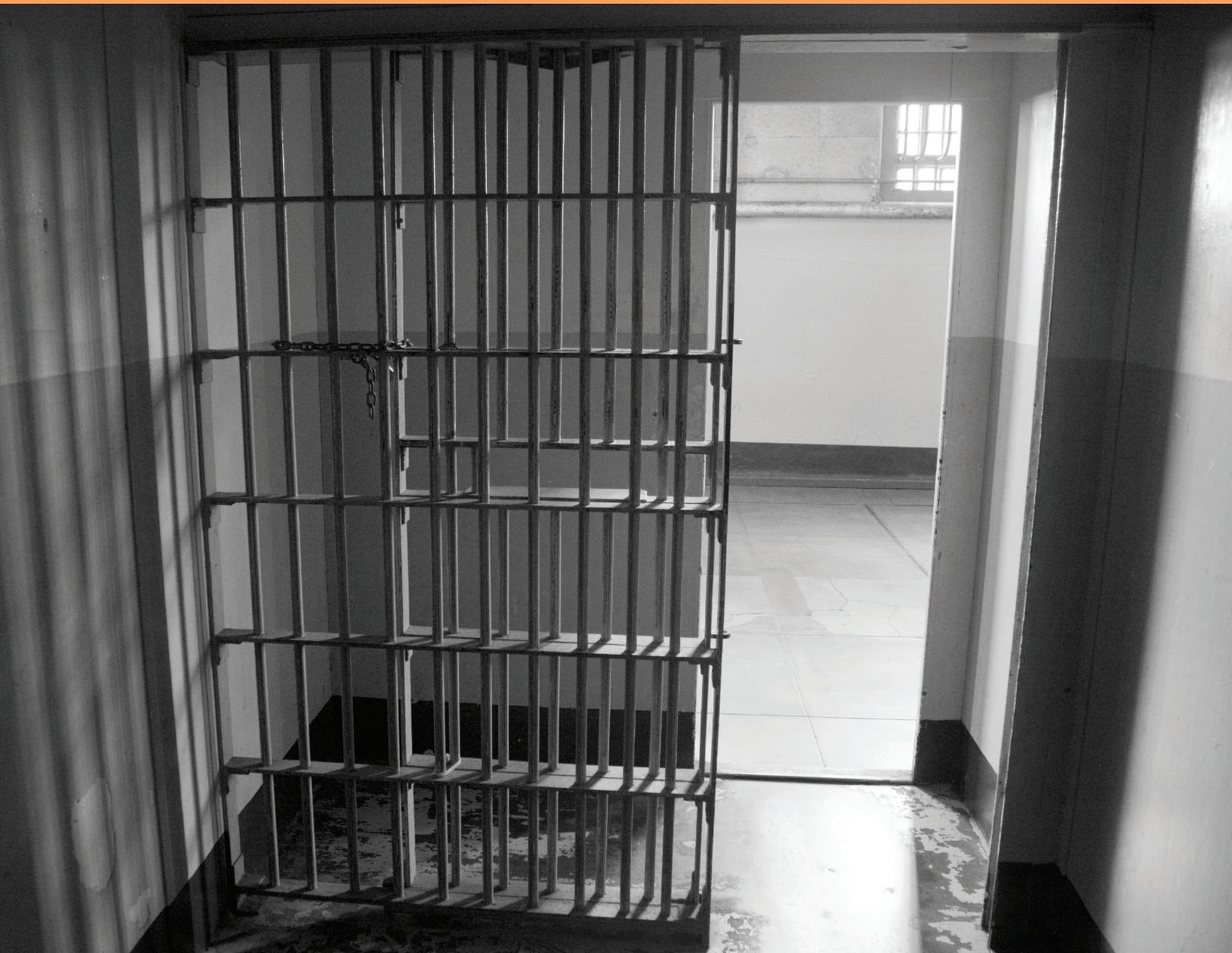


UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

Condensed Version

February 2016



Authors



Partners



This report was authored by:

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This report was developed in partnership with:

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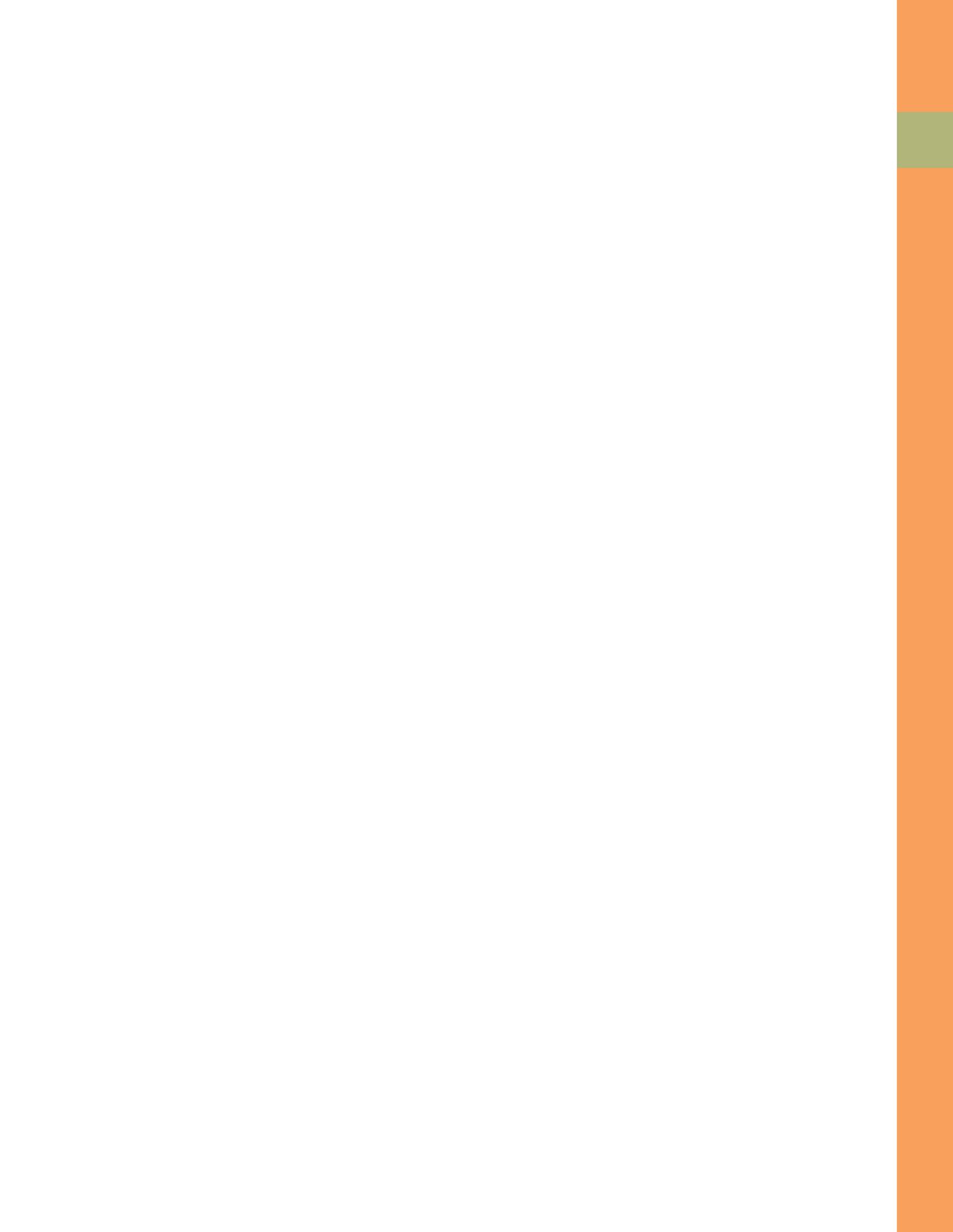
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FOREWORD

Five years ago, Beacon Press published *Queer (In)Justice: The Criminalization of LGBT People*, a book which provided a comprehensive examination of 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

^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.

