

# UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE OF COLOR

August 2016



Center for American Progress



movement advancement project ►

Authors



Partners

## This report was authored by:

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## This report was developed in partnership with:

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MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community", MALDEF promotes social change through advocacy, communications, community education, and litigation in the areas of education, employment, immigrant rights, and political access. MALDEF strives to implement programs that are structured to bring Latinos into the mainstream of American political and socio-economic life; providing better educational opportunities; encouraging participation in all aspects of society; and offering a positive vision for the future. For more information, visit [www.maldef.org](http://www.maldef.org).

### National Action Network

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### National Black Justice Coalition

The National Black Justice Coalition (NBJC) is a civil rights organization dedicated to empowering Black LGBT people. NBJC's mission is to end racism and homophobia. As America's leading national Black LGBT civil rights organization focused on federal public policy, NBJC has accepted the charge to lead Black families in strengthening the bonds and bridging the gaps between the movements for racial justice and LGBT equality. For more information, visit [www.nbjc.org](http://www.nbjc.org).

### National LGBTQ Task Force

The National LGBTQ Task Force works to secure full freedom, justice and equality for lesbian, gay, bisexual, transgender and queer (LGBTQ) people. For over forty years, we have been at the forefront of the social justice movement by training thousands of organizers and advocating for change at the federal, state, and local level. For more information, visit [www.thetaskforce.org](http://www.thetaskforce.org).

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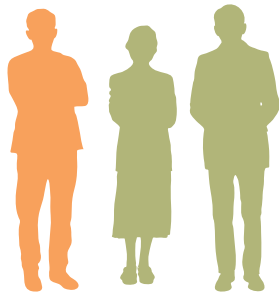
# UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE OF COLOR

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## LGBT PEOPLE OF COLOR ARE OVERREPRESENTED IN THE SYSTEM

**1 IN 3**

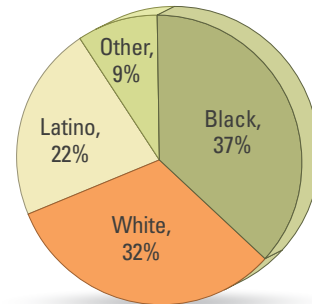
ADULTS ARE PEOPLE OF COLOR



**3.8%** OF ALL ADULTS IDENTIFY AS LGBT

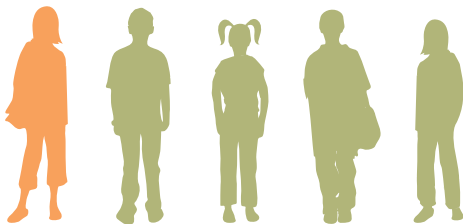
**2 IN 3**

ADULTS IN PRISON & JAIL ARE PEOPLE OF COLOR



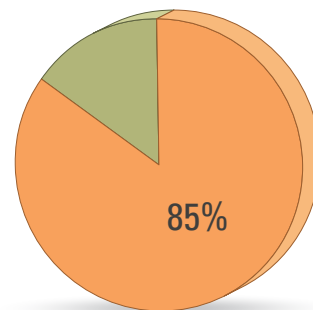
**7.9%** OF ADULTS IN PRISON & JAIL  
IDENTIFY AS LGBT

## OF YOUTH IN JUVENILE JUSTICE FACILITIES



**1 IN 5**

YOUTH IDENTIFY AS LGBT OR GENDER  
NON-CONFORMING



OF LGBTQ YOUTH IN JUVENILE JUSTICE  
FACILITIES, **85%** ARE YOUTH OF COLOR

Sources: "QuickFacts: White Alone, Not Hispanic or Latino, Percent, July 1, 2014, (V2014)," U.S. Census Bureau; Gary J. Gates and Frank Newport, "Special Report: 3.4% of U.S. Adults Identify as LGBT," Gallup, October 18, 2012; E. Ann Carson, "Prisoners in 2013" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2014); 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); Angela Irvine, "Dispelling Myths: Understanding the Incarceration of Lesbian, Gay, Bisexual, and Gender Nonconforming Youth," Unpublished (Oakland, CA: National Council on Crime and Delinquency, 2014).

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## WHY ARE LGBT PEOPLE OF COLOR OVERREPRESENTED?

### PERVASIVE DISCRIMINATION & STIGMA

LGBT people are pushed into the system by:

- Unsafe Schools and School-to-Prison Pipeline
- Family Rejection and Negative Child Welfare System Experiences
- Poverty, Unemployment, and Pervasive Discrimination

### DISCRIMINATORY ENFORCEMENT OF LAWS

LGBT people disproportionately impacted by:

- HIV Criminalization Laws
- Drug Laws

### HARMFUL POLICING STRATEGIES & TACTICS

LGBT people experience negative policing strategies, including:

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

## HOW ARE LGBT PEOPLE OF COLOR TREATED IN CRIMINAL JUSTICE INSTITUTIONS?



DISCRIMINATION  
IN COURTS



UNFAIR AND INHUMANE  
TREATMENT IN  
CONFINEMENT FACILITIES

## WHAT IS THE IMPACT ON LGBT PEOPLE OF COLOR?



LACK OF SUPPORT



COLLATERAL  
CONSEQUENCES OF  
CRIMINAL RECORD



# BLACK COMMUNITIES BEAR THE BRUNT OF THE SYSTEM'S DYSFUNCTION

## ARRESTED, SUSPENDED, AND STOPPED



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



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

## IMPRISONED AND DETAINED



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



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



# LATINO LGBT PEOPLE & THE CRIMINAL JUSTICE SYSTEM

“ THERE IS A LACK OF DATA ON THE SPECIFIC EXPERIENCES OF LATINO LGBT PEOPLE IN THE CRIMINAL JUSTICE SYSTEM, BUT LIMITED DATA PAINT A PICTURE OF BIAS AND OVERREPRESENTATION. ”

**17%** OF THE PEOPLE IN THE US ARE LATINO

**22%** OF PEOPLE IN PRISONS AND JAILS ARE LATINO

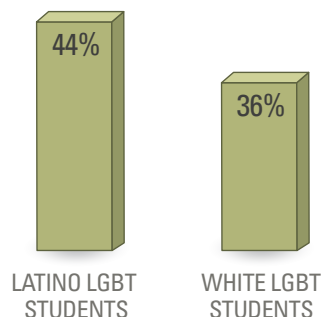
**4%** OF LATINO ADULTS IDENTIFY AS LGBT (AS DO 3.4% OF ALL ADULTS)

**8%** OF ALL INCARCERATED ADULTS IDENTIFY AS LESBIAN, GAY, OR BISEXUAL

## LATINO LGBT PEOPLE AT INCREASED RISK FOR INTERACTIONS WITH LAW ENFORCEMENT

**20%**  
OF PEOPLE SHOT BY POLICE  
IN 2015 WERE LATINO

LATINO LGBT  
YOUTH MORE LIKELY  
TO BE DISCIPLINED  
AT SCHOOL



- Latinos are more likely to be stopped by police
- Collaboration between law enforcement & immigration officials increases surveillance of communities and discourages reporting of crime
- Latina women are overrepresented in HIV criminalization cases





## INTRODUCTION

Greater national attention has recently been paid to the experiences of people of color,<sup>a</sup> particularly black and Latino people, within the criminal justice system in the United States—how violence and abuse, profiling and discrimination, and prosecution and incarceration have devastated communities of color. Racial and ethnic disparities across the criminal justice system are extreme; see, for example, the graphic on pages 3 and 4 for a summary of key disparities for black and Latino people in the United States. Police arrests and convictions under drug laws reveal racial biases by law enforcement and court officials. People of color are held in jail longer before being tried and receive increased sentences compared to white defendants. People of color comprise the majority of people held in immigration detention facilities. Disproportionately high rates of incarceration and the collateral consequences related to having a criminal record force many people of color back into the criminal and legal cycle.

For LGBT people of color, experiences with law enforcement, with the justice system, in confinement facilities, and when rebuilding their lives with a criminal record are inextricably linked with racism and discrimination against LGBT people. Both people of color and LGBT people, in general, are overrepresented in the criminal justice system (as shown in the graphics in the preceding pages). Therefore, it's not surprising that LGBT people of color face exceptionally high rates of incarceration.<sup>b</sup>

This report focuses on LGBT people of color and their interactions with the criminal justice system. It is a companion report to a larger report released in February 2016 entitled *Unjust: How a Broken Criminal Justice System Fails LGBT People*. That report examines drivers of incarceration for LGBT people, the experiences of LGBT people in the justice system and in confinement facilities, and added challenges to re-entry for LGBT people.

