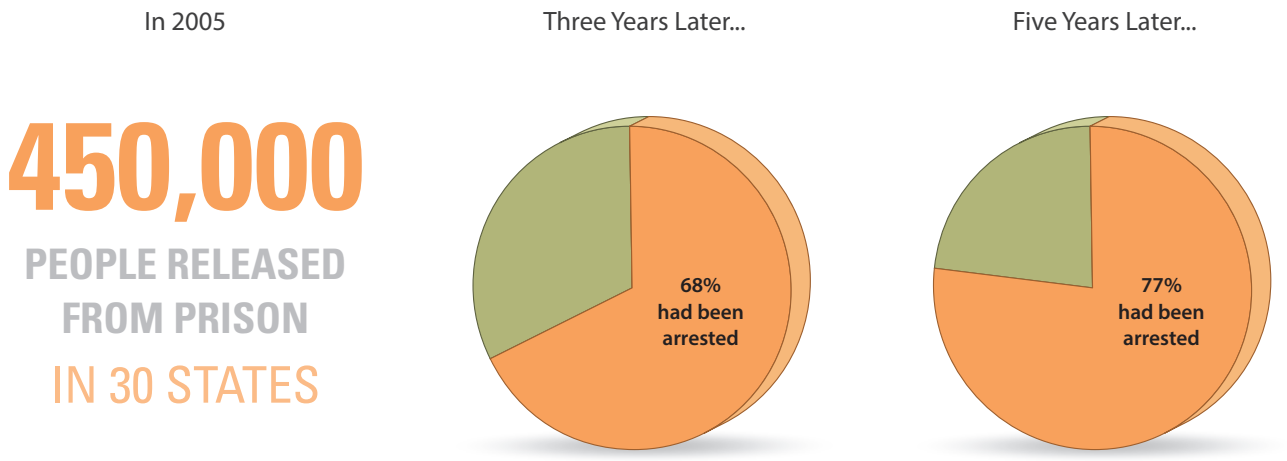
Each year, more than 650,000 individuals are released from state and federal prisons in the United States and struggle to find their way back into their communities and families.[662] Rebuilding one's life after being incarcerated can be an enormous, multifaceted challenge.[663] On the most basic level, individuals must find a way to support themselves and find a place to live, as well as decent medical care and other essentials. What makes re-entry into society so challenging when leaving prison or detention is the lack of employment, money, and housing—as well as broken connections to community and family. In many areas across the country, individuals leaving jail or prison are simply given a small amount of cash and sent on their way.

Because of these challenges, many people who have been incarcerated and have criminal records end up back in the criminal justice system. The National Employment Law Project estimated that in 2014, 70 million adults in the United States had an arrest or conviction record.[664] As shown in *Figure 42*, it is estimated that two-thirds of individuals released will be arrested again in three years,[665] and 77% will be arrested again within five years.[666]

As described in Section 1, even before they have a criminal record, many LGBT people are rejected by their families, lack employment opportunities because of discrimination, face bullying, harassment and unfair treatment in school, have their lives criminalized, and are targeted by police. These challenges don't go away while someone is in detainment; in fact, they can become even more pronounced when one gets out. Like other formerly incarcerated people, released LGBT people also may have a history of substance abuse and physical and mental health issues. Few will have completed high school, let alone college. Many are parents. Together, all of these factors are linked to high rates of insecurity and instability, and all of them add up to huge challenges for an LGBT person who has a criminal record or has spent time in prison or jail.

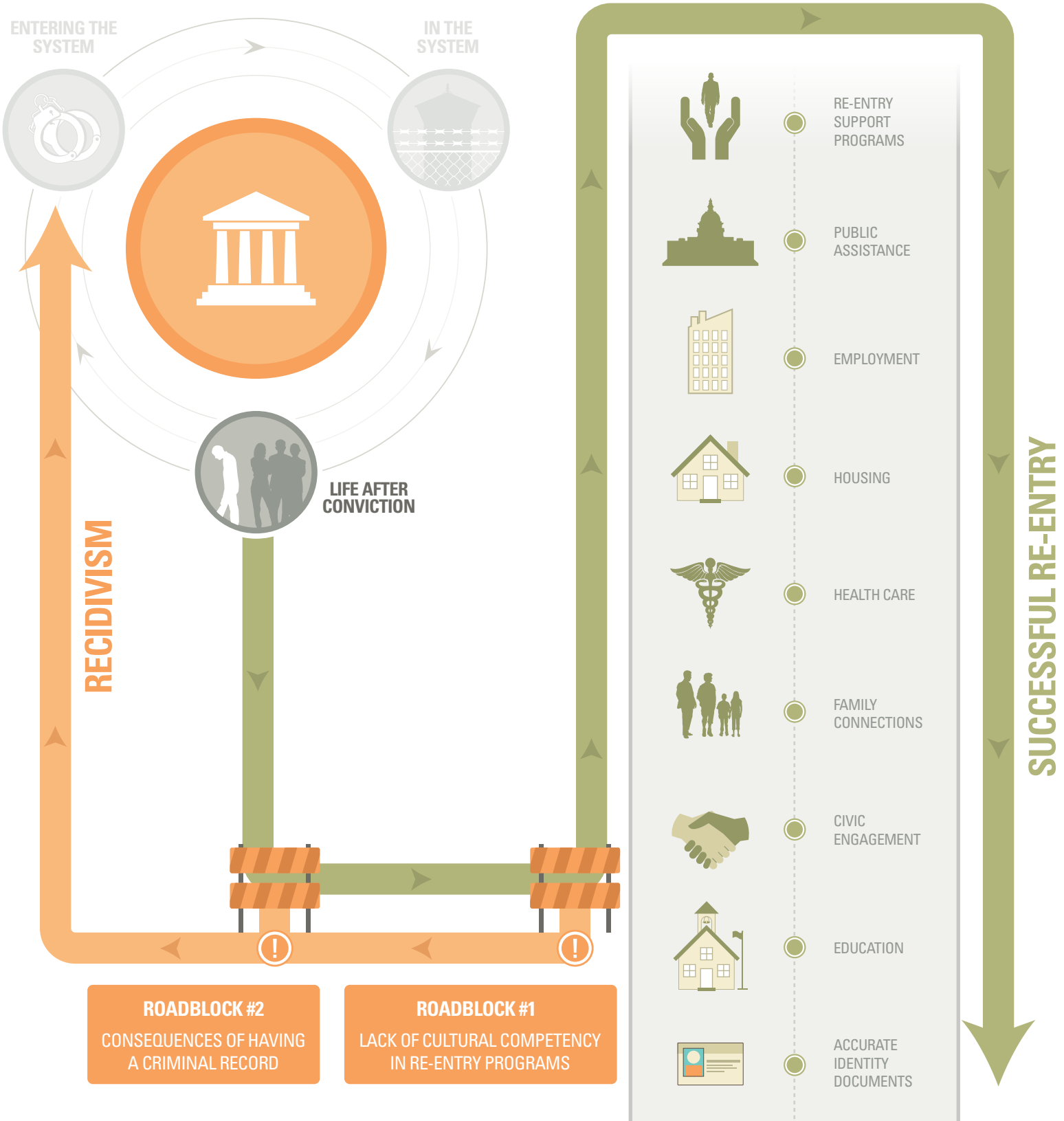
LGBT people can have a uniquely hard time rebuilding their lives. Across the United States, doors are frequently closed to any individual with a criminal record when it comes to jobs, housing, and more. Many parole, probation, and re-entry programs are understaffed and underfunded. Most focus heavily on employment without addressing the wider range of challenges—and substantial barriers—that formerly incarcerated people face when securing even basic necessities such as food, shelter, and family reunification. As explored throughout this report, LGBT people often face their own unique challenges with all of these issues. Add in the fact that

Figure 42: High Rates of Recidivism in the United States



Source: Matthew R. Durose, Alexia D. Cooper, and Howard N. Synder, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," Special Report (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, April 2014).

LIFE AFTER CONVICTION:
LGBT PEOPLE FACE ADDED CHALLENGES TO REBUILDING THEIR LIVES



most re-entry programs are not inclusive or culturally competent when it comes to addressing the unique concerns and challenges of LGBT people, and it's clear that they are left struggling and at risk for future law enforcement contact.

Recently released individuals also struggle with the changes in technology and culture. Shifting from the extremely proscribed, regimented environment of prison back into society can be very challenging. People also face barriers to becoming valued members of a community because of limitations on voting, serving in public office, volunteering, and other civic activities.

There is broad public consensus that the discrimination facing people who have served time in prison is wrong.

- Sixty percent of Americans think the unequal treatment faced by people who have served time is a serious problem,[667] and 56% support legislation designed to reduce discrimination against people with criminal records.[668]
- Additionally, 80% of Americans think the current level of recidivism is unacceptable,[669] and nearly three-quarters (74%) support increased spending on programs to reduce the likelihood that an individual will commit another crime.[670]
- Two in three Americans support increased spending on job training and placement programs for formerly incarcerated people, and 55% support tax incentives for employers who hire individuals who have served time in prison.[671]

In this section, we explore the impact of having a criminal record on LGBT people, as well as the challenges they face re-entering society after being incarcerated. Specifically we examine:



Lack of support for LGBT people in probation, parole, and re-entry programs. LGBT people often face unique needs for support in finding housing and jobs and accessing essential services. They experience discrimination at high rates and frequently lack family support, and transgender people and those living with HIV may need additional assistance finding appropriate health care. Rarely do probation, parole, and re-entry programs take into consideration the discrimination that LGBT people experience in many areas of life, including employment, housing and public accommodations.



Having a criminal record harms LGBT people's ability to support themselves and be a part of their families and communities. The challenges for individuals with criminal records are substantial in the United States and touch every aspect of one's life. In many ways, these individuals continue to be punished for their crimes long after they have completed their sentences. For people who already struggle with pervasive discrimination, such as LGBT people and people of color, a criminal record compounds daily discrimination to create substantial barriers to rebuilding one's life and avoiding future interactions with the criminal justice system. For LGBT immigrants, regardless of immigration status, having a criminal record can easily lead to deportation.