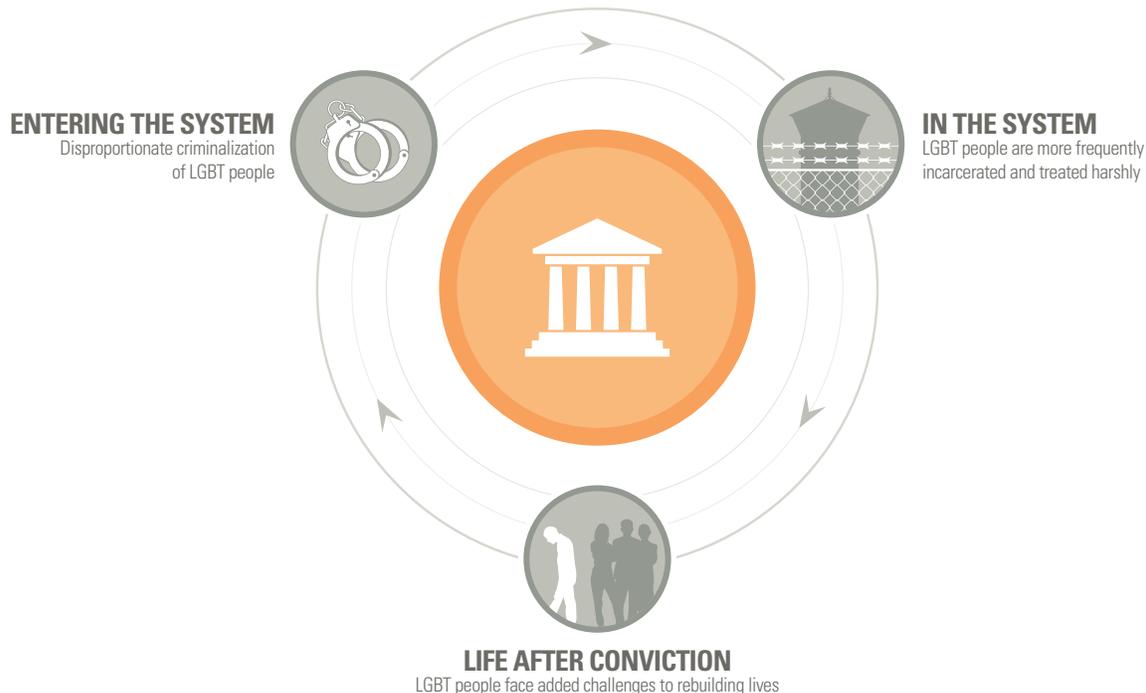
^c Allen J. Beck and Thomas P. Bonczar, “Lifetime Likelihood of Going to State or Federal Prison,” (Bureau of Justice Statistics, March 6, 1997), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1042>.

^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.nccglobal.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.⁹ 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

⁹ 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.

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."

READ THE FULL REPORT FOR MORE

This condensed report provides a high-level discussion of the key drivers of interactions with law enforcement for LGBT people, the experiences of LGBT people within the justice system and in prisons, jails, and immigration detention facilities, and the added challenges LGBT people face when trying to rebuild their lives with a criminal record.

The longer, full version of *Unjust: How the Broken Criminal Justice System Fails LGBT People*, offers more extensive statistics, detailed policy analysis, and in-depth discussion of the key issues discussed here, plus additional content, including:

- Discussion of how LGBT people interact with the criminal justice system on tribal lands and the issue of trafficking and LGBT people
- A more thorough exploration of how the criminal justice system and immigration systems interact and more information about the experiences of LGBT people within immigration detention facilities
- Extensive recommendations for federal, state, and local policymakers and advocates, community organizations, researchers, and funders
- A comprehensive listing of resources and additional materials



Spotlights on innovative programs, initiatives, policy changes, and other positive actions around the country to create a more just system for LGBT people. For example:

- Helping Families Support Their LGBT Children: The Family Acceptance Project
- Building Safe Schools Without Pushing Youth Out: #GSAs4Justice
- Working Beyond Survival: Economic Empowerment for Transgender People
- Community-Based Diversion Programs
- Educating LGBT People About Their Rights
- A Successful Campaign in New York City to Challenge “Stop-and-Frisk”
- New Transgender Unit on New York City’s Rikers Island
- A Model Approach in the Santa Clara Juvenile Division

- Juvenile Facility in New York Strives to Do Better by LGBT Youth
- Connecting LGBT People in Prison to the LGBT Community
- Meeting Needs Immediately After Release



Stories from LGBT individuals about their interactions with the criminal justice system, including:

- A gay youth who was mistreated by the child welfare system who spent time on the streets
- Many LGBTQ youth, many of whom are youth of color, in New York City who have experienced homelessness, engaged in survival economies, and who have been harassed by police
- A young black transgender woman who was pushed out of school by bullying
- The ongoing consequences of being convicted under an HIV criminalization statute for a black gay man in Louisiana
- The stories of several Latina transgender women who were profiled by police for “walking while trans”
- The stories of two black transgender people charged with crimes after defending themselves from hate crimes and sexual assault
- Stories of brutality at the hands of police
- A Latina transgender woman’s journey to safety in the United States from El Salvador
- The experiences of a black transgender girl and a multiracial gay man who experienced discrimination by judges, court staff, and attorneys
- A number of stories from transgender people in prison, jails, and immigration detention facilities
- A gay man’s visit to his partner in a New York City jail that resulted in physical assault by jail staff
- An older white lesbian’s experience of being released from prison with no support and experiencing homelessness
- A black transgender woman’s experience in a halfway house in Illinois

UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

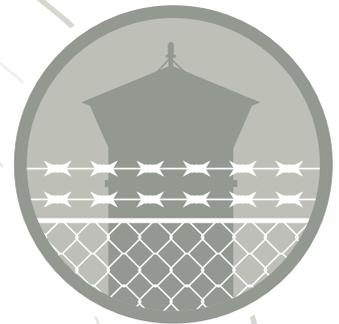
ENTERING THE SYSTEM

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) people in United States. LGBT people are overrepresented in the criminal justice system (see infographic on page 2). 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.¹ 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.

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.

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 overrepresented 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 other population groups.

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,

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

7.9%
OF ADULTS IN PRISONS
IDENTIFY AS LGBT

7.1%
OF ADULTS IN JAILS
IDENTIFY AS LGBT

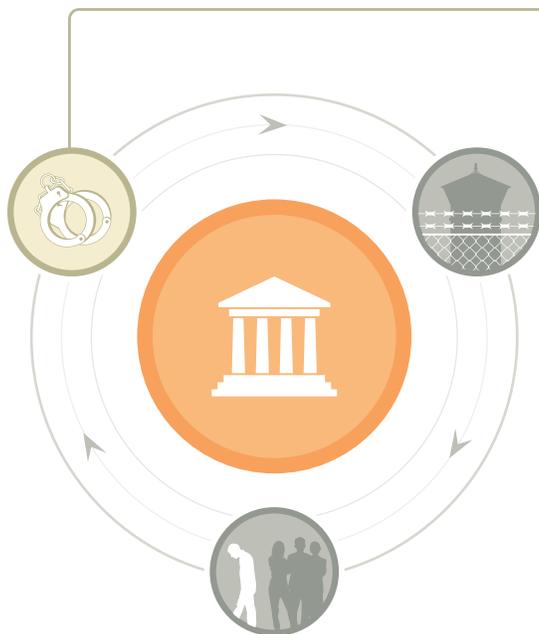
2X
MORE LIKELY

IN JUVENILE DETENTION FACILITIES

20% OF YOUTH IDENTIFY AS LGBT
(COMPARED TO 7-9% OF YOUTH OVERALL WHO ARE LGBT)

2X
MORE LIKELY

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

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 former prisoners and detainees, 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.² While similar statistics are not available for the LGBT population, several studies find that LGBT people are disproportionately likely to be incarcerated than the general population, as shown in the infographic on page 2.

- 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 adults in the United States who identify as LGBT, according to Gallup (3.8%).³
- 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.⁴
- 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%).⁵ Nearly one in five transgender women (19%) had been incarcerated, and black and Native American/Alaskan Native transgender women were more likely to report having been incarcerated than white transgender women.⁶ These high rates of incarceration for transgender people come despite the fact that they have higher rates of education than the general incarcerated population.
- Between 12% and 20% of youth in juvenile justice facilities are LGBT, compared to the estimated 7% of youth who identify as LGBT nationally.⁷ 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.⁸ LGBT youth in the system are overwhelmingly people of color. In the same survey, 85% of LGBT and gender non-conforming youth were youth of color.⁹

A Broken Immigration System Harms LGBT Undocumented Immigrants

There are an estimated 267,000 LGBT-identified undocumented individuals in the United States.¹⁰ 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.¹¹

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.¹² LGBT and HIV-affected immigrants experience hate violence at higher rates than the LGBT population in general.¹³

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.

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.¹⁴ 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.¹⁵ 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 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.¹⁶ 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 applications¹⁷; 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.

A Broken Immigration System Harms LGBT Undocumented Immigrants *(continued)*

Many immigrants, particularly those who are detained or surrender at a border, are placed in immigration detention facilities while they seek asylum. 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.¹⁸ 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.¹⁹ Of these, 81 were placed in detention anyway.

LGBT individuals in immigration detention facilities report high rates of abuse, neglect, and assault. Many of the same issues arise for LGBT immigrants in these facilities as arise in prisons and jails, such as placement of LGBT detainees in solitary confinement and transgender detainees in incorrect facilities based on birth sex; high levels of assault by facility staff and other detainees; inadequate medical care, particularly for individuals living with HIV and transgender individuals; and lack of access to adequate legal counsel while detained, which can have a negative impact on one's chances of obtaining asylum.