### Who are LGBT People of Color?

More than one in three people in the United States identifies as a person of color—over 113 million people.<sup>1</sup> Similarly, a survey of adults conducted by Gallup found that 33% of adults who identify as lesbian, gay, bisexual, and/or transgender<sup>c</sup> are people of color, and people of color are more likely than white people to identify as LGBT.<sup>2</sup> In addition, research by the Williams Institute

finds that an estimated 1.7 million young people of color between the ages of 8 and 18 identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ).<sup>3</sup>

LGBT people live throughout the United States, comprising anywhere from 2.6% of the population in Birmingham, Alabama, to 10.0% in the District of Columbia.<sup>4</sup> LGBT people of color are more likely than white LGBT people to be raising children; data from Gallup finds that two in five (41%) Hispanic and African American LGBT women are raising children as are 38% of Asian LGBT women compared to 28% of white LGBT women.<sup>5</sup> Childrearing rates are also higher among Hispanic, Asian, and African American LGBT men compared to white LGBT men.

Much like their non-LGBT counterparts, LGBT people of color have lower economic security, higher rates of poverty and uninsurance, and other economic struggles compared to their white peers, and in some cases LGBT people of color also report greater economic insecurity compared to their non-LGBT peers. For example, African Americans in same-sex couples have poverty rates at least twice the rate for African Americans in married opposite-sex couples and poverty rates six times that of white men in same-sex couples.<sup>6</sup> Transgender people of color are more likely to live in extreme poverty than are non-transgender people of color; Asian and Pacific Islander (API) transgender people are six times more likely to report incomes of less than \$10,000 or less compared to non-transgender API people.<sup>7</sup> Transgender people of color also report higher rates of extreme poverty compared to the transgender population as a whole; 15% of transgender people in the National Transgender Discrimination Survey reported incomes of \$10,000 or less per year compared to 34% of black transgender respondents, 28% of Latino/a respondents, 23% of both Native American and multiracial respondents, and 18% of API respondents.<sup>8</sup>

<sup>a</sup> In some cases, this report uses the term people of color to refer broadly to African American or black, Latino 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, black or African American, or American Indian or Native American).

<sup>b</sup> While data speaks directly to the experiences, in many instances, of black and African American people as well as Latino and multiracial people, less data is available to understand the ways in which other communities of color, including Asian and Pacific Islanders, Middle Easterners, and Native Americans, interact with the criminal justice system. For example, data show stark disparities particularly for black and African American communities as well as Latino and multiracial individuals in terms of incarceration rates. Limited data about sexual orientation and gender identity and limited disaggregated data about communities such as Native Americans and Asian and Pacific Islanders make it more difficult to present quantitative data about these communities' experiences.

<sup>c</sup> All individuals have both a sexual orientation and a gender identity. Thus it is possible for an individual to identify as transgender and not identify as lesbian, gay, or bisexual, or to identify as both transgender and lesbian, for example.

## Data about LGBT People of Color 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.<sup>9</sup> While similar statistics are not available for the LGBT population, several studies find that LGBT people are more likely to be incarcerated than the general population, as detailed below. Similar to the numbers for the broader population of people in the criminal justice system, LGBT people in the system are overwhelmingly people of color.

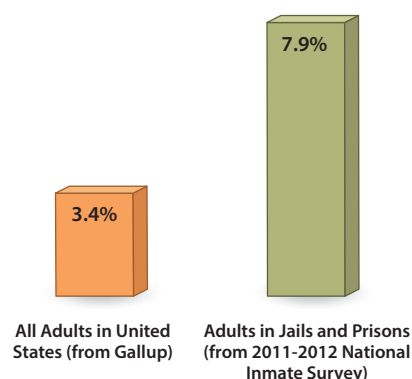
**LGBT Youth.** In a survey of youth at seven juvenile justice facilities across the United States, 85% of LGBT and gender non-conforming youth were youth of color.<sup>10</sup> High rates of incarceration for LGBT youth of color are not surprising given that youth of color, in particular black youth, are disproportionately likely to be in the juvenile justice system; 40% of incarcerated youth are black compared to 14% of youth overall.<sup>11</sup> Rates of incarceration for Latino youth are roughly proportionate to the Latino youth population overall, while white youth are underrepresented among youth in juvenile justice facilities (33% of incarcerated youth versus 53% of the overall youth population).<sup>12</sup>

**LGBT Adults.** Data about LGBT people in the criminal justice system are scarce. As part of recent data collection efforts required under federal law, federal surveys have begun to ask individuals in prisons, jails, and juvenile facilities about their sexual orientation and gender identity.

- Two reports released by the federal Bureau of Justice Statistics, one in 2008 and another in 2011-2012, found that 8% of adults in prisons and jails, or approximately 162,000 adults, identified as something other than heterosexual.<sup>13</sup> This is more than twice the percentage of adults in the United States who identify as LGB, as shown in *Figure 1*.<sup>14</sup> The 2011-2012 study also estimated that there were approximately 3,209 transgender adults held in prisons or jails in the United States.<sup>15</sup> These reports do not provide racial or ethnic demographics about individuals identifying as transgender and/or something other than heterosexual.
- Black and Native American/Alaskan Native transgender women were more likely to report having been incarcerated than white transgender women,

**Figure 1: LGBT Adults are Overrepresented in Jails and Prisons**

Percent of People Identifying as LGB



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

as shown in *Figure 2* on page 7.<sup>16</sup> These high rates of incarceration for transgender people come despite the fact they have higher rates of education than the general incarcerated population.

- A 2015 study involving transgender veterans accessing care through the Veterans Administration found that transgender veterans were twice as likely to have been involved with the justice system than non-transgender veterans.<sup>17</sup>

**LGBT Unauthorized Immigrants.** There are an estimated 267,000 LGBT-identified individuals without legal authorization to be in the United States (hereafter referred to as "unauthorized immigrants").<sup>18</sup> Nearly all of these unauthorized LGBT immigrants are people of color; 71% are Hispanic and 15% are Asian or Pacific Islander. 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. Other LGBT people of color may be placed in immigration detention because they have been arrested by law enforcement and transferred to immigration enforcement officials. There are an additional 637,000 LGBT-identified immigrants with legal authorization to be in the United States, including those with green cards.<sup>19</sup> While these LGBT immigrants are less likely to be people of color than those who are unauthorized, 30% are Hispanic and 35% are Asian or Pacific Islander.

## How Do We Know What We Know (and Don't) About LGBT People of Color? Data Challenges and Opportunities

LGBT people's experiences have been long missing from large, nationally representative data sets because few surveys ask questions about sexual orientation or gender identity. As a result, researchers, policymakers, and advocates struggle to access data needed to articulate the needs of the LGBT community and how changes in policy are impacting the LGBT community. Given the smaller size of the LGBT community compared to the U.S. population as a whole, there are also challenges in disaggregating data to convey the experiences of LGBT people of color, both as a broader group, and also within racial or ethnic groups.

**This report presents, whenever possible, data that speaks to the experiences of LGBT people of color as black LGBT people, Latino/a LGBT people, Asian and Pacific Islander LGBT people, Native American LGBT people, multi-racial LGBT people, and others.** Very few large, nationally representative surveys, however, ask about sexual orientation or gender identity. The two largest nationally representative surveys in the country, the decennial Census and the annual American Community Survey (ACS), conducted by the U.S. Census Bureau, do not ask about sexual orientation or gender identity. The information about the LGBT community that is available through the Census and the ACS is limited to the number of cohabiting same-sex couples and no information is available to determine whether people identify as transgender. The National Health Interview Survey, the largest federal health survey, contained questions about sexual orientation for the first time in 2013, and is the first large federal survey to include such questions.<sup>20</sup> Gallup, a private survey organization, has recently begun including a question about LGBT identity in their surveys, which provide a new data set. The National Transgender Discrimination Survey, fielded by the National Center for Transgender Equality and The Task Force, provides the largest picture of the experiences of transgender and gender nonconforming people with a sample size of more than 6,000.<sup>21</sup> The upcoming data from the U.S. Trans Survey will provide an even broader picture of the transgender community.