Lack of Support in Probation, Parole, and Re-Entry Programs

The problems facing all people being released from the criminal justice system are significant. Compounding these problems for LGBT people is the fact that parole and re-entry programs lack competency to address their specific needs. Both within prisons and in parole and re-entry programs, very few staff are trained to support LGBT people in being prepared for release, finding jobs and housing, and successfully completing probation or parole. Given the many challenges that individuals face in being successful post-incarceration, probation, parole, and re-entry programs can make a huge difference in whether someone has the skills and guidance to get back on their feet and succeed. To the extent that these programs fail, LGBT people, including low-income people and people of color, may be more likely to violate the terms of their probation or parole.

This section explores the following barriers to successful re-entry for LGBT people with criminal records, including:

- Lack of LGBT cultural competency in prison re-entry programs for individuals leaving prison, jails, and juvenile justice facilities;
- Lack of understanding and respect for LGBT people in probation and parole systems; and
- The use of indefinite detention through civil commitment.

First, however, we give an overview of how probation and parole systems work in the United States.

How Probation and Parole Work

As explained in Section 2, some people who are convicted of a crime are sentenced to community supervision, often called *probation*. Other times, individuals who have spent time in a jail or prison are released and are supervised through a system called *parole*. In both parole and probation systems, individuals frequently have limitations put on their actions and receive supervision by law enforcement or legal system officers, such as probation or parole officers. Individuals on parole may have to meet regularly with their parole officers in person, by mail, or through electronic monitoring. Typically, parolees must meet other specified conditions of their parole, such as: not committing any new crimes, remaining employed, not using drugs, keeping a curfew, supporting dependents such as children through child support payments, participating in drug treatment programs, and potentially avoiding certain locations or people.[672]

At the end of 2013, 4.8 million U.S. adults, or one in 51, were under community supervision, such as probation or parole, following incarceration.[673] It is estimated that nearly 675,000 juveniles are also under probation supervision, which is imposed in an estimated 62% of adjudicated juvenile cases.[674] Some individuals released from prisons or jails are sent to facilities such as re-entry centers designed to ease their transition back into daily life.

If an individual on parole or probation violates the conditions placed on them, they frequently are subject to new restrictions or are re-incarcerated.[675] From 1980 to 2000, the share of prison admissions due to parole violations increased from 17% to 36%.[676] In other words, over one-third of prison admissions are due to re-incarceration for a parole violation.

Just as the network of detention facilities is complicated and is overseen by various levels of government, the same is true for community supervision. Federal, state, county, and city systems have their own agencies responsible for supervising individuals who are not placed in a detention facility.[677] Despite the fact that the majority of individuals sentenced in the criminal justice system will interact with probation or parole systems, those systems remain underfunded, particularly compared to the amount spent on prisons and jails.[678] Supervision (parole and probation) officers frequently carry heavy caseloads. In Alabama, for example, a single probation officer supervised 143 people on average in 2005, compared to 60 in similarly sized, better-funded states.[679] Given these caseloads, supervision officers struggle to provide individualized, thoughtful guidance to individuals as they are released from the criminal justice system. For example, with 143 people to manage, a probation officer would only be able to spend about 15 minutes per person per week, and that is assuming the officer has no general administrative duties and can dedicate 100% of time to working with parolees.



It is estimated that 100,000 young people are released from juvenile justice facilities each year.[680] Rarely are plans in place to support these youth as they return to their families, schools, and communities.[681] To succeed in rebuilding their lives and staying out of the criminal justice system, youth need to be reconnected with schools, health services, employment services (particularly for young people who are over age 18), housing, and families.

Without appropriate support, many young people released from the system face substantial barriers to successful re-entry. These barriers include: unsafe and underfunded schools that are unprepared to integrate young people back into the educational system; families frequently struggling with financial, health, or other challenges that make welcoming a young person home difficult; and unsafe communities lacking in social support and adequate medical and mental health services.[682] As a result, young people who leave the juvenile justice system are at high risk of recidivism. Programs employing models that engage young people, families, peers, schools, and communities in re-entry have shown great promise of reducing recidivism.[683]

Story: Coming home homeless, financially broke, convicted, and aging



I was released from the Federal Correction Institution, Tallahassee, one year ago. I was taken to the Greyhound bus station and given a ticket to head home to New York. For the first time in close to a year, I went unescorted to a store to buy a cup of coffee. I didn't feel free. I felt anxious.

Prior to my arrest, I worked for decades. I had a home, family, extended family, and friends. At an age when most of my friends were preparing for retirement, I was released from the higher-security prison as a homeless, financially broke, convicted, and aging woman. I had nothing to call my own, and my legal bills had consumed a lifetime of savings. I was full of fear and anxiety. I came home an orphan with a living family.

After I arrived back in New York, I had to report to a residential re-entry center (RRC, aka a halfway house). Under current law, RRC placements can last up to one year. However, I was permitted to stay only six weeks—a very short amount of time for re-entry, especially given that I was 63, homeless, and penniless.

On top of that, this halfway house's rules were borderline Kafkaesque. Phones were prohibited within the house. There was no Internet. Permission to leave the house was limited and often unattainable. If you managed to get permission to go somewhere that had a computer, you could apply for a job online. However, since there was no way for an employer to call you, the effort was futile. Even if you got an email response, you might not get permission to go to the job site for an interview.

Because I couldn't demonstrate proof of employment on an application for housing or pass a background check, the only choice I had after the halfway house was a homeless shelter, aka the last place I wanted to live. And so, I arranged to join a three-quarter house, which are unlicensed facilities that rent shared rooms to people leaving mental hospitals, drug treatment programs, and prisons or jails. It's a profitable business. This one was run by a purported feminist who claimed to care about the women she was housing.

It was a frightening sight. Eleven women were crowded into a few rooms. One working bathroom was available. I lived in a space half the size of my prison cell. My roommate and I could not stand in the room at the same time. One of us had to stay on the bed for the other to get her clothes.

I worked a $9.00 an hour job at Old Navy for the Christmas season. Standing on my feet seven hours a day was painful, and I couldn't straighten out my back and needed to sleep to endure the next full day of work. And, although I was assigned evening hours, the house curfew was at 11:00. Women who didn't get home on time found their belongings in garbage bags on the street. The so-called feminist found it easy to throw women out, and I had to call her when I arrived at the house from work each night to get back in after hours.

My struggles to obtain housing in New York City haven't ended, as I don't have credit or a job. In one telling instance, I had three in-person interviews in one week with an agency whose work focused on the formerly incarcerated. Although I was hired, the job offer was retracted only two days later. I was—and I still am—stunned by the lack of interest in employing formerly incarcerated returning citizens.

In short, I'm writing this story because *I believe in coming out as a convicted felon*. I believe in disclosing my history to employers, friends, and practically everyone. And as there are as many as 100 million Americans with a criminal record, if everyone "came out as a criminal," most people would know someone. We would see increased momentum for reform on jobs, housing, and criminal justice reform more broadly. And we could build an elder justice movement that works for alternatives to incarceration for the elderly; the release of incarcerated elders; and responsible re-entry specifically focused on the needs of the elderly who are returning home.

But right now I have no job and no housing. I am 64 years old and fearful I will end up in a shelter. I have fought every day to jumpstart my life, but I feel I am losing the battle.

- Evie Litwork

Excerpted, with permission, from Evie Litwok, "I Went to Prison at Age 60. Here's What I Learned.," Talk Poverty, October 16, 2015.

PROBLEM: LACK OF LGBT COMPETENCY IN PRISON RE-ENTRY PROGRAMS

In federal and state prisons, re-entry planning includes helping inmates with employment searches and job search skills prior to being released. In addition, some state and local corrections departments provide inmates who are due to be released with assistance in obtaining identity documents, either directly or through referrals to other agencies. For transgender inmates, however, it is difficult, if not impossible, to obtain identity documents that accurately reflect their gender identity. The reason, as explored earlier in this report, is that transgender individuals face a high likelihood of being housed in correctional facilities that do not reflect their gender identity. As a result, staff are likely unaware of the necessary paperwork or the route for obtaining accurate identity documents for transgender people. Without a driver's license with an accurate gender marker and name, transgender people who are released from prison face additional challenges in finding jobs. Either they will be "outed" as transgender during the job search, or else they will face added discrimination. Mismatched identity documents can also make future interactions with law enforcement more difficult (as discussed in Section 1).

Other components of job preparedness training or career counseling do not regularly address the unique concerns of LGBT people either. For example, LGBT people in these programs rarely if ever receive advice on what to do when they face discrimination in the job application process. In addition, when given tips on how to dress for a job interview, transgender inmates may not receive appropriate guidance or they may be told not to dress in accordance with their gender identity.

PROBLEM: LACK OF LGBT COMPETENCY IN PROBATION AND PAROLE

Once released from prison and placed on parole or probation, individuals are often required to adhere to strict requirements and regularly meet with a parole or probation officer. However, probation and parole programs are notorious for lack of support for those seeking to re-enter the local community. In addition, programs often place strict requirements on individuals, such as stating that they cannot visit certain communities and not socialize with certain people, or that they need to maintain employment. There have been cases in which a transgender person's dressing in accordance with their gender identity has resulted in a violation of parole terms.[684]

Together, lack of support and the rigorous requirements placed on people on probation or parole contributes to high levels of recidivism among parolees and recently released individuals, particularly LGBT people.

Some individuals on probation or parole are required to attend job training or educational programs, or to hold a steady job as a condition of their parole.

SPOTLIGHT

City of New York Department of Probation's LGBTQI Policy

In June 2015, the City of New York and its Department of Probation released a revised policy designed to ensure that LGBT, questioning, and intersex youth, adults, and families served by the department are treated with respect and experience a safe environment. Staff are advised to identify and address the individual needs of each client. Harassment and discrimination is not tolerated, and staff are advised that they may not impose their personal or religious beliefs on clients.