For a deeper discussion of the intersections between the immigration system and the criminal justice system, as well as a detailed exploration of the conditions for LGBT detainees in immigration facilities, please read the full report.

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.²⁰ Recent progress has been made for the LGBT community, particularly as marriage is now a nationwide reality for same-sex couples.²¹ By no means, however, are LGBT people free from legal inequality, institutional and societal discrimination, and social stigma. 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.²²

As shown in the graphic on page 2, LGBT people are also 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 Force Many LGBT People Into Difficult Situations

Stigma and discrimination in society, in communities, and in families force many LGBT people into difficult 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

LGBT young people are often pushed out of homes and schools because of family rejection, harsh and discriminatory school discipline policies, and other factors.



PROBLEM: FAMILY REJECTION

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.²³ 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. In a study of Seattle young people ages 13 to 21 without a stable place to live, 14% of LGBT girls had left home because of conflicts with their parents about their sexual orientation or gender identity.²⁴ 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.¹



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. For some families that struggle with financial and housing instability, older youth may be 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. Without strong safety net programs and support for families, youth suffer the consequences. Some youth in struggling families, including many LGBT youth, may find themselves without a home and be pushed into an unsafe living situation, such as on the streets or in shelters.²⁵

¹ See pages 9-11 for more about how discrimination results in increased criminalization.

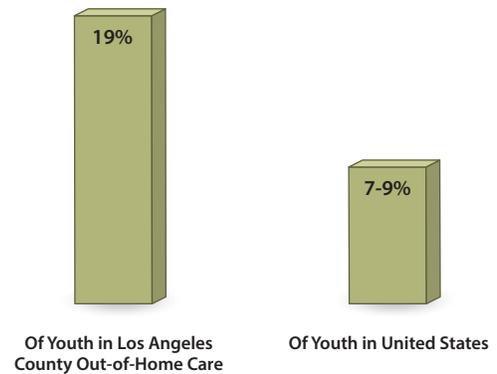


PROBLEM: NEGATIVE EXPERIENCES IN THE CHILD WELFARE SYSTEM

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 1*.²⁶ This rate is approximately 1.5 to 2 times higher than the estimated LGBTQ youth population as a whole for the area.²⁷ 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.

Figure 1: 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).

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, ran 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 <http://equalityfederation.org/sites/default/files/powerinpartnerships.pdf>.

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. Youth who age out rarely have the resources necessary to succeed on their own, let alone access to housing, employment, or health insurance.²⁸ This puts young people who age out of the child welfare system at particular risk for interactions with the criminal justice system.



PROBLEM: INCREASED RATES OF HOMELESSNESS

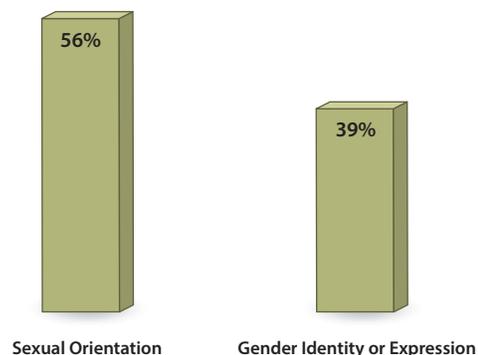
LGBT young adults are greatly overrepresented in the homeless population. Becoming homeless can make it extremely difficult for young people to complete school and do well academically and, in turn, move on to good jobs and rewarding careers. Instead, homeless youth are at increased risk of contact with 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.²⁹ Research also 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.³⁰



PROBLEM: UNSAFE SCHOOLS

LGBT students, including LGBT students of color, are more likely to report an unsafe environment at school and have little means to address it. In 2013, 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, as shown in *Figure 2*.³¹ Ultimately, LGBT youth may be forced to defend themselves or they stop going to school.³² 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.³³

Figure 2: 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).



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. LGBT young people are among the groups of students, including students of color and students with disabilities, 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.³⁴

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.

Figure 3: 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.



PROBLEM: EMPLOYMENT DISCRIMINATION

LGBT people experience high rates of employment discrimination—when looking for work and on the job. For many LGBT people, employment discrimination can result in increased economic insecurity. Several surveys have found higher rates of unemployment among LGBT people; in the National Transgender Discrimination Survey, transgender people reported twice the unemployment rate of the general population.³⁵ Research also finds that LGBT people are more likely to live in poverty than their non-LGBT peers. The combination of high rates of poverty and unemployment no doubt contributes to higher rates of incarceration and justice system interactions among LGBT people. Among LGBTQ-identified prisoners surveyed by Black and Pink, an organization for currently and formerly incarcerated LGBTQ people, more than one-third (36%) had been unemployed before being incarcerated, as shown in *Figure 3*.³⁶



PROBLEM: HOUSING DISCRIMINATION AND 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. 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. Individuals who experience homelessness are particularly vulnerable to being stopped or arrested by police and having their lives criminalized. 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.³⁷



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. 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.³⁸ Others turn to survival economies to afford the high out-of-pocket costs of transition-related care.



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. 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 13-17 for more about abuse by law enforcement). For example, when transgender people are stopped or detained, they are often subjected to harassment and abuse if the name and gender marker on the document they present don’t match the name they use and their gender expression.



PROBLEM: LACK OF SOCIAL SERVICES

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. When mental health services dwindle, law enforcement is frequently tasked with addressing situations where individuals are in crisis, pushing more and more people with mental illnesses into prisons and jails.³⁹ Even when such services exist, providers may be biased against, or lack competency in working with, LGBT people. This lack of supportive services exacerbates the challenges facing LGBT people in need of assistance, increasing the chances that their lives will be criminalized.



Discriminatory Enforcement Criminalizes LGBT People's Lives

Criminalization of LGBT people's lives 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.



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.⁴⁰ 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. In some states, individuals convicted under these laws are forced to register as sex

Figure 4: 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.

offenders, further limiting employment and housing options, among other far-reaching ramifications. A 2015 analysis of data from California by the Williams Institute found that individuals charged with HIV-related cases were convicted in 99% of cases, and 91% of those convicted were sentenced to time in prison or jail, as shown in *Figure 4*.⁴¹ Once in jail or prison, individuals with HIV face added challenges in receiving adequate medical care while in prison.



PROBLEM: LAWS CRIMINALIZING CONSENSUAL SEX

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 by the Supreme Court in 2003, gay and bisexual men are often targeted.

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.

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

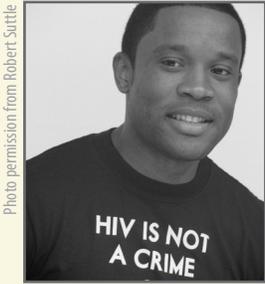


Photo permission from Robert Suttle

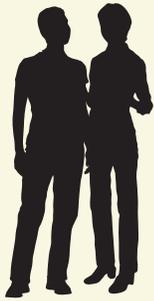
After graduating from Louisiana State University, Robert Suttle sought to enlist in the Air Force, but he was rejected when he tested positive for HIV. Suttle overcame his disappointment and began working for Louisiana's Second Circuit Court of Appeal, in Shreveport, as an assistant clerk. After several 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," *The Huffington Post*, accessed September 2, 2015, http://www.huffingtonpost.com/sean-strub/lgbt-hiv-criminalization_b_2039539.html.

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



Like many teenagers, Antjuaneece 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 Antjuaneece. The two spent time at the mall. Antjuaneece attended Jolene's lacrosse games.

Like more than half of American teens who have "sexted,"⁴² 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 Antjuaneece told a reporter for *Willamette Week*, "I've never been in trouble in my life. ... I'm not a sex offender."

And yet, Antjuaneece 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, Antjuaneece 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, Antjuaneece 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: http://www.wweek.com/portland/article-16544-sext_crimes.html; <https://vimeo.com/33881828>.

LGBT young people are also at increased risk for prosecution under statutory rape and other laws regulating sex between minors. Researchers find that LGBT 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 LGBT 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 a detrimental impact on the LGBT young person's ability to finish school and find jobs.⁴³



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.⁴⁴ Sixteen percent of people in state prisons were sentenced for drug-related offenses. A majority of federal prisoners (51%) were sentenced for drug-related offenses.⁴⁵

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.⁴⁶ 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. 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.^m

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 5*, in the Black and Pink survey of currently incarcerated LGBTQ people, 55% had sold drugs prior to being incarcerated.⁴⁷

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.⁴⁸

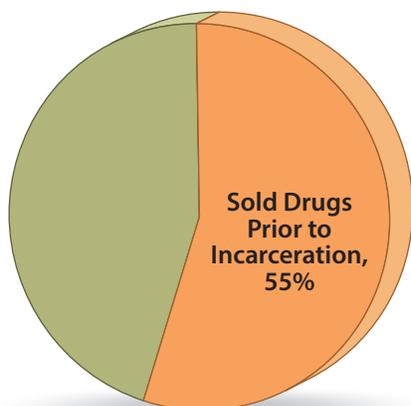


Harmful Policing Strategies and Tactics Push LGBT People Into the Criminal Justice System

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 other groups, 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 people of color and/or low-income. Among the results of these harmful policing strategies and tactics are disproportionate numbers of LGBT people being pushed into the criminal justice system, increased mistrust of law enforcement, and reduced public safety.