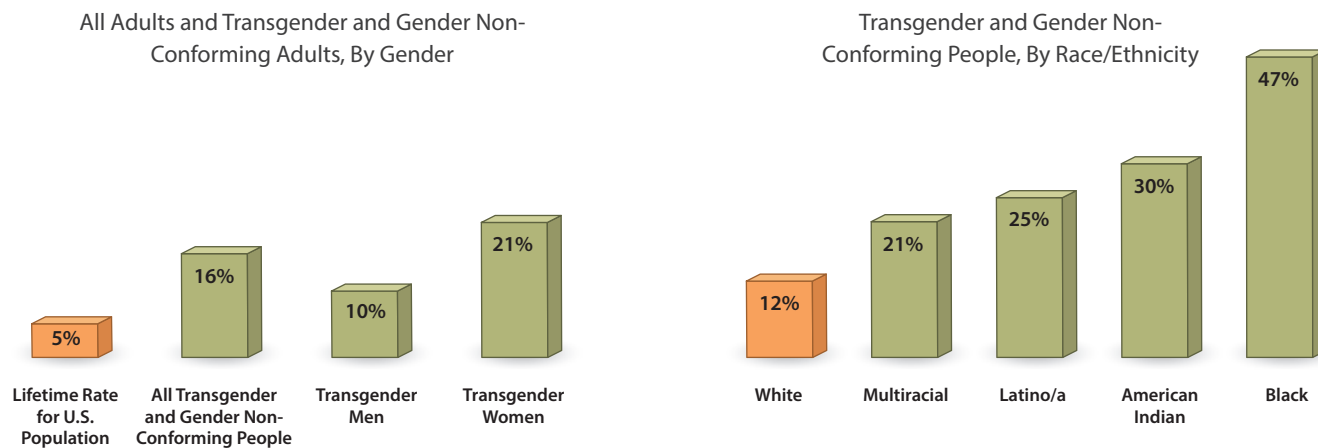
Even with these and other data sources that ask about sexual orientation, gender identity, and LGBT identity, the intersection of data sets that also speak to experiences in the criminal justice system remain few. As part of data collection required by the federal Prison Rape Elimination Act (PREA), the Bureau of Justice Statistics has begun releasing data about the experiences of adults and youth in prisons and jails.

Even more rarely do researchers using these data examine the intersections of race, ethnicity, sexual orientation, and gender identity, so the data presents solely the experience of all individuals who identified as LGB or transgender on a survey.

**Thus, where data does not exist regarding the unique experience of LGBT people of color, our common practice is to present data about LGBT people and people of color and to make empirically-based arguments about the likely experiences of LGBT people of color within the criminal justice system.** In some instances, this isn't even possible, and so we try to draw links between broader experiences of LGBT people and what is known about people of color in a particular aspect of the criminal justice system. It is important to note that data about the experiences of people of color are also imprecise. Questions about race or ethnicity may not offer the specificity needed to uncover disparities or surveys may not be asked in a language which a respondent understands and can fully respond. The lack of data specifically about LGBT people of color in the context of the criminal justice system makes it difficult to assess the relative contributions of race, ethnicity, sexual orientation, or gender identity as drivers of the issues discussed in this report. However, we present these data to give the reader as full a picture as possible of the ways in which these factors come into play.

There is great need for more granular data—disaggregated by, for example, gender/gender identity and race/ethnicity—on the LGBT population. More data on subpopulations is critical to developing a comprehensive understanding of, and then addressing, the needs of all members of the LGBT population, including, for example, bisexual people. The challenge of small sample sizes can be overcome by oversampling, that is, surveying more people from specific subpopulations than their relative representation within the larger community. And strategies can and must be developed to ensure that isolated—due to language, geography, and other reasons—populations are reached. A lack of disaggregated data can render invisible the experiences and needs of LGBT subpopulations. For example, high poverty rates among several Asian American and Pacific Islander ethnic groups (e.g. Hmong) are rendered invisible when data are aggregated, overshadowed by lower poverty rates in other AAPI ethnic groups.<sup>22</sup> What's more, agencies and advocates must ask the questions needed to better understand the experiences of LGBT people of color. That means asking about sexual orientation and gender identity. It means asking about race and ethnicity utilizing various languages to ensure that disparities are adequately documented. Federal, state, and local surveys examining health, school environments, economic security, and housing and homelessness need to include questions about sexual orientation and gender identity so that the ways in which LGBT people are impacted become clearer. More precise data collection and larger sample sizes will allow us to precisely examine disparities facing LGBT people and specifically, how different LGBT communities are impacted by different disparities.

**Figure 2: High Rates of Incarceration Among Transgender Adults**  
Percent of People Reporting At Least One Period of Incarceration



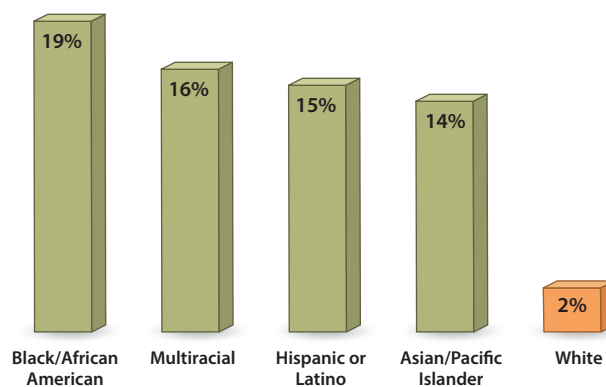
Source: Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011; Allen J. Beck and Thomas P. Bonczar, "Lifetime Likelihood of Going to State or Federal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

## WHY ARE LGBT PEOPLE OF COLOR OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM?

### Reason #1: Pervasive Stigma and Discrimination

**Unsafe Schools and Harsh Disciplinary Policies.** At school, many LGBT youth of color are harassed because of their race and ethnicity as well as their sexual orientation and gender identity. As shown in *Figure 3*, the 2013 National School Climate Survey found that black and Latino LGBT youth reported higher rates of harassment and violence because of their race and ethnicity compared to white LGBT youth.<sup>23</sup> Multiracial LGBT students reported higher rates of physical harassment based on sexual orientation and gender expression than did all other LGBT students. A 2012 survey of LGBT youth conducted by the Human Rights Campaign found that LGBT Latino youth were twice as likely as non-LGBT Latino youth to report being excluded by peers, verbally harassed, or physically assaulted at school.<sup>24</sup> Some LGBT students who are bullied or harassed at school receive little support or recourse through school officials.<sup>25</sup> Ultimately, LGBT youth may be forced to defend themselves, putting themselves at risk for disciplinary action.<sup>26</sup> Additionally, LGBT young people who are bullied and harassed at school are at risk for substance use, mental health challenges, missed school, thoughts of suicide, and lower aspirations to attend college,<sup>27</sup> which can mean increased interactions with law enforcement.

**Figure 3: Percent of LGBT Youth Reporting Feeling Unsafe at School Because of Race or Ethnicity**



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).

Teachers and school administrators use harsh disciplinary policies disproportionately against students of color. Emerging research shows that LGBTQ youth are also disciplined and pushed out of school at higher rates than their non-LGBTQ peers. Analyses of the 2013 National School Climate Survey finds that, among LGBTQ-identified students, Black/African American, Hispanic/Latino, and multiracial students report higher rates of school discipline than do white and Asian/South Asian/Pacific Islander students.<sup>28</sup> In a 2012 national survey of LGBT people ages 18-24, 72% of Native American LGBT

youth, 69% of African American LGBT youth, and 65% of Latino/a LGBT youth reported being sent to detention in middle or high school, as shown in *Figure 4*.<sup>29</sup> Nearly one-third (31%) of African American LGBT youth reported being suspended compared to 20% of LGBT youth overall. And, more than three-quarters (79%) of LGBT youth of color reported that they had interacted with security or law enforcement in their middle or high school years, compared to 63% of white LGBT young people.<sup>30</sup>

These findings mirror research finding that, in general, black, American Indian, and Native-Alaskan students receive more disciplinary action compared to white students (and non-white students of other racial and ethnic backgrounds), even when controlling for the type of offense.<sup>31</sup> Black students are three times more likely to be suspended than their white peers,<sup>32</sup> and students of low socio-economic status are suspended at greater rates than students of high socio-economic status.<sup>33</sup> Emerging research suggests that African American girls are increased risk of harsh school disciplinary policies. This is particularly true of African American girls and girls who identify as LGBT and who are perceived to be gender non-conforming in some way, such as dressing in a more stereotypically masculine fashion, speaking out in class, or playing sports.<sup>34</sup>

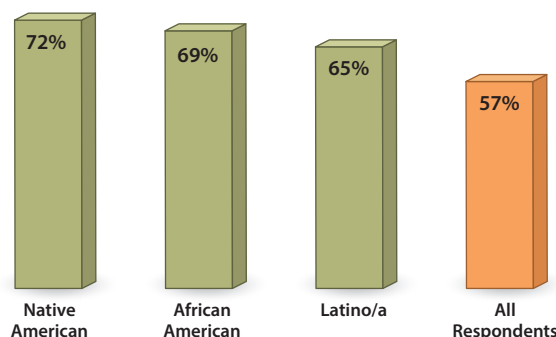
**Family Instability and Poverty, Family Rejection, and Negative Experiences in the Child Welfare System.** LGBT youth of color face an array of challenges at home such as family instability and poverty, family rejection, and negative experiences with the child welfare system,

all of which can result in increased rates of homelessness and interactions with law enforcement.