Beyond these general principles, the policy provides detailed guidance for the language to be used by staff, names and pronoun policies, disclosure and confidentially, family concerns, personal grooming issues, procedures for searches, training, and policies for reporting harassment and discrimination. For example, staff are advised to use "respectful language" that will not result in harm in group or shared spaces for LGBT clients. To the extent possible and only with the approval of a client, staff are to use preferred names and pronouns rather than legal names, including in internal Department case management notes and communications and when addressing clients.

Source: "New York City Department of Probation Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex Anti-Discrimination Policy" (The City of New York Department of Probation, June 23, 2015).

As shown in Section 1 of this report, LGBT people in general face difficulty in applying for jobs compared to non-LGBT applicants. With a criminal record, LGBT people have an even harder time. When job training and employment services for individuals with criminal records are unaware of the job discrimination faced by LGBT people—or fail to acknowledge the impact it can have on their ability to find economic stability—they do their LGBT clients a disservice. Without an inclusive and culturally competent approach, these programs fail to provide the support needed to help LGBT people succeed and reduce the likelihood of reoffending.

Some parole conditions include restrictions on travel by individuals. For example, in California, individuals on parole generally must receive permission to travel more than 50 miles from home, leave their "home" county for more than two days, or leave the state.[685] These limitations can be particularly onerous for transgender people and people living with HIV, particularly those living in rural areas. Such individuals may not be able to access competent, respectful medical care without traveling. And if a parole officer is not supportive of an individual's gender transition—which is not an unlikely turn of events, given the lack of competency training for law enforcement generally—the officer may not approve a request to travel or may consider an individual in violation of parole if he travels for medical care.



Federal, state, and local governments frequently contract with private agencies to provide re-entry services to recently released individuals, including job training, re-entry counseling, and residential re-entry centers.

Some people who are nearing release are placed in residential re-entry programs, such as halfway houses, where they live for a period of time before being released into the community. As a condition of placement in a residential re-entry program, individuals in these facilities have many aspects of their lives controlled by the facility but are able to go out into the community to find work, to complete job training, or to visit family.

LGBT people placed in residential settings like these report violence and harassment by fellow residents and by staff. In addition, transgender people have been housed in residential re-entry programs that do not match their gender identity, and have had their clothing taken away for violating house policies. Denying transgender people the ability to live their lives authentically makes it all the more challenging for them to focus on addressing the difficulties of having a criminal record, such as finding employment, completing their education, and receiving substance abuse counseling.

Some of these programs are religiously affiliated and may not be accepting of, or may be hostile towards, LGBT people.[686] Even centers that do not actively discriminate against LGBT individuals frequently lack an understanding of the specific support that LGBT people need when seeking employment or education. They fail to help LGBT people deal with crucial questions such as: how to react when you are discriminated against when applying for a job; or how best to respond to a background check that "outs" you as a transgender applicant. Staff in re-entry programs also may not understand the healthcare needs of transgender people and can therefore fail to connect them to healthcare providers that will provide appropriate medical care.



Young people leaving juvenile justice facilities, particularly youth who have been committed to residential facilities, have a wide range of needs. Among the most important: resuming their education, finding good, affordable healthcare services; and reconnecting with family. Support for young people leaving these systems is limited and varies greatly across states and within cities and counties. In some instances, youth are simply given a bus ticket or released to a family member. Other young people benefit from a much more strategic and thoughtful approach: engaging in pre-release planning alongside a "reintegration team" that includes family members, correctional staff, social workers, and school staff to help ease the transition.

Some youth who have come out as LGBT only while in a residential facility may struggle with when or how to come out to their family members or friends. These youth need support to help them navigate family conflict and reduce the opportunity for family rejection. They also need help accessing resources to be safe at school. Without such support, LGBT youth risk family rejection, leaving their homes, and school violence that pushes them out of school. Each of these outcomes increases the likelihood of repeated interaction with law enforcement. And to the extent that young people are not able to stay in their homes or in school, they may violate the strict probation and parole conditions placed on them.

Story: Life as a Transgender Woman in a Halfway House



Printed with permission from Lambda Legal

I am a transgender woman. I first realized that I felt more like a girl than a boy when I was four years old, but it wasn't until 1999 that I started hormone therapy. For the past 15 years, I have lived openly in the world as a woman.

In August of 2010, I was sentenced to two years in federal prison. I began three years of supervised release in April of 2012, but was sent back because I tested positive for drug use. That was a real wake up call for me, and I started attending Narcotics Anonymous (NA) meetings. With hard work and prayer, I have been drug free since April 15, 2013.

In October 2013, I was paroled to The H Group, a halfway house in Marion, Illinois, to complete my sentence and begin a drug rehabilitation program. At the halfway house, I was able to enroll in college, and attend counseling and substance abuse treatment. I was excited about the opportunity to focus on my rehabilitation and to set myself up to succeed once I was released. I was sorry about the actions that had landed me in jail and truly believed that I was capable of more, but the way I was treated at The H Group made it nearly impossible for me to think about the future.

Almost as soon as I started living at The H Group, I was told by the staff members that I was a man, which is not true, and that if I didn't stop acting like a woman, I would be sent back to jail. The staff members addressed me with male pronouns and titles, I was forced to sleep in a room with four men, even though I didn't feel safe, and the staff at The H Group periodically raided my belongings and confiscated anything they viewed as remotely feminine. They took my makeup, clothing, pedicure kit, magazines, and curlers. They even took my pink shower cap. I tried to "take the high road," "turn the other cheek," and "let go and let God," but I was hurt, and I knew this treatment was wrong. Instead of focusing on improving myself to build a new life, I was just focused on surviving each day.

Being the first transgender resident at this facility, I realized that I had the opportunity and responsibility to speak out, not only to protect myself, but to make sure that other transgender individuals aren't discriminated [against] in the same way. After some investigation, I reached out to Lambda Legal, a national LGBT advocacy group. They agreed to advocate for me, but I had to do my part.

On April 21, I filed a formal grievance with The H Group about the way I was being treated. I wasn't convinced that the grievance would cause The H Group to change, but I had learned that if I didn't exhaust The H Group's internal grievance procedure, I could be barred from filing a lawsuit in federal court. There was a tight deadline to file a grievance, but I was able to file the grievance within 20 days of the last raid of my room. In the grievance, I demanded four things: 1) that my personal possessions be returned; 2) that I be allowed to live and present as the woman I am; 3) that staff address and refer to me with feminine pronouns and titles; and 4) that I be removed from the male dormitory. On May 1, Lambda Legal sent a demand letter to the CEO of The H Group with copies forwarded to my probation officer, my U.S. Senator, the regional director of the Bureau of Prisons, and the U.S. Attorney General.

On May 5, I was summoned by the facility director. She extended a formal apology on behalf of the facility. She informed me that all of my personal belongings would be returned, staff would refer to me using appropriate pronouns and treat me with respect, I would start eating meals with the other female residents, and I would be reassigned to a single room. Talk about a grand slam!

I felt proud and grateful. I felt that I had spoken up not only for myself but for transgender women everywhere. When The H Group was refusing to respect me, I felt as though they were forcing me to take a step backward. After my personal items were returned and The H Group staff started treating me as a woman, I found for the first time that I was able to concentrate on the real reason I was at The H Group – treating my substance abuse and preparing myself for my release.

I have since found a job and nice apartment in the area. I have a growing support network in the community, and I love the progress that I'm making with my therapist. I feel like my trust in God allowed me to trust the process and myself.

I hope that my story can help to further transgender rights in correctional institutions. What happened to me should never happen to anyone just because of who they are. I'm thankful I stood up for myself and thankful that Lambda Legal was able to help me.

- Donisha McShan

Reprinted, with permission, from Donisha McShan, "In My Own Words: Donisha McShan," Lambda Legal.

Young people in the juvenile justice system regularly struggle to continue their education. It is estimated that two-thirds of young people eventually drop out of school after being involved in the system. This should not be a surprise. When students are in the juvenile justice system, their educational studies are interrupted. Even if they are able to continue their studies while detained, returning to school is a challenge. For example, students have difficulty re-enrolling in school if they do not have adequate records to show what courses they completed while in a facility. Often, young people are pushed into alternative programs that lack academic rigor or supportive services.

SPOTLIGHT

Meeting Immediate Needs After Release

Being released from jail, prison, and immigration detention can be challenging. Time spent disconnected from family and friends—geographically, emotionally, and otherwise—means that many people feel isolated and alone. For LGBT people, some of whom have been rejected by family, there can be very few places to turn for immediate help with transportation, clothing, a place to stay, and more. But several programs have been created to help:

The **Transformative Justice Law Project of Illinois** offers Glam Team Re-entry Support. Through the program, volunteers assemble items to help transgender people make the transition from prison or jail to the outside. In some cases, volunteers may meet individuals at a prison or jail, or individuals can pick items up from the project's office. The project may also provide gender-appropriate clothing, accessories, or other items as needed.

In New York City, the **Queer Detainee Empowerment Project** provides direct assistance to individuals released from immigration detention, including housing through a host home program, clothing, employment assistance, help accessing medical care, and more.

Mariposas Sin Fronteras, based in Tucson, Arizona, works to assist LGBT individuals in immigration detention facilities in Arizona through visits, raising funds to make bond, and assisting released individuals with housing and other necessities.

Young people also face challenges in finding health care in their communities when they are released from the system. This is a particular problem for many LGBT young people who often face unique physical and mental healthcare needs. Succeeding in their re-entry may require them to find accessible, affordable and *competent* health care. Transgender youth, for example, often struggle to find physicians and counselors who can provide appropriate care. Another problem facing all young people leaving the system is a lack of continuity of care; even simply obtaining healthcare records once released can be a major challenge.

PROBLEM: INDEFINITE DETENTION THROUGH CIVIL COMMITMENT

In some instances, individuals who complete their sentences are not actually released. A court may conclude that an individual has a psychological condition that makes it difficult to control their behavior, putting them at higher risk of committing a crime in the future. The process of "civil commitment" has been used at high rates for individuals convicted as sex offenders. According to a 2012 survey, 20 states and the federal government have laws that permit civil commitment.[687] According to analysis by a researcher in Minnesota, 10% of adults who are held under civil commitment in Minnesota had been initially convicted as juveniles, despite the fact that many were found to have very little risk of reoffending as adults.[688]

Given that LGBT people, including youth, may be more likely to be convicted of sex-related crimes, both as a result of targeting by police and laws that heighten punishments for same-sex contact, the risk of civil commitment is heightened for LGBT people.