Figure 5: 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.

^m 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.



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

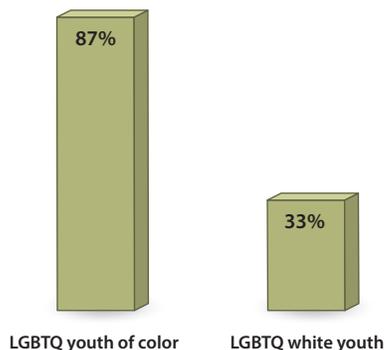
Over the past 30 years, government and law enforcement officials have prioritized a policing strategy called “quality-of-life policing.” This strategy is based on the “broken windows theory,” which posits that cracking down on highly visible minor crimes and even non-criminal activity can prevent more serious crimes in a neighborhood and restore “order.”⁴⁹

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 in public space. In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by police compared to just 33% of white youth, as shown in *Figure 6*.⁵⁰

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.⁵¹ And people experiencing homelessness, including the estimated 20-40% of homeless youth who identify as LGBT,⁵² can find themselves caught in a cycle

Figure 6: 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.

of arrests and jail time as they are ticketed or arrested for sleeping in public or panhandling. In many places, quality-of-life policing criminalizes poverty because it targets minor offenses related to economic insecurity, such as jumping the turnstile, panhandling, and loitering.



PROBLEM: POLICING OF GENDER NORMS

“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.⁵³ When law enforcement officials use profiling, they are not focusing on evidence of wrongdoing, but are instead relying on stereotypes and bias. 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 subjected to increased policing because they are perceived to transgress gender norms.⁵⁴ 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 as the fact that they are standing, walking, or driving in a particular area.

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.⁵⁵

**PROBLEM: AGGRESSIVE ENFORCEMENT OF ANTI-PROSTITUTION STATUTES**

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. 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. 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.⁵⁶

Police generally have wide discretion under these ordinances, and they often arrest individuals for vague violations such as “loitering with intent to solicit.”⁵⁷ 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.⁵⁸ 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.

Police also frequently rely on stereotypes in enforcing anti-prostitution laws, such as assuming that all transgender women, 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 were also sometimes asked for sex in exchange for leniency.⁵⁹ 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.⁶⁰

**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.

Research shows that 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.

Predictably, the available data from New York and other jurisdictions show that not only are these stops rarely effective in reducing crime, but 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.⁶¹

**PROBLEM: DISCRIMINATION AND VIOLENCE WHEN SEEKING ASSISTANCE FROM POLICE**

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. For example, when LGBT people who are victims of hate crimes seek assistance from law enforcement, they often do not have their complaints 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.”⁶² In addition, there have been documented cases where LGBT people involved in hate incidents were charged with crimes for defending themselves against their perpetrators, while the perpetrators were not charged.⁶³

Figure 7: Violence Survivors At Risk for Violence By Police



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: 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.

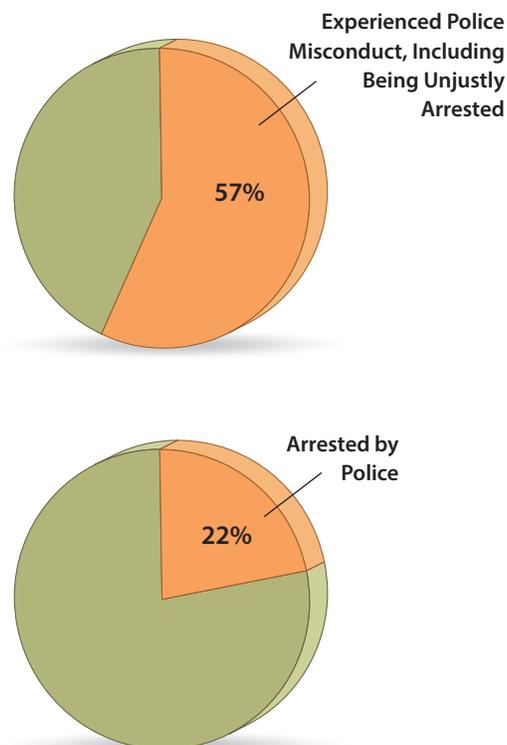
Adapted from (Trans* Woman Claims Self-Defense in Case - Gay Lesbian Bi Trans News Archive - Windy City Times n.d.; A Tale of Two Murders: Connected or Not? - Gay Lesbian Bi Trans News Archive - Windy City Times n.d.; Eisha Love Is Serving Jail Time for Defending Herself While Other Chicago Trans Women Are Being Attacked n.d.). <http://www.windycitymediagroup.com/lgbt/transgender-woman-released-from-jail-after-nearly-4-years-without-trial-/53720.html>.

LGBT people who report hate crime incidents to the police may themselves become the targets of police violence. 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.⁶⁴ As shown in *Figure 7* on the previous page, 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.⁶⁵

Law enforcement also often fails to adequately address cases of intimate partner violence involving LGBT people.⁶⁶ LGBT survivors of domestic violence are frequently arrested along with their abusive partners if they reach out to the police for help.⁶⁷ In a 2014 report from the National Coalition of Anti-Violence Programs, 57% of intimate partner violence survivors who called the police reported police misconduct including being unjustly arrested, as shown in *Figure 8*.⁶⁸ Sometimes, the survivor can even be charged with a crime if they use violence against the perpetrator. According to NCAVP, in half of instances where survivors reported police misconduct, police arrested LGBT and HIV-affected survivors for violence.⁶⁹

Figure 8: 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

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 abuse their power and treats LGBT people in deplorable ways.

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.⁷⁰

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

Because of the problems described in Section 1 of this report, LGBT people are at increased risk of having an arrest lead to legal proceedings and time in correctional facilities. Once they are in the system, many LGBT people are treated unfairly, abused, disrespected, and subjected to violence. 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.

This section explores two issues: discrimination against LGBT people in legal proceedings; and unfair and inhumane treatment of LGBT people in jails, prisons, and other confinement facilities.



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, juries, and even defense attorneys. As a result, LGBT people are disproportionately represented in juvenile justice facilities, adult correctional facilities, and immigration detention facilities.⁷¹



PROBLEM: INADEQUATE ACCESS TO COUNSEL

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.⁷² 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.⁷³ As a result, low-income people, including many people of color and LGBT people, do not receive adequate defense.

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.⁷⁴ Only 42% of youth in custody in 2007 reported they had legal counsel.⁷⁵ For LGBT youth lacking strong family support, lack of counsel can be even more detrimental.



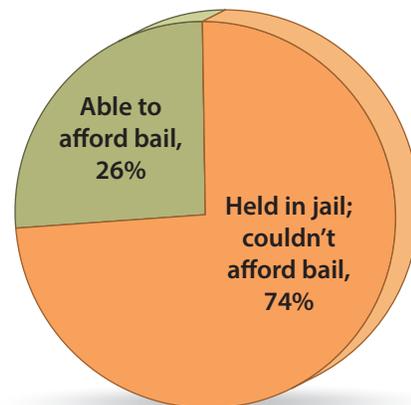
PROBLEM: DISCRIMINATION BY JUDGES, PROSECUTORS, AND COURT STAFF

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.

Bias in pre-trial release is a particularly troubling problem for LGBT people. Given the lack of support from family and higher rates of poverty among LGBT people, particularly transgender people and people of color, LGBT

Figure 9: 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.

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

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 9* on page 18.⁷⁶ Individuals forced to stay in jail because they cannot afford bond can lose their jobs, suffering additional financial consequences.

LGBT young people face unique disadvantages in the arraignment process and are also at increased risk of being placed in a facility to await trial, rather than being sent home.⁷⁷ For example, 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.⁷⁸ 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.



PROBLEM: 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.

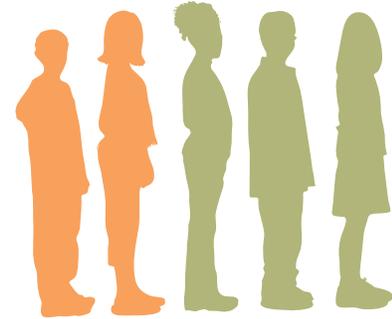
In criminal cases, for example, some defendants have claimed that a victim's sexual orientation or gender identity excused the defendant's violent actions; this is known as the gay or transgender "panic" defense.

Historically, sexual orientation has also been used against defendants in court as evidence of "poor character." Several courts have ruled that evidence of a criminal defendant's sexual orientation is highly prejudicial if irrelevant to the charged crime.⁷⁹ 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.⁸⁰ As shown in *Figure 10* half (44%) reported their experience with the court system as negative.