Low and stagnant wages, high poverty rates, chronic unemployment, and high costs for housing, childcare, and other necessities leave many families stretched. One in five children (22%) under the age of 18 in the United States lives in poverty, with much higher rates for American Indian, Black, and Latino children, as shown in *Figure 5*.<sup>35</sup> Adding to the challenges, high rates of incarceration, particularly for black and Latino communities, mean that families must rely on a single earner or networks

**Figure 4: LGBT Youth of Color More Likely to be Disciplined at School**

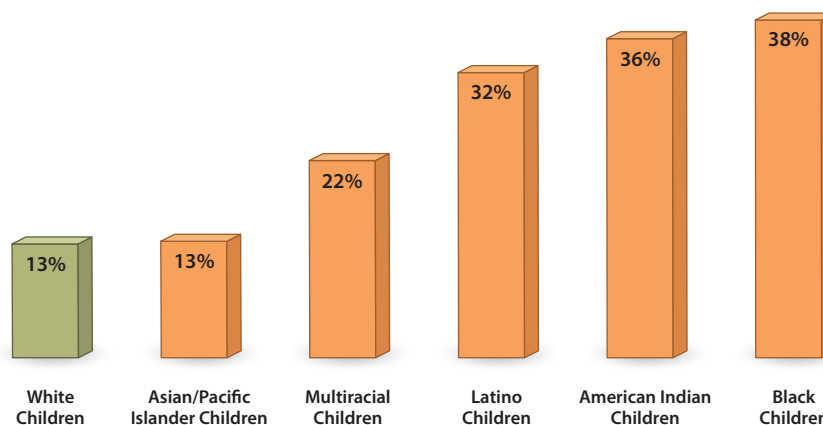
Percent of LGBTQ Young Adults Ages 18-24 Reporting Being Sent to Detention in Middle or High School, By Race/Ethnicity



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

**Figure 5: More Than 15 Million Children Grow Up in Poverty**  
2014 Poverty Thresholds by Family Configuration

**22%**  
(15.7 MILLION)  
OF CHILDREN  
LIVE IN POVERTY



Source: National KIDS Count, "Children In Poverty by Race and Ethnicity: 2014," Updated September 2015.



to provide basic necessities. When some youth reach a certain age, they may be told that are “on their own” and need to find ways to provide for themselves. Other youth may be separated from their families because of housing instability, a parent being detained or even deported by immigration officials, or domestic violence.

LGBT youth may experience rejection from their families related to their sexual orientation or gender identity, and some families may experience extreme economic instability that result in youth being separated from their parents.

Youth of color may be pushed into the child welfare system, and for LGBT youth of color in particular, the system can be a difficult place and can serve as a pipeline to homelessness and the juvenile justice system. For example, as shown in *Figure 6*, of young people in out-of-home care in Los Angeles County, nearly one in five (19%) identified as LGBTQ (over twice estimate of youth nationwide identifying as LGBT), and 86% of those youth were youth of color, mirroring the broader demographics of the Los Angeles County child welfare system.<sup>36</sup>

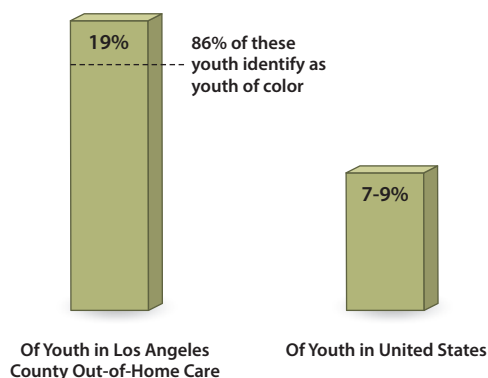
Youth nationwide may experience homelessness or housing instability, and research finds an alarming number of homeless youth identify as LGBT, and a disproportionate number of LGBT homeless youth are youth of color. For example, in a 2014 survey of human service providers serving the youth homeless population, providers reported that 31% of their LGBTQ clients (nearly 30% of all clients) identified as African American or Black, 14% as Latino/Hispanic, 1% as Native American, and 1% as Asian or Pacific Islander—rates greater than their respective composition of the population as a whole.<sup>37</sup>

**Poverty, Unemployment, and Pervasive Stigma and Discrimination.** LGBT people of color experience high rates of discrimination in employment, housing, and when accessing social services based on their race and ethnicity, sexual orientation and gender identity, and immigration status. For example, the National Transgender Discrimination Survey found that 37% of African American transgender respondents had been evicted from a home or apartment because of their gender identity or expression as had 21% of unauthorized immigrants, compared to 11% of the total sample.<sup>38</sup>

Poverty rates and unemployment rates for LGBT people of color are higher than for non-LGBT people of color and white LGBT people.<sup>39</sup> The National

**Figure 6: LGBTQ Youth Are Over-Represented in Child Welfare System**

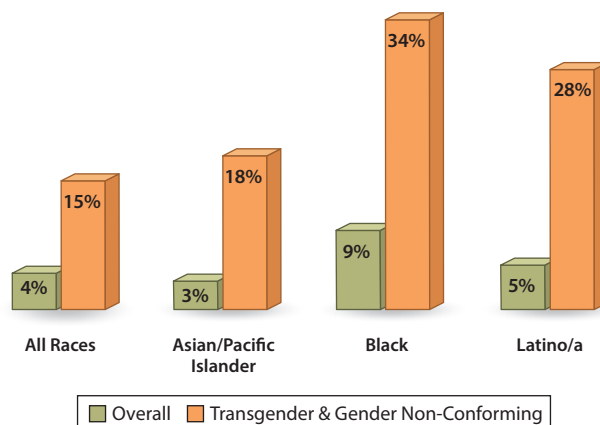
Percent of Youth Identifying as LGBTQ



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).

**Figure 7: Transgender People Report Extreme Poverty**

Percent of Respondents Reporting Incomes Less Than \$10K Per Year



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

Transgender Discrimination Survey found that African American transgender people had substantially higher rates of unemployment than white transgender people (28% compared to 12%) and higher rates of poverty, as shown in *Figure 7*.<sup>40</sup>

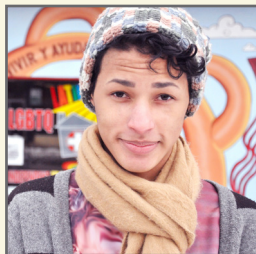
When LGBT people of color have limited resources to care for themselves and their families, they are at increased risk for engagement with the criminal justice system.



**END RESULT:** When communities, schools, families, and systems fail LGBTQ youth and adults of color, they may have limited options. Demonstrating incredible resiliency and strength,



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



Antonio Gray came out to his family when he was 14. He didn't get along with his mother, and her boyfriend was violent. "I just couldn't take it. It was all just too much," Gray told NBC News in 2014. When he was 17, he

became homeless. He moved between friends' houses and emergency shelters. Antonio found his way to El Rescate, a community center in Chicago's Humboldt Park neighborhood for LGBTQ youth and youth living with HIV. He lives among other youth, learning life skills from the center's staff and receiving assistance with education and employment readiness.