Impact of a Criminal Record

Regardless of whether an individual spent time in prison or was sentenced to community supervision, having a criminal record makes it more difficult to rebuild one's life. In many ways, individuals with criminal records continue to be punished by society even after they have completed their adjudicated sentences.[689] As described below, a criminal record creates barriers to fair treatment in many areas of daily life—obtaining public assistance, which can be essential for individuals just out of prison; obtaining stable, fair employment to earn a living wage; and accessing educational programs to improve employment opportunities.

A number of states have worked to reduce the roadblocks for people with criminal records. In contrast, the Legal Action Center identified the 15 states with the worst record when it comes to having laws on the books that are designed to make life more difficult for people with criminal records.[690] These states limit people with criminal records from accessing employment and public assistance, including housing; allow expansive public access to criminal records; limit voting rights and parenting rights; and restrict individuals' ability to obtain driver's licenses. Given the rise in incarceration and policing, the number of individuals in the United States who have barriers to economic opportunity, family stability, and public life because of these limitations has expanded immensely.[691]

For example, one study found that in the year following the release of a father, a family's income drops by 15% from what it was before he was incarcerated.[692] Similarly, researchers find a strong link between increased rates of incarceration and increased rates of poverty in the United States.[693] In a five-year study of women cycling in and out of prisons in Massachusetts, only three women out of 47 had found stable employment and secure, stable housing, and had avoided substance abuse five years after release.[694]

As detailed in this section, LGBT people with criminal records face numerous challenges, including:

- Difficulty finding housing;
- Inadequate health care after release;
- Difficulties finding employment;
- Ineligibility for public assistance;
- Overuse and misuse of sex offender registries;
- Educational barriers;
- Severed or denied parenting rights;
- Challenges reconnecting with family;
- Difficulty obtaining name changes; and
- Loss of political participation.

Story: Stopping the Revolving Door: Milan's Story

The discrimination that I faced on a daily basis as a transgender woman of color was intensified when I was incarcerated in a men's jail in New Orleans. With little to no interaction with sunlight and unsanitary, unlivable conditions, my days in jail felt doubled.

I was emotionally traumatized and mentally damaged going into jail, and even more so coming out of jail.

After my involvement with the prison system, I returned to a world where I still needed to protect myself from hate and violence in order to ensure my survival. During job interviews, when a potential employer realized I'm trans, the energy of the room changed, and immediately the interview went downhill.

To me it is so clear why there is such a revolving door for trans women of color who find ourselves in and out of jail as we persist to find security and meet basic needs.

I now fight endlessly for those who don't have the energy to fight anymore. I'm a founding member and volunteer of BreakOUT!, where I advocate for and provide mentorship for trans women of color. Through my journey and organizing career, I encourage others in my community to seek resources for survival and continue to plan for a life of challenges.

As Black trans women, we are constantly told that we are unworthy to be loved, unworthy to get an education, unworthy to get respect and to even live. My goal is to get girls like me to think: Who's going to hire me? How am I going to live, to survive? And to tell them, "I am here for you." I encourage others to do the same. Whether it's offering a shower, a place to stay, a meal or health care—anyone can offer support to a trans woman of color who faces experiences like mine.

- Milan, New Orleans, LA

Excerpted from Saneta deVuono-powell et al., "Who Pays? The True Cost of Incarceration on Families" (Ella Baker Center, Forward Together, and Research Action Design, September 2015).

PROBLEM: DIFFICULTY FINDING HOUSING

Finding safe, stable housing is one of the most immediate needs for individuals leaving correctional facilities, and one of the most difficult barriers to rebuilding one's life. It is estimated that in major urban areas, between 30-50% of individuals currently under community supervision, such as parole, are homeless.[695] In a 2014 survey of formerly incarcerated individuals, 79% reported being denied housing because of their criminal records.[696]

Residential facilities. The federal correctional system relies heavily on what are frequently called "halfway houses." These are residential re-entry centers or community corrections centers where inmates are housed prior to release. These centers provide housing, supportive services, and connections to job training or employment programs.[697] However, less than 1% of state inmates are released to these transitional housing options.

The Reentry Employment Opportunities Program (REO) is a federally funded program that supports programs for eligible youth and formerly incarcerated adults. The REO program provides pre- and post-release services, including work experience and internships, basic skills training, GED preparation, mentoring, and case management. In 2014, the program had a total national budget of $80 million.

Many of the organizations receiving REO funding are religiously affiliated.[698] While not an outright barrier for LGBT people, religious affiliation may present challenges, particularly if the organization is not supportive of or is hostile to LGBT people. LGBT people in these environments may face discrimination due to their sexual orientation or gender identity. LGBT youth, in particular, also are unlikely to receive advice or guidance on how to create healthy relationships with families and peers, how to navigate returning to school, or how to find support in their communities. This support is crucial to young people who were not "out" prior to being committed but are now out as LGBT and wish to be out in their home communities.

Private market rental housing. Formerly incarcerated individuals struggle to find private housing even if they can afford it. It is estimated that 80% of landlords use background checks to assess prospective tenants, and this unfairly disadvantages individuals with criminal records who pose no safety risk to other tenants.[699] The state of Oregon and several municipalities across the country have passed so-called "fair chance" housing policies that prohibit discrimination based on an arrest record or certain criminal convictions. Some of these laws also require landlords to state why they are denying housing, which gives prospective tenants an opportunity to address the results of a background check.[700]

This discrimination is compounded by the high levels of housing discrimination reported by LGBT people in general (as described on pages 28-31).[701] No federal law explicitly prohibits discrimination in housing based on sexual orientation or gender identity, and only 20 states and the District of Columbia have laws outlawing such housing discrimination. In federally funded housing programs, however, discrimination based on sexual orientation, gender identity, and family status is prohibited.

Public housing and rental assistance. Federal housing assistance programs are administered by public housing agencies. These federal programs include Section 8, which provides financial assistance to individuals for housing on the private market. However, this housing assistance has broad restrictions for those with criminal records. For example:

- Federal law explicitly excludes—for life—individuals on a state sex offender registry from receiving federal housing assistance of any kind.[702]
- Individuals who have been convicted of manufacturing or producing methamphetamines on federal assisted housing sites are ineligible for assistance.[703]
- If an individual was evicted from federally assisted housing for drug-related criminal activity, they cannot receive assistance for three years following the conviction.[704]
- Anyone currently engaged in illegal drug use or whose use of a substance may threaten the health or safety of other residents is also ineligible.[705]

Federal law also allows individual housing agencies great flexibility in developing their own policies. As a result, in a majority of states, local housing agencies make it virtually impossible for an individual with a criminal background, or even a drug charge, to obtain housing assistance. An entire family can be evicted if a single member is charged with a drug offense, even if the charge is dropped.[706] In 2011, the U.S. Department of Housing and Urban Development (HUD) issued guidance

to local public housing agencies encouraging more "flexible, reasonable admissions" policies for formerly incarcerated individuals. The guidance was issued in recognition of the immense challenges individuals with criminal records face in securing stable, safe housing and the impact of homelessness and housing instability on rates of recidivism.[707] However, according to a 2014 survey, nearly one in five families still faced eviction, were denied housing, or were unable to qualify for housing assistance once a formerly incarcerated family member rejoined their family.[708] Guidance released in November 2015 further clarified that public housing agencies may not use arrest records to deny housing or evict tenants and that agencies are not required by federal law to automatically deny housing or evict individuals if anyone in their household engages in criminal activity. Importantly for LGBT individuals with a criminal record, HUD has also issued regulations ensuring equal access to federally funded housing programs regardless of sexual orientation, gender identity, or marital status.[709]



Individuals in detention rely on the juvenile justice facility, jail, prison, or immigration detention facility to provide them with the health care they need. This can make it challenging to ensure continuity of care and treatment of chronic conditions upon release.

Many formerly incarcerated individuals qualify for government assistance in obtaining health care, such as through Medicaid. However, they may not be aware that they qualify—especially because they were ineligible while in detention. Adding to the challenge, most states terminate an individual's enrollment in Medicaid following a period of incarceration, typically longer than 30 days, requiring them to reapply upon release.[710] This application process can take several weeks (or months), causing a gap in coverage and care.

Some states have allowed individuals who are incarcerated to put a hold on their Medicaid eligibility, rather than being dropped entirely, which allows individuals to more quickly receive benefits upon release, reducing gaps in care.[711] In addition, some states and localities have worked to address healthcare needs as part of re-entry planning. For example, in Cook County, Illinois, which includes Chicago, individuals held in the jail are screened for eligibility for the county's Medicaid expansion program. Individuals who are held pending disposition of charges and those who are preparing for release can obtain assistance in enrolling in Medicaid. Of the applications submitted through this partnership with the sheriff's office, local nonprofits, and the county health system, 94% of applications had been approved.[712]

Delays in Medicaid enrollment can mean missed medication, lack of urgently needed medical care, and, particularly for individuals with mental health concerns, increased likelihood of future criminal justice involvement.[713] Formerly incarcerated individuals are 12 times more likely to die from health problems in the first two weeks after release when compared to the general population—most frequently from drug overdose or cardiovascular disease.[714]

When individuals aren't able to afford medicine or do not have a regular physician, the gaps in health care or medication regimens can pose serious risks, particularly for individuals with HIV. Research shows that among men and women with HIV, women were less likely than men to access continuous HIV care in the six months following release from jail, resulting in increased health risks.[715] Of individuals released from prison in one study, only 5.4% had filled their antiretroviral prescriptions within 10 days of release, 18% within 30 days, and only 30% within 60 days.[716]

Continuity of coverage and care is also important for transgender individuals who are taking hormones and receiving other transgender-related health care. Medicaid exclusions for transgender-related care in many states mean that individuals may have received care while in prison (although as discussed in Section 2, the availability of this care should not be overstated), but are unable to access appropriate health care upon release.