Figure 10: LGBTQ Youth Report Negative Experiences with Court System

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



44% REPORTED NEGATIVE EXPERIENCES WITH THE COURT SYSTEM

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



PROBLEM: 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 whites⁸¹; once charged, people of color are more likely to be convicted,⁸² and once convicted, they face stiffer sentences.⁸³ 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.

For example, 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.⁸⁴

Story: 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: <http://streetwiseandsafe.org/wp-content/uploads/2015/09/Locked-In-FINAL-REPORT.pdf>.



PROBLEM: DISCRIMINATION IN JURY SELECTION AND BY JURIES

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.

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.⁸⁵ 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."⁸⁶

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."⁸⁷ 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.⁸⁸



Unfair and Inhumane Treatment in Jails, Prisons, and Other 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. 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.

LGBT people face a number of serious problems in confinement facilities, as shown in the graphic on the next page.

OVERLAPPING SYSTEMS COMPRISE CRIMINAL JUSTICE SYSTEM IN THE UNITED STATES

YOUTH

Youth who remain in the juvenile justice system interact with state and local-level officials and facilities. Youth who are tried as adults may be tried in state or federal courts.

FEDERAL

Individuals who violate federal statutes have cases heard in federal courts around the country and may be sentenced to one of 116 federal Bureau of Prisons facilities, privately managed facilities or other facilities.

CRIMINAL JUSTICE SYSTEM

IMMIGRATION

Individuals detained by Immigration and Customs Enforcement may be held in one of more than 250 federal facilities, in city or county jails, or in private facilities around the country.

STATE AND LOCAL

Individuals violating state or local laws are frequently housed in city or county jails. Cases are heard by state court systems, and then they may be sentenced to a state prison or may remain in a city or county jail operated by a state department of corrections or a county.

**PROBLEM: LIMITED REGULATION AND OVERSIGHT**

Oversight and regulation of jails, prisons, and immigration detention facilities is complicated because these institutions are managed by many different levels of government, and sometimes even by private companies as contractors. 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. And the laws governing conditions within these facilities vary depending on the type of facility and where it is located. For example, there is very little federal oversight of state and local criminal justice and juvenile justice systems and facilities. An important exception to this lack of oversight are the changes brought about by the 2003 Prison Rape Elimination Act (PREA) (see sidebar at right).

**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 non-conforming. This is based on the fact that LGBT people in prisons and jails are at increased risk for sexual assault.

PREA also provides a variety of other standards related to placement of LGBT people. For example, LGBT and intersex people may not be placed in "facilities, units, or wings solely on the basis of such identification

The Prison Rape Elimination Act and Its Impact

PREA is significant advance because it explicitly identifies LGBT people as a vulnerable population and provides specific guidance and regulations as to how they should be treated and protected while in confinement. The law applies to both facilities housing adults and those housing young people, though it applies somewhat differently across different levels of government.

- **Federal facilities.** The law is binding on 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—may risk losing federal funding but would not face other consequences.⁸⁹
- **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.⁹⁰ 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.

UNDERSTANDING THE PRISON RAPE ELIMINATION ACT (PREA)

PAGE 1

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



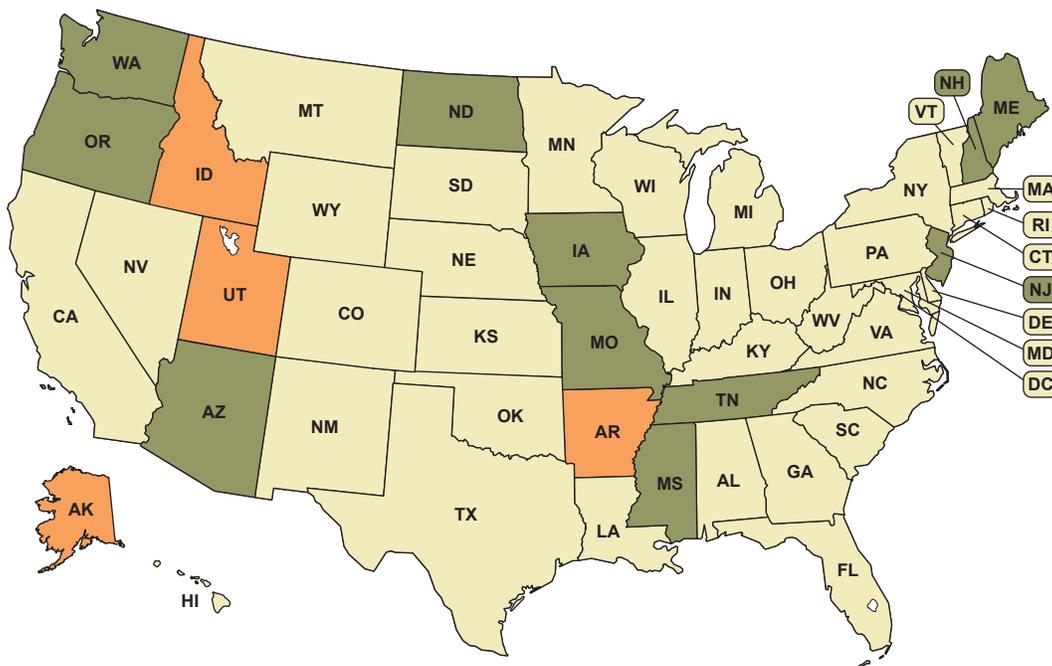
DATA

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

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



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



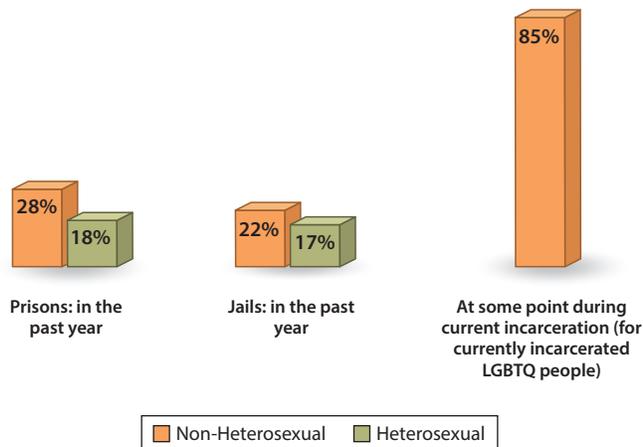
SOME LGBT INMATES NOTE THAT PREA HAS BEEN USED TO PENALIZE CONSENSUAL SAME-SEX CONTACT IN PRISONS



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

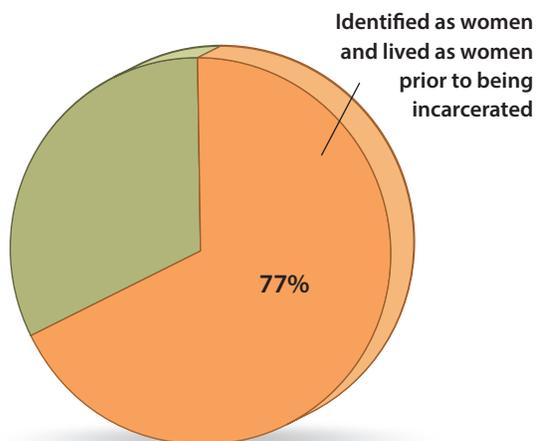
or status.” In addition, placements of transgender and intersex people must take into consideration an individual’s health and safety and overall facility management and safety; and transgender people must be able to shower separately. Placement decisions for transgender and intersex people also must be assessed at least twice a year.

Figure 11: 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.”

Figure 12: 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.”

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. A 2015 report from the U.S. Bureau of Justice Statistics found that 28% of people who identify as non-heterosexual in prisons and 22% of those 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, as shown in *Figure 11*.⁹¹

Second, transgender people are placed in facilities and cells according to the sex on their birth certificate rather than their gender identity. 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 (see *Figure 12*).⁹² 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. 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 28-30 for more about access to health care).