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

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

## Story: Escaping the School-to-Prison Pipeline



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

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

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

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

- Kourtnee Armanii Davinnie

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

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

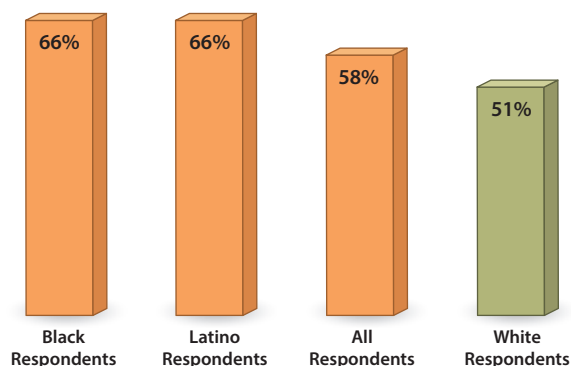
many LGBT youth and adults of color rely on one another and themselves to not only survive, but thrive, in the face of these challenges. And yet the impact on LGBT people of color can be violence, harassment, and criminalization. Some LGBT people of color, youth and adults, experience homelessness. Black, Latino, and multiracial LGBT youth, in particular, are pushed out of school directly into the juvenile and criminal justice system by harsh disciplinary policies and skipping school because school is not safe. In a 2015 survey by Black and Pink, 66% of currently incarcerated black and Latino/a LGBTQ people had been arrested before age 18 compared to 51% of white LGBTQ people, as shown in *Figure 8*.<sup>41</sup> LGBT people of color face pervasive discrimination in employment, housing, and social services all of which means they may struggle to meet their basic needs. Some may turn to survival economies, which increases risk of interactions with law enforcement and criminalization.<sup>42</sup>

## Reason #2: Discriminatory Enforcement of Criminal Laws

**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.<sup>43</sup> These laws, frequently called “HIV criminalization laws,” penalize behavior by people living with HIV, even if those behaviors carry no risk of transmission or only unintentionally expose others to the virus. HIV criminalization laws also criminalize commercial sexual behavior between adults, regardless of whether the individuals use condoms and/or other forms of protection.

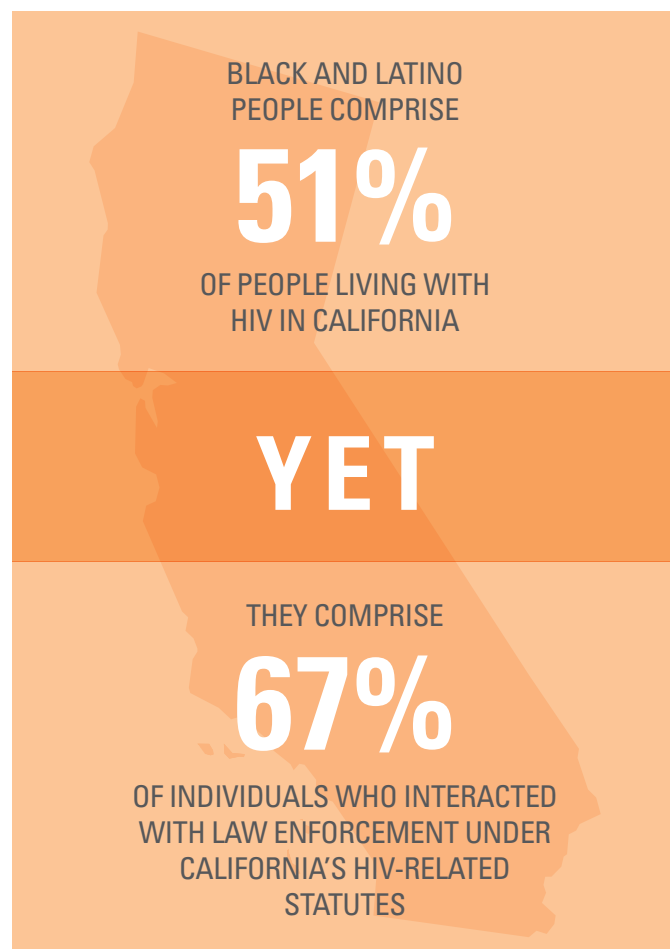
HIV criminalization laws are wielded disproportionately against people of color living with HIV, many of whom are gay or bisexual men and transgender women. Analyzing 322 HIV-related prosecutions from 19 states, ProPublica found that two-thirds involved individuals who identified as black or African American.<sup>44</sup> In 2015, the Williams Institute examined instances where individuals came into contact with the California criminal justice system between 1988 and June 2014. Again, racial disparities emerged; as shown in *Figure 9*, black and Latino people comprised two-thirds (67%) of the individuals who interacted with law enforcement based on their HIV status, while they comprise just 51% of individuals living with HIV in the state.<sup>45</sup> Individuals charged with

**Figure 8: Percent of Currently Incarcerated LGBTQ Adults Who Had Been Arrested Prior to Age of 18**



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

**Figure 9: Racial Disparities in Interactions with Law Enforcement Under California’s HIV Statutes**



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.

HIV-related charges were convicted in nearly all cases and 91% of convicted individuals were sentenced to time in prison or jail, compared to a conviction rate of 59% for all felony defendants.<sup>46</sup>

**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; 16% of individuals incarcerated in state prisons and 56% of those in federal prisons were convicted of drug-related offenses.<sup>47</sup>

The intense war on drugs in the United States has disproportionately impacted people of color, particularly black and Latino communities, despite similar rates of illicit drug use among black, Latino, and white people.<sup>48</sup> Research finds that police are more likely to arrest black people for violating drug laws than white people.<sup>49</sup> For example, in Seattle, two-thirds of individuals arrested for serious drug offenses during a four-month period were black—reflecting a rate 13 times higher than for whites.<sup>50</sup> Similarly, according to a 2013 report by the ACLU examining data from all 50 states and the District of Columbia from 2000 to 2010, African Americans are incarcerated for drug charges at much greater rates than white people even though drug use rates are similar.<sup>51</sup>

Additionally, drug sentencing laws often punish some offenders more harshly than others, and this has a disproportionate impact on people of color. For example, individuals convicted of selling drugs near schools receive increased sentences, but given the population density around schools in cities, people in urban areas, particularly people of color, are more likely to be arrested within these zones.<sup>52</sup> Data from the Bureau of Justice Statistics found that in 2013, 65% of people in state prisons for drug-related convictions were black, Hispanic, multiracial, or a member of another community of color.<sup>53</sup>

Information about rates of arrest of LGBT people of color for drug-related offenses is limited. However, given the rates of arrest for people of color in general, and research showing higher rates of substance use for LGBT people, it is likely that LGBT people of color are at greater risk of arrest for these types of offenses.<sup>54</sup> Research finds that LGBT people are more

### Story: Black Gay College Student Sentenced to 30 Years in Prison

In 2013, Michael Johnson, a black gay student at Lindenwood University outside of St. Louis, was arrested by police and charged under Missouri's HIV criminalization law. In 2015, Michael was convicted and sentenced to 30 years in prison. Michael's trial and conviction exhibited the racial biases evident in HIV criminalization prosecutions.

Among Michael's sex partners were a number of white men. The prosecutor portrayed Michael as a sexual predator, drawing on racial stereotypes dating back centuries of black men and other men of color as people from whom white people needed protecting. The jury was nearly all white and deliberated for only two hours. The judge was white.

Michael's case highlights not only the outdated nature of HIV criminalization laws but also how racial discrimination intersect with stigma and discrimination against LGBT people and those living with HIV. Research shows that black people are overwhelmingly more likely to be convicted under HIV criminalization laws and to receive harsher sentences.

likely to abuse substances, including illegal drugs, perhaps as a reaction to the minority stress resulting from discrimination and stigma that LGBT people experience. For example, men who have sex with men are more likely than other men to use marijuana, amphetamines, and heroin.<sup>55</sup> Bisexual people more likely to use non-marijuana substances.<sup>56</sup> And, in a meta-analysis of 18 published academic studies, LGB-identified youth were more likely to engage in substance use than heterosexual youth.<sup>57</sup>

Transgender people, particularly transgender people of color, may be unfairly targeted by police for suspicion of selling or using drugs if they are found in possession of syringes. Some transgender people inject hormones as part of their transition-related medical care, so they have syringes in their belongings. A troubling number of transgender people, including large numbers of transgender people of color, lack adequate medical care or cannot find competent medical care, and they may use street hormones, for which they may carry syringes.