As described on pages 25-26, LGBT people frequently experience employment discrimination because of who they are or whom they love. This is particularly problematic for LGBT people with criminal records, who also face barriers to stable employment because of their records. Not only does the difficulty of finding employment create financial challenges for individuals and their families, but a lack of stable employment is the single greatest predictor of recidivism among individuals with criminal records.[717]

Thus, the inability to obtain a job due to a criminal record contributes to the cycle of incarceration.

- In a three-year study following people released from prison, individuals with one year of employment had a 16% recidivism rate over three years, compared to 52% for all individual released at the same time.[718]
- It is estimated that imprisonment reduces an individual's annual wages by 40% and results in a nearly four times greater loss in aggregate lifetime earnings for black men than for white men.[719]
- In a 2014 survey of formerly incarcerated individuals, 76% said they had a very difficult or nearly impossible time finding employment, and two-thirds (67%) were unemployed or underemployed five years after release from prison.[720]

Individuals with criminal records also struggle to obtain occupational licenses, such as commercial driver's or pilot's licenses and commercial hunting or fishing licenses, or certifications for particular jobs, such as nursing.

Discrimination based on criminal records. Given the racial imbalances in the U.S. criminal justice system, workers of color—most often black and Latino men, including those who are LGBT—are more substantially impacted when employers improperly rely on criminal records to influence hiring decisions. Of all nonworking men between the ages of 24 and 54, 34% are men with criminal records.[721]

Research has also uncovered the particular barriers to re-entry for formerly incarcerated women. In one study, of women submitting resumes, women with criminal records were least likely to receive positive responses; and African American women were the most likely to face barriers related to having a criminal record.[722]

Many employers require that job applicants undergo a background check, including a criminal record check, before they are offered employment. Also, in many job applications, individuals are asked whether they have a criminal record. Being asked to check yes or no on the "box" where this question is asked discourages individuals with records from applying for jobs. It also narrows the pool of otherwise qualified job applicants. In one study, employers disqualified applicants in 50% of cases solely based on the presence of a "checked box." Anger over the impact of these practices on people who were incarcerated and who are struggling to rebuild their lives has led to a nationwide "Ban the Box" movement.

A patchwork of federal and state laws provides guidelines for employers on how and when they can use these background checks to influence employment decisions. However, there is evidence that many employers use a criminal record of any kind as an automatic reason to disqualify candidates, even in situations where the information generated during the background check is not directly related to the job for which someone is applying.[723] For example, a drug possession conviction when an individual was 18 may have little bearing on that individual's ability to do construction work at age 40.[724] Indeed, there is little evidence that the existence of a criminal record is at all predictive of an individual's likelihood to commit a crime at work, let alone their potential job performance.[725]

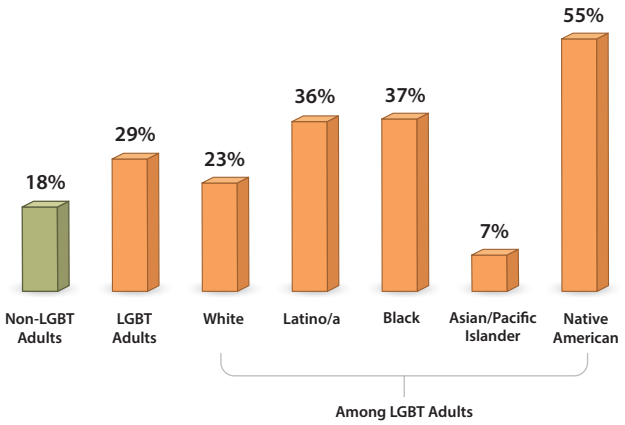
A 2012 survey by the Society for Human Resource Management found that 69% of organizations reported conducting criminal background checks on all job candidates, and 18% completed checks on some candidates.[726] A slim majority of these organizations (58%) allowed job candidates to explain the results of the criminal background check before a decision was made about whether to hire the applicant.

Among applicants with criminal records, employers often give a greater benefit of the doubt to white applicants. The Equal Employment Opportunity Commission (EEOC) has noted that criminal background checks and their use in hiring decisions have a disparate impact on applicants of color. In a study of applicants with criminal records, only 5% of African Americans with a criminal record received a call back from a potential employer (as did 14% of African American applicants without a record) compared to 17% of white applicants with the same criminal record (and 34% of white applicants without a record).[727] These are dismal numbers for both groups, but show a clear disadvantage for black applicants.

The EEOC recently released guidance to employers that use of an individual's criminal history in making employment decisions, in some instances, violates the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964.[728] The EEOC's guidance recommends that employers limit their use of criminal background checks when there is no compelling business necessity. In November 2015, President Obama issued an executive order directing the federal government's hiring agencies to delay inquiries into criminal histories until the latter stages of the hiring process.

As of 2015, 18 states and over 100 cities and counties have adopted "fair chance" policies that remove questions about criminal history from job applications for most government jobs.[729] When these questions are removed from job applications, all candidates are able to be judged based on their qualifications. Concerns about criminal background can then be more appropriately addressed during interviews, reference checks, or background checks. In addition, seven states have passed "Ban the Box" legislation that limits employers' ability to ask about a candidate's criminal background on employment applications.[730] An analysis of Hawaii's 1998 "Ban the Box" legislation found that it reduced the likelihood that someone would be charged with a subsequent felony by 57%.[731]

Figure 43: LGBT People Report High Rates of Food Insecurity
Percent Reporting Food Insecurity in the Past Year



Source: Gary J. Gates, "Food Insecurity and SNAP (Food Stamps) Participation in LGBT Communities" (The Williams Institute, February 2014).

PROBLEM: INELIGIBILITY FOR PUBLIC ASSISTANCE

Research shows that LGBT people are more likely to rely on public assistance, such as the federal Supplemental Nutrition Assistance Program (SNAP), than non-LGBT people. SNAP, formerly known as food stamps, provides low-income individuals with assistance in purchasing food based on household size and income. SNAP is a critical resource for individuals and families across the country who experience food insecurity, including many LGBT people, as shown in *Figure 43*.

- More than one in four (29%) LGBT people reported being unable to feed themselves or their families during the past year, compared to 18% of non-LGBT adults.[732]
- LGBT people of color reported higher rates of food insecurity than the broader LGBT population.[733]
- The 2006-2010 National Survey of Family Growth found that one in five LGB adults received SNAP in the previous year, as did 43% of LGB adults raising children and 26% of same-sex couples raising children.

Given their high reliance on SNAP and research showing that LGBT people are disproportionately likely to be incarcerated, prohibiting individuals with a criminal record from receiving this kind of government assistance likely has a disproportionate effect on the ability of LGBT people to feed themselves and their families.

Other programs providing important assistance to individuals and families in poverty include Temporary Assistance for Needy Families (TANF), which provides direct cash assistance, child care, education and job training, transportation assistance, and other services to low-income individuals with children. In addition, housing assistance programs provide vouchers and other support to individuals and families so they can find affordable, stable housing. SNAP, TANF and housing assistance are all joint federal-state programs. Federal laws govern some aspects of the programs, but states can also implement their own policies.

All federal programs have limitations for individuals with a criminal record. TANF and SNAP, for example, have a federal lifetime "drug felon ban," meaning individuals with a drug-related felony cannot receive assistance at any point in their life. Research shows that the TANF drug felon ban disproportionately harms women, children, and communities of color.[734] It is estimated that as many as 92,000 women in 23 states have been or will be unable to access TANF assistance because of the ban.[735]

Many states have used their discretion within the program to opt-out or modify the TANF ban at the state level. As of 2011, 13 states had opted out of the drug felon ban for TANF cash assistance, 26 had modified the ban, and 12 states still had a full ban on TANF cash assistance. SNAP has similar drug felon limitations, but the majority of states have modified or eliminated the ban.[736] However, SNAP remains inaccessible to many formerly incarcerated individuals, including those who lack stable housing or a mailing address and those without a state-issued ID.[737]

PROBLEM: OVERUSE AND MISUSE OF SEX OFFENDER REGISTRIES

Labeling individuals convicted of certain crimes as "sex offenders" originated out of public fear about sexual crimes, primarily against children.[738] Between 2007 and 2008, alone, more than 1,500 bills were proposed in state legislatures aimed at sex offenders.[739] The laws, in general, do two things. First, they increase sentences for certain crimes under sex offender laws.[740] Second, they place limitations on individuals convicted of these offenses even after they serve their sentence. These include limitations on where someone can or cannot live, whether they have to receive ongoing supervision, and whether they must register or be tracked using electronic monitoring.[741] Parole and probation officers are often notified of someone's sex offender status, further allowing officers to monitor and limit their behavior.

Sex Offender Status

Laws labeling people as sex offenders, requiring registration and monitoring, and imposing limitations on these individuals often are overly broad and are applied in many situations where they shouldn't be. Examples may include when someone is charged with public indecency for an offense such as urinating in public. Under the parole regulations in some states, if that person is convicted and sentenced to supervision or incarceration for a completely unrelated crime, the previous offense could be used as justification to put that person on sex offender status. This would bring additional restrictions and limitations as part of parole. For example, parolees with sex offender status may have to undergo polygraph testing and other invasive forms of questioning.

As described in Section 1, discriminatory laws and policing strategies mean that sex offender laws unfairly impact LGBT people. An LGBT person may have been convicted in the past of a crime that carried sex offender status, such as consensual sex between people of the same sex, even though these convictions are now unconstitutional. The following are among the other situations in which LGBT people can unfairly end up with sex offender status:

- Some state laws criminalize consensual sex among some LGBT youth, but not youth in different-sex couples, such as Texas (as described on pages 40-41).
- Some HIV criminalization laws require sex offender status or listing an individual on a sex offender registry (page 37).
- Policing strategies target men who have consensual sex with men (see pages 39-40).
- Some laws allow law enforcement to cite the possession of condoms as evidence of solicitation or prostitution (see page 50), and some prostitution-related convictions carry with them sex offender status.
- Many laws unfairly target transgender women. For example, in Louisiana some LGBT people, mainly transgender women of color, report being arrested, charged, and convicted of soliciting "crimes against nature." This is a separate and more serious charge than general solicitation, and multiple convictions for crimes against nature require registration as a sex offender. According to a report from the Department of Justice, people convicted of crimes against nature comprise 40% of the Orleans Parrish sex registry.[742] Of those convicted, 80% were African American.[743]

Sex Offender Registries

Some convictions may require individuals to register as sex offenders for a specific period of time after release or for the rest of their lives. State laws on this issue differ widely, with listings on the sex offender registry ranging from five years to life.[744] Individuals can petition to be removed from a registry after a certain period of time, depending on the state and the conviction.