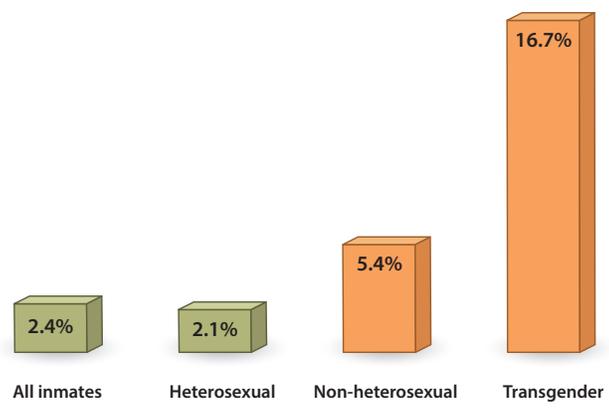
PROBLEM: HARASSMENT AND SEXUAL ASSAULT BY STAFF AND INMATES

Given the power dynamic in confinement facilities, prisoners and detainees 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.⁹³

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.⁹⁴ As shown in *Figure 13* on the next page, in a Bureau of Justice Statistics survey conducted in 2011-2012, 5.4% of inmates identifying as LGB or non-heterosexual had been sexually assaulted by facility staff, compared to 2.1% of heterosexual inmates.⁹⁵ The same survey found that 16.7% of transgender people in

Figure 13: High Rates of Sexual Assault by Facility Staff in Prisons and Jails

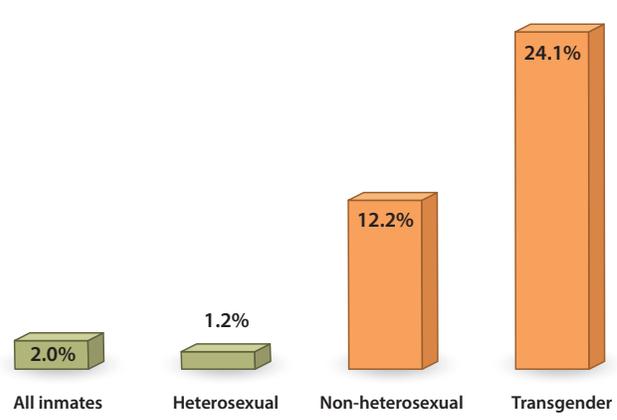
Percent of People in Prisons and Jails Reporting Sexual Assault by Facility Staff



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.

Figure 14: 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.

prisons and jails reported being sexually assaulted by facility staff compared to 2.4% of all inmates.⁹⁶

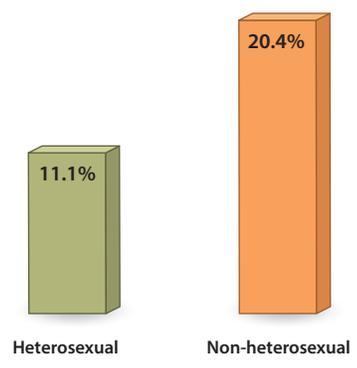
LGBT youth are particularly vulnerable to sexual assault by staff. In a survey of LGBT youth, more than one in five non-heterosexual youth reported sexual victimization involving another youth or facility staff member compared to slightly more than one in 10 heterosexual youth.⁹⁷ Staff may also implicitly condone abusive behavior on the part of staff and other youth towards LGBT youth.⁹⁸ LGBT youth also report that staff frequently overreact to displays of affection, between girls in particular.⁹⁹ They say they are unfairly disciplined compared to other youth.

Abuse by staff is just one aspect of the problem. LGBT people are also 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 an insufficient commitment to ensuring the safety of LGBT people.¹⁰⁰ Data from the 2011-2012 National Inmate Survey show that 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 (see *Figures 14 and 15*).¹⁰¹

Similarly, a 2010 survey of youth in juvenile confinement facilities across the country found that 20.4% of non-heterosexual youth had experienced forced sexual

Figure 15: LGBT Youth Sexually Assaulted at Higher Rates in Juvenile Justice Facilities

Percent of youth in juvenile justice detention facilities reporting sexual contact with other inmates or staff



Source: "Fact Sheet: Understanding the BJS Study of Sexual Victimization in Juvenile Facilities" (Center for Children's Law and Policy, April 12, 2010), <http://www.cclp.org/documents/Conditions/Fact%20Sheet%20-%202010%20BJS%20Sexual%20Victimization%20Study.pdf>.

activity with another youth or had sexual contact—either consensual or nonconsensual—with a staff member, compared to 11.1% of heterosexual youth.¹⁰² 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.¹⁰³

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.¹⁰⁴ 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, as shown in Figure 14 on the previous page.¹⁰⁵

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. 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.¹⁰⁶

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.



PROBLEM: INADEQUATE ACCESS TO HEALTH CARE

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.¹⁰⁷ In many parts of the United States, prisons serve as *de facto* public health institutions.¹⁰⁸ 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.

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.

Ensuring quality health care for LGBT young people in confinement is a particularly urgent challenge. 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.¹⁰⁹

Another urgent health care issue is ensuring access to quality—and confidential—HIV 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.¹¹⁰ At the California Medical Facility, a California state prison facility, which has a transgender health clinic, rates of HIV for transgender women in the male prison ranged from 60% to 89%.¹¹¹

For individuals with HIV, verbal harassment, isolation, limitation of access to services (including work assignments), and assault are not uncommon.¹¹² Therefore, maintaining confidentiality about incarcerated people's HIV status is essential. This can be challenging in confinement facilities, given that many spaces within facilities are open and visible for safety reasons.¹¹³ An incarcerated person's medical records are frequently handled by many staff members, including non-medical personnel.¹¹⁴ 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.¹¹⁵

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.¹¹⁶ Doing so enabled other inmates and correctional staff to identify these individuals as

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>.

HIV-positive. Courts in the United States are split as to whether disclosing an incarcerated person's HIV status constitutes a violation of privacy.¹¹⁷

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.¹¹⁸ As discussed in Section 3, access to medical care upon release is particularly problematic for individuals with HIV.



PROBLEM: 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. 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.”¹¹⁹ Transgender prisoners who were already receiving hormone therapy prior to incarceration cannot be denied necessary medication unless there is a clear medical reason to do so.¹²⁰ However, limiting hormone therapy only to these circumstances is not considered best practice.

Access to transgender-related health care varies across the country. Given the incomplete or inadequate medical care that confinement facilities often offer to transgender prisoners, some of them have turned to courts to seek the care they need. Young transgender people in particular may have to seek a court order, with the assistance of legal counsel, to receive medically necessary care such as transition-related hormones or hormone blockers to delay puberty. Research finds that a majority of juvenile justice professionals do not understand the medical needs of transgender youth.¹²¹



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. Adding to these problems, there are numerous other, less blatant ways in which LGBT people in confinement facilities have their needs ignored. These include:

- **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.¹²² For example, some states prohibit

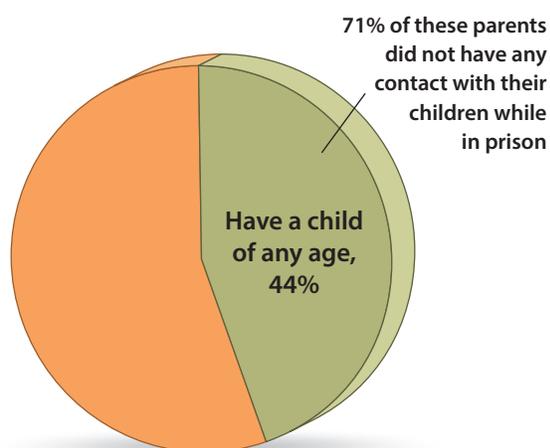
incarcerated people from changing their names and having access to cosmetics and gender-appropriate clothing, such as bras for transgender women housed in men’s prisons, even if such items are available to individuals of the opposite sex.¹²³ Staff in confinement facilities also often refuse to use a 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.¹²⁴

- **Lack of Supportive Services.** Funding for educational and vocational programs in prisons has declined, even as the prison population has increased across the nation. 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.
- **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.¹²⁵ 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. In addition, 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.
- **Limited 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 18.¹²⁶ While similar estimates are not available for LGBT prisoners nationwide, 44% of LGBTQ-identified prisoners surveyed by Black and Pink in 2015 reporting having children of any age.¹²⁷ As shown in *Figure 16* on the next page, 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.¹²⁸ One possible explanation for this high number is that LGBT parents in the criminal justice system who lack legal ties to the children they have been raising may be denied all visitation by those children—and unequal laws, especially historically, have left a disproportionate number of LGBT parents without legal ties to their children.⁹ 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.¹²⁹

- **Challenges in 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.

Figure 16: 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.



PROBLEM: LIMITED LEGAL 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.¹³⁰

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.¹³¹ 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 prisoners' access to the courts to challenge the conditions of their confinement.¹³² Under this law, prisoners 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.¹³³ 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.¹³⁴ Courts generally give great leeway to correctional officers.

⁹ 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. 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.