## SPOTLIGHT



## LGBT People of Color Caught at the Intersections of the Immigration and Criminal Justice Systems

As described on page 7, there are an estimated 267,000 LGBT-identified individuals lacking legal authorization to be in the United States (referred to in this report as “unauthorized immigrants”).<sup>58</sup> And there are an additional 637,000 LGBT-identified immigrants with legal authorization to be in the United States, including those with green cards.<sup>59</sup> Data show that many of these LGBT immigrants are people of color, particularly Latino and Asian or Pacific Islander.<sup>60</sup> LGBT immigrants, particularly LGBT immigrants of color, are at increased risk for interaction not only with the criminal justice system but also with the immigration enforcement system. Throughout this report, issues arising for LGBT immigrants are discussed, but this section is designed to provide a high-level overview of the immigration system specifically.

**Background on immigration system.** While it is not part of the criminal justice system, the immigration system in the United States functions as a justice system in many ways, relying on immigration enforcement officers and even law enforcement officers, immigration courts and attorneys, and immigration detention facilities. Programs such as the Priority Enforcement Program rely on local law enforcement to notify ICE when people are fingerprinted and to hold immigrants in jail when requested so immigration officers can take custody, and 287(g) agreements deputize local law enforcement officers to act as federal immigration agents, further entangling the two systems. Most of the more than 250 ICE detention facilities are even comprised of space rented from city or county jails and prisons.<sup>61</sup> Individuals can enter federal immigration custody if they are apprehended at the border or at a port of entry, through immigration raids, being stopped by law enforcement, or after being convicted of certain crimes. For example, unauthorized immigrants who are arrested by police or detained by immigration officials may be held in immigration detention while awaiting deportation proceedings, asylum applications or other judgments. Authorized immigrants, including those with a green card, can be detained and have deportation proceedings commenced for convictions of certain categories of crimes. ICE has broad authority to detain individuals it determines lack legal status to be in the United States, including those who are awaiting a determination of whether they should be deported and those awaiting deportation.<sup>62</sup>

**LGBT people of color who are immigrants may be at increased risk of interaction with law enforcement.** As described on pages 20-21, heightened policing and profiling by police of immigrants, people of color, and LGBT people mean that LGBT people of color, particularly transgender women of color, may be more likely to be targets of law enforcement. Increased collaboration between law enforcement and immigrant enforcement officials are particularly dangerous for LGBT unauthorized immigrants.

**Transgender immigrants are frequently detained.** It is likely that LGBT people of color are overrepresented in immigration detention facilities because of the number of LGBT people, particularly transgender women, who come to the United States to seek asylum based on persecution in their home countries based on sexual orientation, gender identity, and/or HIV status. Many immigrants, particularly those who are detained or surrender at a border seeking asylum, are placed in immigration detention facilities. Some immigrants are subject to statutory mandatory detention, such as individuals with certain criminal convictions. However, ICE policies state that individuals who are found to have “credible fear” of persecution or torture if deported to their home country and who pose no flight risk or are no danger to the community should be eligible for release to await future immigration hearings.<sup>63</sup>

Despite this, research shows that LGBT unauthorized immigrants, including asylum seekers, are more likely to be detained, compared to the general population of asylum seekers, putting them at increased risk for harassment, sexual assault, and lack of adequate medical care. A 2015 report by the Center for American Progress found that 68% of LGBT asylum seekers were detained, despite the fact that 70% of all cases were to be considered for release.<sup>64</sup> According to another 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/or gender identity.<sup>65</sup> Of these, 81 were placed in detention anyway.



**LGBT immigrants lack adequate counsel while in detention and face challenges upon release.** While criminal defendants, particularly those facing a potential prison or jail sentence, are generally entitled to legal representation even if they cannot afford it, individuals in immigration proceedings are not guaranteed counsel. Lacking counsel has serious consequences, particularly in complicated situations, like asylum cases or other instances where deportation could put an individual at grave risk, such as a transgender person from a country where she may be treated harshly. In asylum cases, in particular, there are numerous examples of judges showing a basic lack of understanding of the challenges facing LGBT people in other countries. Immigration attorneys frequently hear judges refer to transgender asylum seekers using the wrong pronoun or using an applicant's legal name even after they have been told that an individual uses a name in accordance with their gender identity. A language barrier may make it very difficult for immigrants to fully participate in their case.

**LGBT immigrants, particularly transgender immigrants, are frequently mistreated in immigration detention facilities.** Much like the inhumane and unsafe conditions described later in U.S. prisons and jails for LGBT people, LGBT people face extraordinary difficulties in immigration detention facilities. In immigration detention facilities, LGBT detainees, particularly transgender detainees, are frequently placed in isolation or in segregated units. In some cases, this placement happens immediately when an individual identifies as LGBT or is identified by staff as LGBT; it also happens in response to a safety concern.<sup>66</sup> Despite PREA regulations, which are binding on the federal government, transgender detainees in immigration detention facilities are frequently housed in units according to the sex on their birth certificate rather than their gender identity, putting their physical safety at risk.<sup>67</sup> According to the Government Accountability Office, 20% of substantiated assaults in immigration facilities involved transgender detainees.<sup>68</sup>

**High rates of physical and sexual assault.** LGBT people are extremely vulnerable within immigration detention facilities. Many are seeking asylum from their home countries where they are persecuted for who they are, and yet they are placed in detention facilities with individuals from those same countries and who may carry the same hatred toward them. According to a study by the Center for American Progress, more than half of the complaints by LGBT detainees to the Department of Homeland Security's Office of Inspector General over a five-year period included reports of sexual or physical abuse.<sup>69</sup>

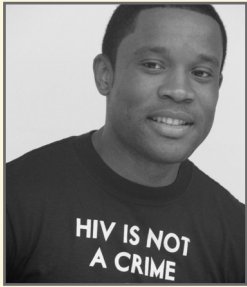
**Lack of necessary medical care.** As detailed on page 31, health care in immigration detention facilities has been found to be substandard. Access to HIV care as well as transgender-related health care is limited, putting people in detention's health at risk.

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



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

Photo permission from Robert Suttle



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

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

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

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

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, in the Black and Pink survey of currently incarcerated LGBTQ people, 55% had sold drugs prior to being incarcerated.<sup>70</sup>



**END RESULT:** Bad laws and discriminatory enforcement of laws push LGBT people into the criminal justice system. HIV criminalization laws rely on outdated science and stereotypes. Drug laws have resulted in high rates of incarceration for low-income communities and communities of color, including a disproportionate number of LGBT people of color.

### Reason #3: Profiling and Police Tactics

Law enforcement agencies, including city and state police, often enforce laws and ordinances in ways that disproportionately impact low-income people and people of color, including LGBT people. Law enforcement officers also often use policing strategies and tactics that have a disparate impact on these communities, resulting in increased rates of arrest and incarceration as well as abuse and violence by police. In some cases, not only an individual's sexual orientation or gender identity 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, perceived religion and immigration status, and stereotyping by police, which puts LGBT people of color at particularly high risk.

**Quality-of-Life Policing.** Quality-of-life policing focuses on policing minor crimes like graffiti, littering, loitering, not paying fares for public transit, and unlicensed street vending.<sup>71</sup> These policies also criminalize public behaviors, such as making too much noise or sleeping or drinking in public.<sup>72</sup> For example, it is increasingly against the law to congregate in public spaces. Police in many jurisdictions claim to focus on enforcing these public nuisance statutes as a way to deter more serious crime. "Broken windows" policing is a similar, frequently simultaneous, policing policy through which these minor infractions, which previously brought a warning or a citation, now result in arrest, jail time, and/or hefty fines, all under the guise of creating safer neighborhoods.<sup>73</sup>

Quality-of-life policing grants extensive discretion to individual law enforcement officers. Officers look the other way and ignore infractions committed by some people or in some neighborhoods, but cite, ticket, and arrest others. In many places, quality-of-life policing has resulted in increased police presence and aggressive enforcement of minor offenses, including minor drug offenses. And research finds that police departments do not use this policy across an entire jurisdiction, but rather in specific neighborhoods.<sup>74</sup> As a result, young people, people of color, people perceived to be involved in trading sex, homeless people, and low-income people, many of whom are LGBT people of color, become explicit targets of broken-windows policing.