In general, these laws exact an enormous toll on individuals. Not only does being on the registry make it difficult to rebuild one's life, but it may actually lead an individual into other areas of crime. Furthermore, research finds that the broad application of these laws has done little to curtail sexual abuse and assault, particularly of minors.[745] Nor have these laws reduced recidivism among individuals labeled as sex offenders.[746]

Post-Release Restrictions

In many instances, convictions under sex offender statutes carry other requirements that have long-lasting impacts on the ability of people to rebuild their lives. Restrictions related to sex offender status may include: checking in at set intervals; indicating whenever one moves or, if an individual is homeless, checking in more frequently; or sharing car registration information. Violation of the terms of an individual's release can

result in a criminal charge and potential re-incarceration (see pages 121-122 for discussion on violating parole or release). Parole officers set the conditions of parole and have great discretion when deciding if an individual is meeting those conditions. For example, transgender people may not be permitted to dress in accordance with their gender identity.

Additionally, an individual may have restrictions on where they can live, such as not within so many feet of a church, park, school, or other place where children may gather; whether they can use the internet; and where they can work. In some jurisdictions, registration as a sex offender can prohibit an individual from working as a plumber or a land surveyor, for example. In many areas, the limitations on where an individual can live can essentially push people into homelessness—they are unable to find suitable, affordable housing that meets the conditions of their conviction. In 2016, federal legislation was passed that created a special designation on U.S. passports for some individuals with sex offender status. What's more, these individuals are less likely to receive the specialized services they need to successfully re-enter society after spending time in prison.[747]

The implications of registration are long lasting. It can be difficult to get and maintain a job, adding to the economic insecurity faced by LGBT people and people who have been involved in the criminal justice system.

While the motivation to keep communities safe from people who might pose harm to children is understandable, the misuse and overuse of sex offender registries can ruin the lives of many people who pose no threat to their community, and whose criminal records are the result of discriminatory and overly aggressive policing.



Education is a building block in creating a stable, financially secure life. Statistics show that many individuals who have interacted with law enforcement and the criminal justice system have lower educational attainment. As part of correctional facility programming, some inmates have access to GED or high school equivalency programming, or can take classes that count toward obtaining an associate's or bachelor's degree. But people exiting the criminal justice system still face considerable barriers to pursuing higher education. These barriers can be even more pronounced for LGBT people. Given the harassment, violence, and disproportionate discipline that LGBT students experience in educational settings, combined with the high rates of discrimination they experience in the workplace, programs that allow LGBT people with a criminal record to pursue education are incredibly important.

Accessing student financial aid. Obtaining a college education is very expensive. Many students access federal grants, such as Pell grants, which do not need to be repaid, and federal loans such as Direct Loans or Perkins Loans. Other students participate in the Federal Work-Study program, which provides on-campus jobs to students, allowing them to earn money to pay for their education expenses. There are also several federal tax credits that can help offset the cost of education, such as the American Opportunity Credit and the Hope and Lifetime Learning Credits.

However, beginning in 2001, any student convicted of a drug offense became ineligible for federal student financial aid for one or two years post-conviction, depending on whether the student had been convicted before.[748] The law was amended in 2006 to prohibit only those students who were convicted of a drug-related felony or misdemeanor while receiving federal student aid.[749] Cutting off an individual's ability to access higher education—at the exact moment when they are most in need of assistance to rebuild their lives—is counterproductive and shortsighted. Research finds that excluding individuals with drug convictions from student aid has reduced the probability that such students will attend college immediately after graduating from high school.[750] Students with drug convictions took, on average, two-and-a-half years longer to enroll in college than students without such convictions.[751]

Applying to college. Many colleges ask applicants about their criminal history, and approximately 20% of colleges complete background checks on applicants.[752] This can discourage individuals with criminal records from even applying to college. At the same time, it leaves applicants who do apply vulnerable to discrimination by colleges and universities; they may be entirely unaware of why they were denied admission. Research shows that some schools impose conditions and restrictions on a student's attendance based on a prior criminal record, and there are even schools that make note of a student's background on their transcript.[753]

PROBLEM: PARENTING RIGHTS SEVERED OR DENIED

Individuals with certain criminal convictions are barred by federal law from fostering or adopting children. The federal Adoption and Safe Families Act of 1997 requires that agencies conduct criminal record checks on prospective parents or risk losing federal funding. Not surprisingly, the law recommends a lifetime bar on fostering or adoption by individuals with child-related convictions (such as child abuse or neglect, crimes against a child, spousal abuse) or violent crimes. However, people with drug-related felonies are banned for five years, while 13 states explicitly ban *all* people with criminal records from becoming adoptive or foster parents. A prospective 35-year-old parent could therefore be banned from adoption for life because they possessed marijuana at age 22.

These restrictions are particularly detrimental for LGBT parents who are more likely to lack legal ties to their children, since both parents in a same-sex couple are not generally biological parents. If a non-biological LGBT parent could not secure legal ties to the couple's children prior to being convicted, or became a parent after being convicted, these restrictions can make it impossible to obtain second-parent adoption.[754] Some states require applicants for stepparent adoption to undergo a criminal background check, but others do not.[755] If they are not legally recognized as a parent, LGBT parents can jeopardize their ability to care for their own children, ensure a child's access to safety-net programs, and risk losing any connection to the child in the case of separation from or death of the child's legally recognized parent.

Many people who have been incarcerated have families and children. In California, 90% of women in state prisons are mothers.[756] Retaining parental rights after being incarcerated is extremely difficult even for those parents with legal ties to their children,[757] and gaining those ties can be virtually impossible for individuals who lack legal parenting ties. Given the high cost of formalizing an adoption and the discrimination that LGBT people still face across the country, obtaining a second-parent or stepparent adoption can still be difficult. As a result, LGBT people who have been incarcerated and who were raising children at the time of their incarceration can be cut off from their children permanently and with little legal recourse.

PROBLEM: CHALLENGES RECONNECTING WITH FAMILY

It is estimated that in 2015, 33 to 36.5 million children in the United States have at least one parent with a criminal record; this is nearly half of children.[758] Individuals recently released from prison or jail have not been a part of day-to-day family activities and have likely missed major milestones in their families' lives. Reconnecting with family and reestablishing those relationships can be challenging. Many LGBT people, particularly those who have experiences with the criminal justice system, have a history of family rejection. After time spent in the criminal justice system, many individuals with criminal records find their family relationships even more strained. For LGBT people with criminal records, lack of traditional family support, increased reliance on support networks that are not based on blood ties, and lack of legal parental recognition can make re-entry and rebuilding one's life even more difficult. Narrow definitions of family, which rely on legal relationships, may mean that LGBT people and their families aren't sure if they can participate or may be excluded.

Research shows that adults who had more contact with family members while in prison and who report positive relationships with their families were less likely to be arrested again or be re-incarcerated.[759] Families provide much-needed support for people exiting the criminal justice system; many people recently released from a correctional facility rely heavily on family for economic support—housing, food, and financial assistance. In a study of 740 formerly incarcerated men conducted by the Urban Institute, 66% indicated their primary source of income two months after release was family and friends.[760]

PROBLEM: DIFFICULTY OBTAINING NAME CHANGES

Frequently transgender people seek a legal name change. It is an important step in living their lives and bringing their legal identities in line with the gender that they live every day. The process for obtaining a legal name change varies from state to state and even within states. However, states will sometimes place restrictions on the ability of people to change their names because of the fear that they are doing so in

order to commit fraud or evade law enforcement. For transgender people with criminal records, these restrictions can create hurdles to rebuilding one's life, even though fraud or evasion is not the motivation for a legal name change. For individuals on probation or parole, for example, a judge may require written consent from a probation or parole officer before an individual may change their name.[761] Adding to the challenges, name changes are granted by individual judges. Given a judge's own biases and lack of understanding, they may be unwilling or more hostile toward a transgender individual seeking a name change, particularly if the individual has a criminal record.

PROBLEM: LOSS OF POLITICAL PARTICIPATION

When LGBT individuals return to their communities after spending time in prison, they are frequently excluded from making decisions about the future of their communities—through restrictions on identity documents, voting, serving on juries, and holding public office. Combined with the pervasive stigma and discrimination experienced by LGBT people in general, these barriers can leave them feeling less invested in and excluded from their communities.

Obtaining a state-issued ID. Individuals who have spent time in prison need assistance obtaining current identity documents, which are crucial for securing housing, opening a bank account, getting a job, and obtaining health benefits. Many individuals leaving prison do not have identity documents, as they have been lost during the criminal justice process or are out of date. In addition, some states automatically suspend or revoke driver's licenses for drug-related offenses, and 11 states do not even offer a restricted license for these individuals to work, attend drug treatment, or obtain an education.[762]

Ability to vote. It is estimated that 5.9 million Americans are unable to vote because of laws disenfranchising people with felony convictions.[763] Felony disenfranchisement laws impact local, state, and federal voting rights. These laws make it more difficult for people with criminal records to be connected to their communities and feel invested and empowered to make a difference. For individuals who are already impacted by discriminatory laws—such as LGBT people, people with disabilities, older people, and people of color—the inability to vote and perhaps have an influence on laws and policy can be especially frustrating.

Only two states (Maine and Vermont) have no limitations on voting by individuals convicted of a crime.[764] In 12 states, individuals with felony convictions are unable to vote while in prison or on probation and even once they have served their sentence. In the remainder of states, individuals have their right to vote limited for a period of time, such as while they are serving time in prison; while they are in prison and on parole; or while they are in prison, on parole, and probation.