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.¹³⁵ Rebuilding one's life after being incarcerated can be an enormous, multifaceted challenge.¹³⁶ 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.¹³⁷ It is estimated that two-thirds of individuals released will be arrested again in three years,¹³⁸ and 77% will be arrested again within five years (see *Figure 17*).¹³⁹

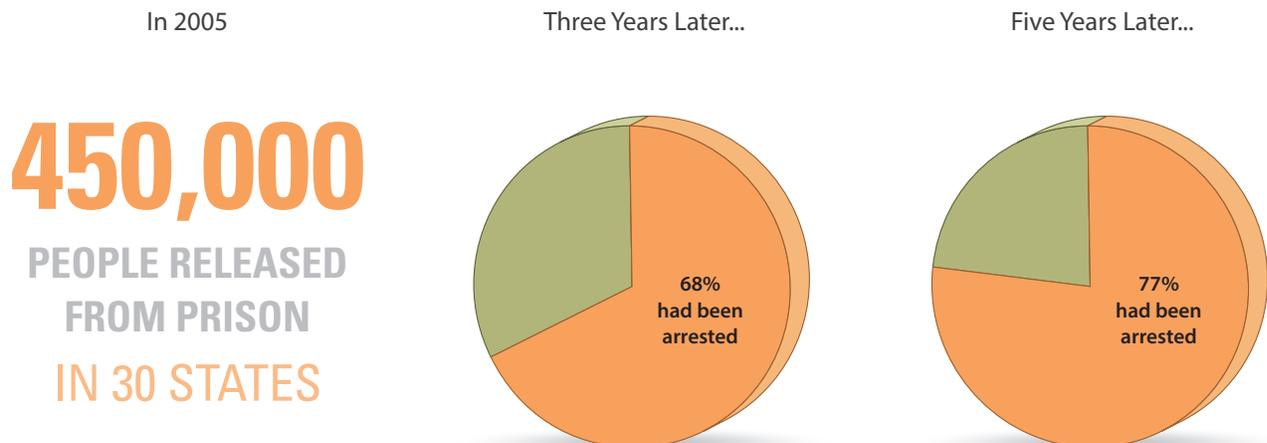
Like other formerly incarcerated people, released LGBT people may have a history of substance abuse and physical and mental health issues. Few will have completed high school, let alone college. Many are parents. Together, all of these factors are linked to high rates of insecurity and instability, and 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 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 encounters with law enforcement.

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.

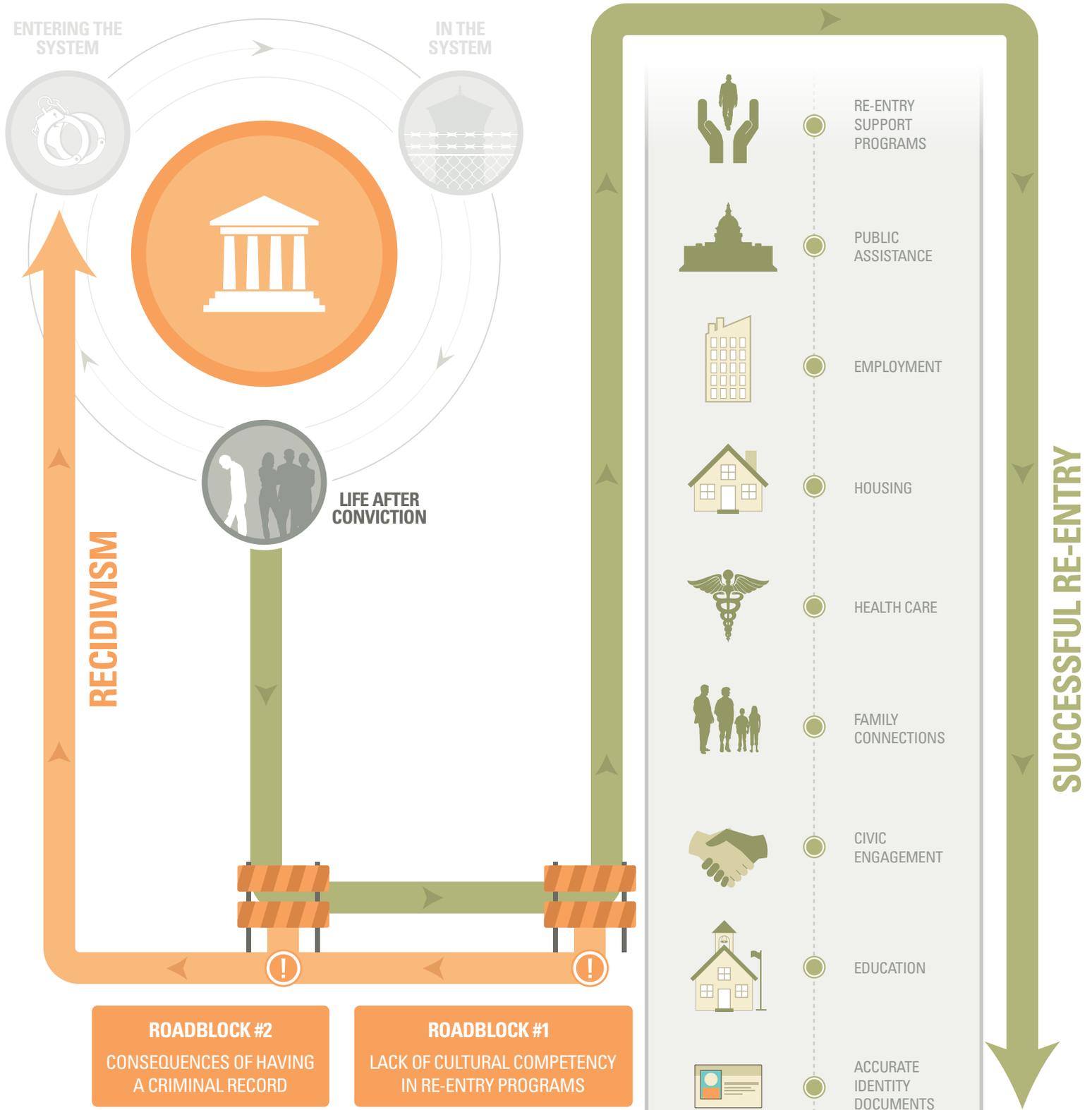
This section of the report looks at two major challenges facing LGBT people who are trying to rebuild their lives after conviction and incarceration: the lack of support for LGBT people in probation, parole, and

Figure 17: High Rates of Recidivism in the United States



Source: Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, "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



re-entry programs; and the impact of a criminal record on their ability to support themselves and be a part of their families and communities.



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. Rarely do these programs take into consideration the discrimination that LGBT people experience in many areas of life, including employment, housing and public accommodations. Without adequate support, LGBT people may violate the terms of release or community supervision and put themselves at risk of being incarcerated again.



PROBLEM: LACK OF LGBT COMPETENCY IN PROBATION AND PAROLE

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.¹⁴⁰ 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.¹⁴¹ 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 health care needs of transgender people and can therefore fail to connect them to health care providers that will provide appropriate medical care.

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. 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.

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 health care 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 health care; even simply obtaining health care 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.¹⁴² 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.¹⁴³

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.¹⁴⁴ 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. For LGBT people, the added discrimination they experience compounds these challenges 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.



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.¹⁴⁵ In a 2014 survey of formerly incarcerated individuals, 79% reported being denied housing because of their criminal records.¹⁴⁶

Like other formerly incarcerated people, LGBT people coming out of the criminal justice system can face difficulties finding both private-market rental housing and public housing and rental assistance. 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.¹⁴⁷ This discrimination is compounded by the high levels of housing discrimination reported by LGBT people in general (as described on pages 9-11 in Section 1).¹⁴⁸ 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, discrimination based on sexual orientation, gender identity, and family status is prohibited. But there are still challenges for LGBT people and others who have criminal records. Federal housing programs such as Section 8, which provides financial assistance to individuals for housing on the private market, have 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.¹⁴⁹
- Individuals who have been convicted of manufacturing or producing methamphetamines on federal assisted housing sites are ineligible for assistance.¹⁵⁰
- If an individual was evicted from federally assisted housing for drug-related criminal activity, they cannot receive assistance for three years following the conviction.¹⁵¹
- 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.¹⁵²

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.¹⁵³ 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.¹⁵⁴

Story: Life as a Transgender Woman in a Halfway House

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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.

**PROBLEM: INADEQUATE HEALTH CARE AFTER RELEASE**

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.

Formerly incarcerated people may not be aware that they qualify for Medicaid—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.¹⁵⁵ This application process can take several weeks (or months), causing a gap in coverage and care. 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.¹⁵⁶ 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.¹⁵⁷

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.¹⁵⁸ Of individuals with HIV 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.¹⁵⁹

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.

**PROBLEM: DIFFICULTIES FINDING EMPLOYMENT**

As described on pages 9-11, LGBT people frequently experience employment discrimination because of who they are or whom they love. This is particularly problematic for LGBT people exiting the criminal justice system, who also face barriers to stable employment because of their criminal records.

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. The U.S. Equal Employment Opportunity Commission 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 1964.¹⁶⁰ 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.¹⁶¹

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.¹⁶² Thus, the inability to obtain a job due to a criminal record contributes to the cycle of incarceration. 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.