Some LGBT young people faced with difficult circumstances in schools, at home, and in their communities create support networks and find community in other places. For some, this may mean spending some or all of their time on the street. While living on the street can provide much needed support and community, it also puts LGBT youth at risk of being criminalized.<sup>75</sup> In particular, young LGBT people of color too often are perceived as “out of place” in traditionally “gay” neighborhoods, which are frequently predominantly white. For example, groups of LGBT young people of color 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 other than simply being in public space. People experiencing homelessness, including the estimated 20-40% of homeless youth who identify as LGBT,<sup>76</sup> can find themselves caught in a cycle of arrests and jail time as they are ticketed or arrested for sleeping in public or panhandling. In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by the police compared to just 33% of white youth, as shown in *Figure 10*.<sup>77</sup>

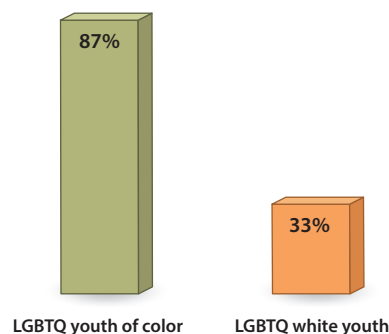
These data mirror extensive research finding that people of color are particularly impacted by quality-of-life policing strategies. Not only are police more likely to engage in over-policing in communities of color and low-income neighborhoods, they are also more likely to enforce violations by people of color in predominantly white and upper-class neighborhoods. In New York City, for example, roughly nine out of ten citations citywide for disorderly conduct, loitering, and spitting were issued to black and Hispanic people, while these populations make up only 53% of the city’s population.<sup>78</sup>

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

An Amnesty International report found that transgender people, particularly transgender women of color, are subject to increased policing because they are

**Figure 10: 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.

perceived to transgress gender norms.<sup>79</sup> For example, police frequently assume that transgender women, particularly transgender women of color, are sex workers based on their perceived transgender status and their race, as well the fact that they are standing, walking, or driving in a particular area. Among the other possible triggers for police targeting of transgender and gender non-conforming people: use of a restroom designated for what police perceive to be the opposite gender; or the presentation of identity documents that do not match a transgender person’s gender expression or the officer’s perception of the person’s gender. For transgender immigrants, who may lack legal identity documents, these interactions can be particularly dangerous—both increasing the risk of harassment and interactions with immigration systems.

In a similar way, gay and bisexual men and lesbian and bisexual women—particularly if they are people of color—are profiled by police if they are perceived to be disrupting the “order”—that is, if they deviate from an officer’s stereotypes of gender norms, which may be compounded by racial or ethnic stereotypes. 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 are more likely to see them as “disorderly” or out of line, or may 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.<sup>80</sup>

## Story: Walking While Trans - Antonia's Story



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

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

**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, shelter, or other staples. Particularly for LGBT people, homelessness and engaging in survival sex frequently co-occur. For example, 48% of transgender people who reported engaging in survival sex in the National Transgender Discrimination Survey also reported experiencing homelessness.<sup>81</sup> In a survey of nearly 1,000 youth experiencing homelessness in New York City, LGBTQ-identified youth were seven times more likely to have traded sex for a place to stay than heterosexual, non-transgender youth.<sup>82</sup>

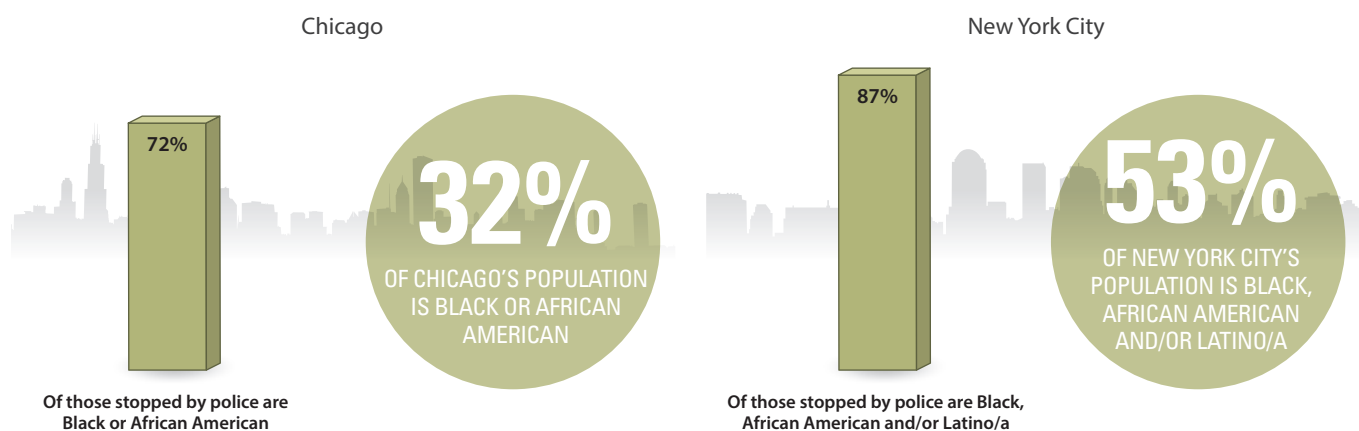
Because LGBT people of color, particularly transgender women of color and unauthorized transgender immigrants, are overrepresented among individuals engaged in sex work, they are frequent targets of police and laws criminalizing prostitution and related offenses. In a survey of LGBTQ youth engaged in survival sex in New York City, virtually all of those surveyed were youth of color; 37% identified as African American or black, 22% as Latino, and 30% as multiracial.<sup>83</sup> Only 5% identified as white. More than half (58%) of youth engaged in survival sex were either living on the street or in a shelter. Of transgender people in the National Transgender Discrimination Survey who reported trading sex, more than three-quarters (79%) reported interactions with police, and transgender people of color trading sex were more than twice as likely to be arrested than their white counterparts.<sup>84</sup>

Police have wide discretion under sex work ordinances, and often arrest individuals for vague violations such as "loitering with intent to solicit."<sup>85</sup> 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.<sup>86</sup> Not only does this practice infringe on basic rights, but it also discourages individuals from carrying condoms, undermining efforts to reduce transmission of HIV and other sexually transmitted infections. Particularly for transgender women and young gay and bisexual men of color, for whom rates of new HIV infections have been rising,<sup>87</sup> this leaves them in a difficult situation—risking arrest for carrying condoms or endangering their health by not using protection. Among LGBTQ youth in New York City engaged in survival sex surveyed by the Urban Institute and Streetwise and Safe, 15% reported that condoms found during a stop, question, or frisk were used by police to justify lengthy questioning or arrests for prostitution-related offenses.

As discussed previously, police also frequently rely on stereotypes in enforcing anti-prostitution laws, such as assuming that all transgender women, and particularly transgender women of color, are engaged in prostitution-related offenses. In Human Rights Watch's examination of policing in New Orleans, for example, transgender women were subjected to constant harassment, verbal abuse, and stops for suspicion of prostitution; these women also were sometimes asked for sex in exchange for leniency.<sup>88</sup> Transgender women frequently report that police assume they are participating in sex work, simply for "walking while transgender" or because condoms are found during a frisk.<sup>89</sup>

**Figure 11: Racial Disparities in Stop-and-Frisk Around the United States**

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



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

**Stop-and-Frisk and Profiling.** "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 may be armed and presents an immediate danger, the law allows the officer to perform a limited pat down of the outer clothing of the person (a "frisk"). In reality, stop-and-frisk has been grossly abused by police departments, who routinely engage in the practice without sufficient legal basis. Additionally, officers often go far beyond what is legally permissible as a "frisk" to conduct full searches without probable cause to believe that a person is concealing weapons or is involved in a crime.

Predictably, the available data from New York and other jurisdictions show that not only are these stops rarely effective at reducing crime, 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.<sup>90</sup>

It is well documented that stop-and-frisk policies disproportionately target people of color, as shown in *Figure 11*. For example, in New York City, the Center for Constitutional Rights found that 87% of individuals stopped by police in 2012 were black or Latino, while

black and Latino people make up only 53% of the city's population.<sup>91</sup> Racial disparities persist across gender.<sup>92</sup> Researchers in Chicago and Los Angeles found similar trends, noting that African American and Hispanic people were stopped at much higher rates, were more likely to be frisked, and more likely to be searched despite the fact that both African Americans and Hispanics who were stopped and frisked and/or consensually searched were less likely to be found with a weapon or drugs than white people who had been stopped.<sup>93</sup> And while limited data is available about Middle Eastern and Southeast Asian communities, and police profiling, it is likely, particularly as law enforcement, including the FBI, focus on terrorism, that these communities are targeted as well as those who are (or perceived to be) Muslim.