Even in states where individuals with criminal records can apply to restore their right to vote, there are disparities in the application of these laws. Despite the fact that two-thirds of people in Alabama's prisons are black, nearly two-thirds of individuals whose voting rights have been restored in recent years have been white.[765] In Alabama, 30% of voting-age black men lack the right to vote because of criminal records.[766]

Serving on a jury. Individuals convicted of a felony are unable to serve on a federal jury. However, in many states once an individual's civil rights have been restored (such as after the completion of a sentence), individuals can serve on state juries.[767]

Elected office. Some states have limitations on individuals with a criminal record serving in public office. This can further limit an individual's abilities to make change in the local community. Given the low representation of LGBT people in public office, this limitation is also an added barrier for LGBT people seeking to represent their communities.

Recommendations

The collateral damage of having a criminal record can make rebuilding one's life incredibly challenging. Probation, parole, and re-entry programs frequently lack basic LGBT competency and rarely provide the assistance LGBT people need to successfully find economic, physical, and emotional security and health. For LGBT people, added discrimination and stigma related to being LGBT can make it even more difficult to find employment, housing, and other basic necessities. In all efforts to improve the lives of formerly incarcerated people, service providers, advocates, and organizers should center the experiences of formerly incarcerated people themselves, including hiring, training, and highlighting them.

Include nondiscrimination provisions in all government-funded re-entry programs.

1. Federal, state, and local governments should require all organizations receiving government funding for re-entry programs to include nondiscrimination provisions that enumerate race, sex, sexual orientation, and gender identity, among other characteristics.
2. Legislators should pass nondiscrimination legislation that explicitly prohibits discrimination based on sexual orientation and gender identity at the federal, state, and local levels in employment, housing, and public accommodations to ensure equal access to all programs and services.

Ensure that prison and jail re-entry programs provide a holistic assessment of an individual's needs.

1. Parole and probation officers and staff in prisons and re-entry facilities should assess needs including access to safe, affordable housing; competent, affordable health care; educational resources; employment; and more.
2. Program staff should receive training and be aware of the added barriers LGBT people face in accessing many of these services and programs.
3. Federal, state, and local jails, prisons, and detention facilities should make supplementary resources available for LGBT people as part of release planning.
4. As part of pre-release planning, federal and state departments of corrections should connect incarcerated people with Medicaid and other public assistance benefits. States should suspend Medicaid coverage, as opposed to terminating coverage, for incarcerated individuals to improve health insurance coverage upon release.

Employ wraparound assessments to help youth succeed following release from juvenile justice facilities.

1. Juvenile justice facility staff and child welfare staff should engage youth, particularly LGBT youth, in re-entry planning, as well as engage community members in supporting youth upon release.
2. Juvenile justice facility staff and child welfare staff should connect youth to supportive services including assistance finding health care, navigating relationships with family and peers, reconnecting with schools, and more.

Remove barriers that people with criminal records, including LGBT people, face when it comes to finding employment, housing, health care, and participating in civic life.

1. Legislators should pass federal, state, and local nondiscrimination laws prohibiting discrimination based on sexual orientation and gender identity.
2. Congress should repeal the federal ban on TANF cash assistance and SNAP food assistance for individuals with drug-related felony convictions. In the meantime, states should exercise their ability to extend such benefits.
3. States should pass fair change hiring legislation limiting employers' consideration of criminal records.
4. Congress should pass legislation prohibiting the federal government and federal contractors from requesting criminal history information until a conditional offer has been extended.
5. Employers should incorporate recent EEOC guidance about the consideration of criminal records during employment decisions into their policy handbooks and hiring practices.
6. Federal, state, and local housing authorities should reform restrictions on accessing public housing for individuals with criminal records. Specifically, the federal Department of Housing and Urban Development should release additional guidance making clear when and how public housing agencies and landlords should consider an applicant's criminal history. States and cities should pass fair housing legislation and policies to limit the use of criminal history by private landlords.
7. Congress should reinstate Pell grant access for currently incarcerated individuals, allowing them to use student aid to pursue higher education.
8. Federal, state, and local legislators should increase funding for educational and vocational training programs within prisons and jails.
9. Congress should remove bans on educational assistance for students with drug convictions, including for federal student loans and educational tax credits.

10. Colleges and universities should remove questions about criminal records from application materials and revise admissions policies to ensure they are not overly broad or exclusionary.

Revise laws governing the use of sex offender status and registries to better balance community safety and the rehabilitation of individuals convicted under sex offender statutes.

1. Jurisdictions should not impose sex offender status and registration on a discriminatory basis, especially against LGBT people and people of color.
2. Jurisdictions and lawmakers should review implementation of sex offender registration laws to ensure that consensual conduct among LGBT youth does not result in mandatory sex offender registration.
3. Legislators should revise sex offender laws to ensure stricter guidance for parole and probation officers to ensure that status restrictions and restrictions following release are tailored to and match an individual's risk to re-offend.[768]

Expand opportunities for individuals to clear their records.

1. States pass legislation allowing individuals to expunge their records, including to clear non-convictions, misdemeanors, and less serious felonies.
2. Resources for legal representation, such as funding for legal aid and expungement clinics, should be expanded by federal, state, and local governments, to expand the accessibility of expungement.

CONCLUSION

America's criminal justice system is under a spotlight. High-profile instances of police misconduct, combined with high rates of incarceration for nonviolent offenses, and shocking rates of recidivism for formerly incarcerated people, have made criminal justice reform the rare issue where there is widespread, bipartisan agreement that change is needed.

- In 2014, seven in ten Americans said they thought the criminal justice system needed major improvements or a complete redesign.[769]
- Half of voters agree that there are too many people being held in prisons.[770]
- Of young people ages 18 to 29, fewer than half think the legal system treats people fairly across race and ethnicity; only 27% of black youth, 37% of Latino/a youth, and 41% of white youth think the system treats people of different races and ethnicities fairly.[771]
- Almost half (46%) of Americans think that society would be better served by investing more deeply in efforts to rehabilitate people convicted of crimes.[772]

Based on these beliefs, there is broad support for rethinking whether prisons and the criminal justice system are effective at addressing the underlying causes of crime and helping individuals turn their lives around.

As the American people and their elected leaders continue to discuss these issues, it is crucial to consider the experiences of LGBT people before, during and after their encounters with the criminal justice system. As we have described in this report, LGBT youth and adults face unique challenges that disproportionately increase their likelihood of run-ins with law enforcement and having their lives criminalized. They also are overrepresented in correctional and detention facilities, they often are treated violently and unfairly while in detention, and they face unique challenges rebuilding their lives after serving time.

"Fixing" America's criminal justice system means fixing it for everybody, including nine million LGBT people across the nation. A "fix" would also mean thinking more broadly about what we can do at all levels to reduce discrimination and increase opportunity and equality—so that LGBT people, people of color, and other frequently marginalized populations can live more safely and securely with the understanding that law enforcement and criminal justice systems exist for protection, not discrimination.

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Tara Huffman, Director, Criminal and Juvenile Justice Program, Open Society Foundations

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Chai Jindasurat, Co-Director of Community Organizing and Public Advocacy, NYC Anti-Violence Project

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Suraj Madoori, Manager, HIV Prevention Justice Alliance, AIDS Foundation of Chicago

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Andrea J. Ritchie, Senior Soros Justice Fellow, Co-Author *Queer (In)Justice: The Criminalization of LGBTQ People in the United States*

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Salma Saley Safiedine, Director, Racial Justice Improvement Project, American Bar Association

Valerie Schmitt, Human Trafficking Advisory Specialist, Polaris Project

Terry Schuster, Senior Associate, Pew Public Safety Performance Project

Amy Schwartz, Senior Staff Attorney, Domestic Violence Unit, Empire Justice Project

Ryan Shanahan, Research Director, Center on Youth Justice, Vera Institute of Justice

Jama Shelton, Deputy Executive Director, True Colors Fund

Melissa Sklarz, Board Member, Empire State Pride Agenda

Nathan Smith, Director of Public Policy, GLSEN

Dean Spade, Associate Professor of Law, Seattle University School of Law

Sharon Stapel, (former) Executive Director, NYC Anti-Violence Project

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Wesley Ware, Co-Director, BreakOUT!

Amy Whelan, Senior Staff Attorney, NCLR

Shannan Wilber, Youth Policy Director, NCLR

Geoffrey Winder, Co-Executive Director, GSA Network

Ming Wong, Supervising Helpline Attorney, NCLR

Judy Yu, Associate Director of LGBTQ Issues, Juvenile Justice Project, Correctional Association of New York

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KEY RESOURCES

This report cites many groundbreaking and influential reports, policy guides, and best practice documents. While not meant to be an exhaustive list, these key resources, which provide more detailed discussion of the issues raised in this report, offer recommendations for federal, state, and local level policy change, and model best practices for community education and engagement.