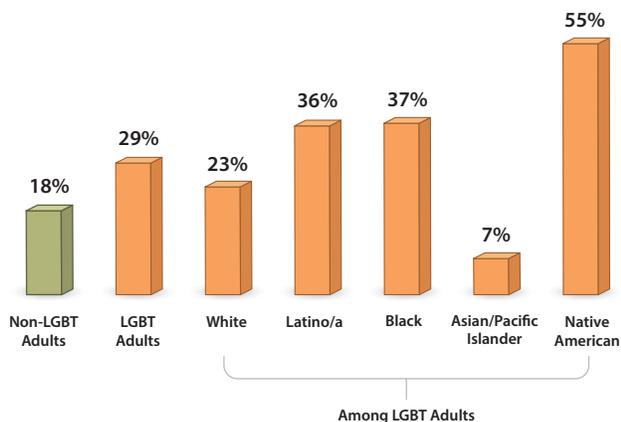
PROBLEM: INELIGIBILITY FOR PUBLIC ASSISTANCE

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, as shown in *Figure 18*.¹⁶³ SNAP, formerly known as food stamps, provides low-income individuals with assistance in purchasing food based on household size and income. The program is a critical resource for individuals and families across the country who experience food insecurity, including many LGBT people.

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.

Most government assistance programs, however, place limits on the support available to individuals with criminal records. Both 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,

Figure 18: 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).

and communities of color.¹⁶⁴ 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.¹⁶⁵

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.



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.¹⁶⁶ Sex offender statutes, in general, do two things. First, they increase sentences for certain crimes under sex offender laws.¹⁶⁷ 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.¹⁶⁸ Parole and probation officers are often notified of someone’s sex offender status, further allowing officers to monitor and limit their behavior.

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.
- Some HIV criminalization laws require sex offender status or listing an individual on a sex offender registry.
- Policing strategies often target men who have consensual sex with men.
- Some laws allow law enforcement to cite the possession of condoms as evidence of solicitation

or prostitution, 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.¹⁶⁹ Of those convicted, 80% were African American.¹⁷⁰

Some convictions may require individuals to register as sex offenders for a specific period of time ranging from five years to life.¹⁷¹ 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.¹⁷² Nor have these laws reduced recidivism among individuals labeled as sex offenders.¹⁷³

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. In 2016, federal legislation was passed that created a special designation on U.S. passports for some individuals with sex offender status. Violation of the terms of an individual’s release can result in a criminal charge and potential re-incarceration.

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. 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.¹⁷⁴

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.



PROBLEM: EDUCATIONAL BARRIERS

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 certification, or they 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.

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.¹⁷⁵ 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.¹⁷⁶ 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.

In addition, many colleges ask applicants about their criminal history, and approximately 20% of colleges complete background checks on applicants.¹⁷⁷ 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.¹⁷⁸

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.



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, or 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.¹⁷⁹ Some states require applicants for stepparent adoption to undergo a criminal background check, but others do not.¹⁸⁰ If they are not legally recognized as a parent, LGBT parents can be deprived of the 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.

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

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.



PROBLEM: DIFFICULTY OBTAINING NAME CHANGES

Transgender people frequently 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.¹⁸¹ Adding to the challenges, name changes are granted by individual judges. Based on their own biases and lack of understanding, judges

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 people re-enter society 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. The following are among the restrictions and barriers that can inhibit political and community participation for LGBT people with a criminal record:

- **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.¹⁸²
- **Ability to vote.** It is estimated that 5.9 million Americans are unable to vote because of laws disenfranchising people with felony convictions.¹⁸³ 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.
- **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.¹⁸⁴
- **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.

Combined with the pervasive stigma and discrimination experienced by LGBT people in general, all of these barriers can leave them feeling less invested in and excluded from their communities.

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.¹⁸⁵
- Half of voters agree there are too many people being held in prisons.¹⁸⁶
- 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.¹⁸⁷
- Almost half (46%) of Americans think that society would be better served by investing more deeply in efforts to rehabilitate people convicted of crimes.¹⁸⁸

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 also 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 place them at increased risk for run-ins with law enforcement and to have their lives criminalized. They are also overrepresented in correctional and detention facilities, they are often 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 the 9 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 our law enforcement and criminal justice systems exist for their protection too.

RECOMMENDATIONS

In the longer, full report, available online at www.lgbtmap.org/criminal-justice, we offer detailed recommendations for federal, state, and local policy-makers and advocates, researchers, community organizations, and funders. The focus of these recommendations is on improving how the criminal justice system serves LGBT people—and all people—and instilling the values of equality and nondiscrimination throughout our law enforcement and criminal justice systems.

Below we offer some examples of work happening to improve the way in which LGBT people interact with the justice system from across the three key issue areas explored in the report: reducing the overrepresentation of LGBT people in the system; improving the conditions of confinement and access to justice for LGBT people; and for supporting LGBT people as they rebuild their lives.



Section 1: ENTERING THE SYSTEM: Three Factors Lead to Increased Criminalization of LGBT People

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. Change is needed 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.

SPOTLIGHT



SPOTLIGHT RECOMMENDATION: 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.

SPOTLIGHT **SPOTLIGHT RECOMMENDATION:**
 **REPEAL, REPLACE, AND MODERNIZE
 HIV CRIMINALIZATION LAWS**

- 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.

SPOTLIGHT **SPOTLIGHT RECOMMENDATION:**
 **REDUCE PROFILING BY LAW
 ENFORCEMENT**

- 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.
- 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.” This guidance should be applied to all federal government agencies. Cities and counties should adopt similar guidance.

SPOTLIGHT **SPOTLIGHT RECOMMENDATION:**
 **REDUCE ABUSIVE AND EXCESSIVE
 FORCE BY POLICE**

- 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.
- Governments, academics, and advocates should strengthen data collection about the experiences of LGBT individuals with law enforcement. For example, 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. 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 Frequently Incarcerated
 and Treated Harshly**

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 overrepresented in confinement facilities. Once within those facilities, LGBT people face an array of indignities and abuses that jeopardize their physical and mental safety, their relationships with their families, and their very lives.

SPOTLIGHT **SPOTLIGHT RECOMMENDATION:**
 **IMPROVE CONDITIONS OF
 CONFINEMENT FOR LGBT PEOPLE**

- **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 particularly vulnerable to physical and sexual assault.

- **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. 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.
- **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 prisoners about their rights to safety and procedures for reporting misconduct and sexual assault by staff and fellow prisoners; and allow prisoners to quickly and easily file complaints and do so without fear of retribution or punishment.
- **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 LGBT prisoners, including procedures for searches and prohibitions on harassment, violence, abuse, or discrimination.
- **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.

- **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.
- **Improve visitation policies 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 Challenges Rebuilding Their Lives

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 while protecting their 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.

SPOTLIGHT



SPOTLIGHT RECOMMENDATION: INCLUDE NONDISCRIMINATION PROVISIONS IN ALL GOVERNMENT- FUNDED RE-ENTRY PROGRAMS

- 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.
- 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.

SPOTLIGHT



**SPOTLIGHT RECOMMENDATION:
REMOVE BARRIERS THAT PEOPLE WITH
CRIMINAL RECORDS, INCLUDING LGBT
PEOPLE, FACE WHEN IT COMES TO
REBUILDING THEIR LIVES**

- Legislators should pass federal, state, and local nondiscrimination laws prohibiting discrimination based on sexual orientation and gender identity.
- 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.
- States should pass fair change hiring legislation limiting employers' consideration of criminal records.
- Congress should pass legislation prohibiting the federal government and federal contractors from requesting criminal history information until a conditional offer has been extended.
- Employers should incorporate recent EEOC guidance about the consideration of criminal records during employment decisions into their policy handbooks and hiring practices.
- 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.
- Congress should reinstate Pell grant access for currently incarcerated individuals, allowing them to use student aid to pursue higher education.
- Federal, state, and local legislators should increase funding for educational and vocational training programs within prisons and jails.
- Congress should remove bans on educational assistance for students with drug convictions, including for federal student loans and educational tax credits.
- 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.

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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>



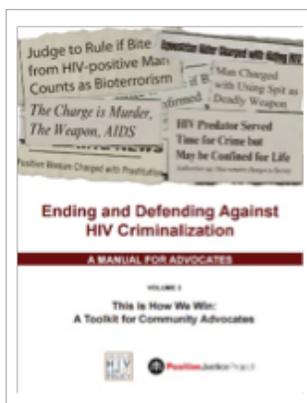
A Roadmap for Change: Federal Policy Recommendations for Addressing Criminalization of LGBT People and People Living with HIV

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, decriminalizing 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

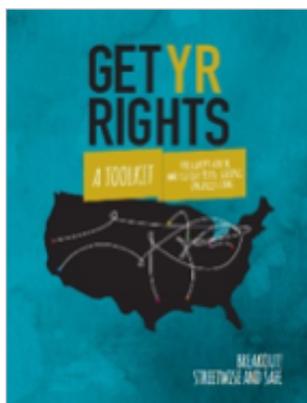
This toolkit is a step-by-step guide with resources for state advocates to modernize state laws related to HIV criminalization. It provides quick-reference resources (e.g., HIV criminalization talking points and references), links to longer reference materials (including, links to HIV criminalization 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 nonconforming 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 provide 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.queerinjjustice.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 on 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.tgjip.org/prison-survival-guide.html>

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