A Guide to Juvenile Detention Reform: Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System
Annie E. Casey Foundation, authored by Shannan Wilber at the National Center for Lesbian Rights

Released in late 2015, this guide offers detailed recommendations and examples of how sites serving youth in the juvenile justice system can better meet the needs of LGBT youth and improve the safety and well-being of such youth. The guide covers a wide range of policies and practices—from broad organizational measures such as staff training and nondiscrimination policies, to specific practices such as talking with youth about sexual orientation and gender identity and making individualized classification and housing decisions.

http://www.nclrights.org/wp-content/uploads/2015/09/AECF_LGBTinJJS_FINAL2.pdf

A Quick Guide for LGBTI Policy Development for Youth Confinement Facilities
The National Institute for Corrections

This guide is designed to help agencies and facilities develop a comprehensive response to working with LGBTI youth in custody. It provides an overview of the important issues that agencies should consider when working to house and treat LGBTI youth in a way that is safe and consistent with an agency's mission, values, and security guidelines.

https://s3.amazonaws.com/static.nicic.gov/Library/026701.pdf

A Quick Guide for LGBTI Policy Development for Adult Prisons and Jails
The National Institute for Corrections

This guide is designed to help agencies and facilities develop a comprehensive response to working with LGBTI inmates. It provides an overview of the important issues that agencies should consider when working to house and treat LGBTI inmates in a way that is safe and consistent with an agency's mission, values, and security guidelines.

https://s3.amazonaws.com/static.nicic.gov/Library/026702.pdf



A Roadmap for Change: Federal Policy Recommendations for Addressing Criminalization of LGBT People and People Living with HIV
Catherine Hanssens, Center for HIV Law and Policy; Aisha C. Moodie-Mills, Center for American Progress; Andrea J. Ritchie, Streetwise and Safe (SAS); Dean Spade, Center for Gender and Sexuality Law, Columbia Law School; Urvashi Vaid, Center for Gender and Sexuality Law, Columbia Law School

Published in May 2014, *A Roadmap for Change* is a comprehensive publication that offers federal policy recommendations to address the criminal justice issues that impact LGBT people and people living with HIV (PLWH). The document outlines policy initiatives that address the following issues: discriminatory and abusive policing practices, improving conditions for LGBT prisoners and immigrants in detention, de-criminalizing HIV, and preventing LGBT youth from coming in contact with the system in the first place. It also identifies many areas of opportunity for the federal government to support improved outcomes for LGBT people and eliminate some of the systemic drivers of incarceration.

http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf



Ending and Defending Against HIV Criminalization: A Manual for Advocates, Volume 3, This Is How We Win: A Toolkit for Community Advocates
Positive Justice Project and the Center for HIV Law and Policy

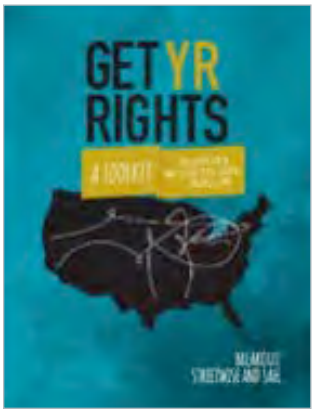
This toolkit is a step-by-step guide with resources for state advocates to modernize state laws related to HIV criminalization. It provides quick-reference resources (e.g., HIV criminalization talking points and references), links to longer reference materials (including, links to HIV criminalization resources by issue/subject), and guidance on the legislative process and advocacy strategy prepared by The Center for HIV Law and Policy.

http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Community%20Advocacy%20Toolkit.pdf

Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts
National Juvenile Defender Center, National Center for Lesbian Rights, and Legal Services for Children

This report examines the experiences of LGBT youth in juvenile courts across the country. The report is based on information collected from 414 surveys and 65 interviews with juvenile justice professionals, including judges, defense attorneys, prosecutors, probation officers, detention staff, and other juvenile justice advocates; focus groups and interviews of 55 youth who possess relevant firsthand experience; and an extensive review of relevant social science and legal research findings.

http://www.equityproject.org/wp-content/uploads/2014/08/hidden_injustice.pdf



Get Yr Rights: A Toolkit for LGBTQTS Youth and LGBTQTS Youth-Serving Organizations
BreakOUT! And Streetwise and Safe

This toolkit is a resource for LGBT youth and youth-serving organizations focused on profiling, policing, and criminalization. Get YR Rights shares the ways people directly impacted by profiling, policing, and criminalization have made these kinds of changes in their communities.

http://getyrrights.org/wp-content/uploads/2015/02/GYR-Toolkit-FINAL-02-05-2015.pdf

Know Your Rights: Laws, Court Decisions, and Advocacy Tips
ACLU and NCLR

This guide identifies laws, court decisions, advocacy tips, and other resources that may be helpful for adult transgender prisoners, family members, and advocates. *Know Your Rights* includes the following sections: the Prison Rape Elimination Act, Safety and Protection from Violence, Medical Care, Housing and Administrative Segregation, Searches and Privacy, Safely Preserving/Enforcing Your Rights, and Resources (which includes lists of organizations and helpful documents).

https://www.aclu.org/files/assets/121414-aclu-prea-kyrs-1_copy.pdf

Model Standards: Sexual Health Care for Youth in State Custody
The Center for HIV Law & Policy and Teen SENSE

Model Standards: Sexual Health Care for Youth in State Custody outlines sexual health standards for youth in state custody. Informed by a comprehensive review of existing resources and inclusive practices and policies, these standards reflect minimum requirements that facilities should meet in order to appropriately address the sexual health care needs of youth in the state's care.

http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Teen%20SENSE%20Model%20Standards%20-%20Sexual%20Health%20Care%20for%20Youth%20in%20State%20Custody.pdf

Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings
The National Institute for Corrections

This detailed policy review and guide provides updated key information to correctional agencies about PREA's impact on agency practice as it relates to LGBTI individuals in custody. This guide is made up of three chapters: Introduction and Overview—introduction, evolving terminology and definitions, core principles for understanding LGBTI individuals in custody, and emerging data on LGBTI individuals in custodial settings and the challenges they face; LGBTI Youth Under Custodial Supervision—the law, PREA standards, other governing principles (state human rights laws and professional codes of ethics), and elements of legally sound and effective policy and practice; and LGBTI Adults Under Custodial Supervision—the law, PREA standards, and elements of legally sound and effective policy and practice.

https://s3.amazonaws.com/static.nicic.gov/Library/027507.pdf

Position Statement: Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings
The National Commission on Correction Health Care

Adopted in 2009 and revised in 2015, the National Commission on Correction Health Care's position statement outlines best practices for transgender, transsexual, and gender non-conforming health care in correctional settings. The statement includes recommendations on Health Management, Patient Safety, and Discharge Planning, and incorporates best practices from the World Professional Association for Transgender Health (WPATH).

http://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care

Power in Partnerships: Building Connections at the Intersections to End the School-to-Prison Pipeline
The Equality Federation, Gay Straight Alliance Network, and Advancement Project

Power in Partnerships is a resource for advocates and organizations working to address the challenges that LGBT youth, particularly LGBT youth of color, experience in schools that result in them being pushed out of school and into the criminal justice system. Designed for advocates in all stages of organizing, this comprehensive resource includes basic facts and information on the school-to-prison pipeline and a framework for collaboration between organizations and inclusion of youth voices, as well as several tools and strategies to advance existing campaigns against school pushout.

http://www.equalityfederation.org/new/wp-content/uploads/powerinpartnerships.pdf

Practice Guide: Creating a Juvenile Justice LGBTQ Task Force
The National Council on Crime & Delinquency - Bernadette E. Brown, Aisha Canfield, and Angela Irvine

This publication is part of a series of reports and practice guides regarding LGBTQ youth in the juvenile justice and child welfare systems, developed by the National Council on Crime and Delinquency. This guide provides instruction regarding how to establish a task force along with guidance on handling possible challenges to this work.

http://www.nccdglobal.org/sites/default/files/publication_pdf/practice-guide-lgbtq-task-force.pdf

Queer (In)justice: The Criminalization of LGBT People in the United States
Andrea J. Ritchie, Joey L. Mogul, and Kay Whitlock

Drawing on years of research, activism, and legal advocacy, Queer (In)Justice is a examination of the queer experience in the criminal justice system. The authors unpack queer criminal archetypes– like "gleeful gay killers," "lethal lesbians," and "disease spreaders"– to illustrate the punishment of queer expression and queer lives, regardless of whether a crime was ever committed. And tracing stories from the judicial bench to the streets and behind prison bars, the authors prove that the policing of sex and gender both bolsters and reinforces racial and gender inequalities.

http://www.queerinjustice.com

Standing with LGBT Prisoners: An Advocate's Guide to Ending Abuse and Combating Imprisonment
National Center for Transgender Equality, Jody Marksamer and Harper Jean Tobin

This toolkit offers an introduction to the issues and policies that affect incarcerated LGBT people (in jails, prisons, and detention facilities), and provides recommendations for advocacy work with local or state corrections/detention agencies.

http://transequality.org/sites/default/files/docs/resources/JailPrisons_Resource_FINAL.pdf

Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the U.S.
Amnesty International

This extensive report from Amnesty International draws on data and reports from the justice system to confirm that in the United States, LGBT people are targeted for human rights abuses by the police based on their real or perceived sexual orientation or gender identity. The report also shows, through data and reports, that certain people in the LGBT community - specifically, transgender and gender non-conforming individuals, people of color, youth, immigrants, homeless individuals, and sex workers - experience a higher risk of police abuse and misconduct. This report concludes with recommendations for federal, state, and local authorities to prevent these human rights violations by police and the criminal justice system.

https://www.amnesty.org/en/documents/AMR51/122/2005/en/

Still We Rise: A Resource Packet for Transgender and Gender Non-Conforming People in Prison
The Transgender Gender-Variant and Intersex Justice Project (TGI Justice Project)

This resource packet includes legal, medical, and community resources for transgender and gender non-conforming individuals who are incarcerated. Most of the legal information is specific to California's prison system, but includes some national resources and information that would be relevant to incarcerated individuals around the United States.

http://www.tgijp.org/still-we-rise---prison-resource-guide.html

Stronger Together, A Guide to Supporting LGBT Asylum Seekers in the United States
LGBT Freedom Asylum Network, The National LGBTQ Task Force, and the Human Rights Campaign Foundation

Released in 2015, *Stronger Together* focuses on helping LGBT asylum seekers adjust to life in the United States, and provides best practices, basic background information, and tips about legal traps to avoid. It is directed toward the organizations that serve LGBT asylum seekers, but also has relevant information for asylum seekers themselves. It also includes a code of ethics and a short directory of helpful organizations.

http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/LGBT_Asylum_Seekers_FINAL.pdf

Surviving Prison in California: Advice By and For Transgender Women
The Transgender Gender-Variant and Intersex Justice Project (TGI Justice Project)

The TGI Justice Project compiled this prison survival guide after transgender women in San Francisco area jails requested detailed information about day-to-day prison life. The guide includes information on housing, self-protection, education, dress code, and health.

http://www.tgijp.org/prison-survival-guide.html

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