Surveys show the disproportionate impact of stop-and-frisk policies on LGBT people, particularly LGBT people of color and transgender women. In New York City, transgender women reported high levels of interactions with the police, often including aggressive searches, such as being physically patted down or a strip-searched.<sup>94</sup> Without cause, police may try to ascertain a person's gender identity through these physical searches, putting transgender people, in particular, at high risk for physical and sexual assault (discussed in more depth in the next section). In New York City's West Village, a neighborhood with a predominantly white LGBT community (just 8% of residents are African American or Latino), 77% of individuals stopped were African

### Story: Unsafe Zone

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

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

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

American or Latino.<sup>95</sup> LGBT youth of color commented that they felt particularly targeted not only because they were African American or Latino, but also because they were LGBT or gender non-conforming.

**Collaboration Between Police and Immigration Enforcement.** LGBT immigrants, particularly those who are also people of color, are at heightened risk of profiling by police because of their presumed unauthorized immigration status or their religious or ethnic background. Even an arrest for a minor offense can result in detention and ultimately deportation for immigrants, in some cases regardless of immigration status. Under programs such as the Priority Enforcement Program, law enforcement checks fingerprints of those arrested against immigration databases, which can result in Immigration and Customs Enforcement (ICE) taking custody of individuals, regardless of whether they committed a crime. Other programs, such as the Criminal Alien Program and the 287(g) program, intertwine law enforcement and immigration enforcement by allowing law enforcement to act as immigration officials and to increase immigration enforcement activities within prisons and jails.

**Discrimination and Violence When Seeking Assistance from Police.** The lack of a competent response from law enforcement can push some LGBT people unfairly into the criminal justice or immigration enforcement system.

When LGBT people seek assistance from the police, particularly in instances of intimate partner violence or a hate crime, they are often met with a lack of understanding, or they often do not have their complaint taken seriously or are not responded to quickly. Police may try to justify why a perpetrator acted the way they acted, particularly in cases involving transgender people whom police officers may see as engaging in “gender fraud.”<sup>96</sup> Sometimes they are even arrested alongside, or instead of, the perpetrator. For example, there have been documented cases where an LGBT person involved in a hate incident was charged with a crime for defending themselves against a perpetrator, while the perpetrator was not charged.<sup>97</sup> They may also experience police violence themselves. 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.<sup>98</sup>

LGBT survivors of domestic violence are frequently arrested along with their abusive partners if they reach out to the police for help.<sup>99</sup> It is estimated that nationally, “dual arrests” of a primary perpetrator and a survivor occur in 2% of all domestic violence incidents.<sup>100</sup> Research finds that in incidents involving individuals of the same sex, dual arrests may occur at 30 times the rate of incidents involving a female survivor and a male perpetrator and 10 times the rate of incidents involving a male survivor and a female perpetrator.<sup>101</sup>

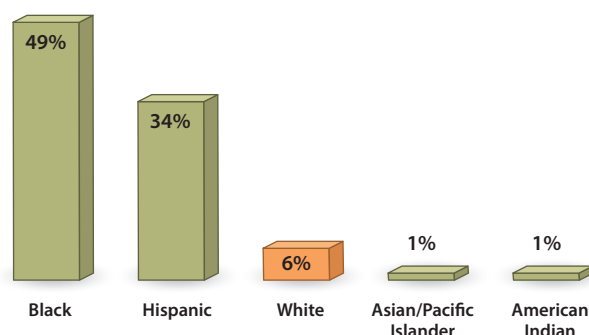
**Abuse and Brutality by Law Enforcement.** Law enforcement’s interactions with communities of color have long been troubled and complicated by racism, and a lack of diversity among police ranks, among other issues. Particularly for black men, but not exclusively, interactions with law enforcement can result in physical assault, violence, or even death. An analysis by ProPublica found that between 2010 and 2012, black men ages 15-19 were 21 times as likely to be shot and killed by police by than white men of the same age, and the officers involved were nearly always white.<sup>102</sup> In a nationally representative sample of young people ages 18 to 29 conducted in December 2013 and January 2014, young black people reported the highest rate of harassment by police (54%), nearly twice the rate of other young people.<sup>103</sup> These statistics quantify the experiences and fears of many people of color in the United States about interactions with law enforcement.



For LGBT people of color, there are added concerns. 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 treat LGBT people in deplorable ways. A survey of LGBTQ youth in New Orleans found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBTQ youth.<sup>104</sup> The 2015 LGBT Health and Human Services Needs Assessment conducted in New York State found one in five transgender respondents (21%) had been unfairly arrested, harassed, or physically harmed by law enforcement, with higher rates for transgender people of color (31%).<sup>105</sup> Analysis of complaints made between 2010 and 2015 to the New York City Civilian Complaint Review Board from LGBTQ people find that black and Hispanic LGBTQ people were overrepresented as victims in complaints filed, as shown in *Figure 12*.<sup>106</sup> Among Latina transgender women in Los Angeles County, 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.<sup>107</sup>

A growing body of research is showing the role that mental health plays in interactions with law enforcement. For example, an analysis of police-involved shootings conducted by *The Washington Post* found that one-quarter of fatal police shootings nationwide during of 2015 involved individuals struggling with mental health challenges.<sup>108</sup> Given the toll of pervasive discrimination experienced particularly by LGBT people of color, combined with the lack of access to quality, affordable health care and lower rates of health insurance, for the subset of the LGBT population with mental health concerns, the risk for criminal justice involvement, and police violence, is heightened.

**Figure 12: LGBTQ People of Color Disproportionately Victims in Police Complaints Filed in New York City**  
(Of complaints where race/ethnicity was reported)



Source: New York City Civilian Complaint Review Board, "Pride, Prejudice and Policing: An Evaluation of LGBTQ-Related Complaints from January 2010 through December 2015," 2016.



**END RESULT:** LGBT people of color are frequently profiled and targeted by police for quality of life crimes and through discriminatory policing, including stop-and-frisk. These interactions frequently result in increased rates of arrest and ultimately incarceration for LGBT people of color. And when LGBT people of color interact with police—seeking assistance after a hate crime or intimate partner violence incident, or during other interactions—too frequently LGBT people of color are subjected to misconduct, harassment, violence and abuse, sexual assault, and discrimination.

## Story: Transgender Man Imprisoned for Fighting Off Rapist



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

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

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

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

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

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

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



## HOW ARE LGBT PEOPLE OF COLOR TREATED IN CRIMINAL JUSTICE INSTITUTIONS?

**In the System:** People of color in the United States experience discrimination in courts and by court staff, prosecutors, and judges which reduces the chances they receive fair treatment and increases rates of incarceration. For LGBT people of color, this discrimination is compounded by a lack of understanding about the lives of LGBT people, particularly transgender people, and added stigma and discrimination based on sexual orientation and gender identity. When LGBT people of color, particularly those who are low-income, interact with the justice system, they rarely have a fair chance at justice. LGBT people of color do not often receive adequate counsel or representation—and they can face substantial discrimination from juries. As a result, LGBT people, and especially LGBT people of color, are more likely than non-LGBT people to spend time in juvenile justice facilities, adult correctional facilities, and immigration detention facilities.

The overrepresentation of people of color in jails and prisons in the United States is well-documented. These facilities do little to rehabilitate or support people, many of whom are struggling with the long-term effects of poverty, a failing educational system, drug use, and mental health issues. Jails and prisons are incredibly unsafe places for LGBT people of color, particularly transgender people. Their physical, mental, and emotional well-being is jeopardized and consistently disregarded by correctional staff.

### Challenge #1: Discrimination in Court and in Court Proceedings

**Lack of access to counsel.** The U.S. legal system is difficult to navigate; filings, hearings, and appeals all require special knowledge of the law and the ins and outs of the system. But many low-income LGBT people, particularly LGBT immigrants and LGBT people of color, cannot afford to pay an attorney to help them. Many state programs intended to provide counsel for low-income people are sorely underfunded.<sup>109</sup> And there are instances where individuals are not entitled to counsel, such as in immigration proceedings (which also disproportionately affect people of color), civil proceedings, most misdemeanor trials, or in supervision revocation hearings.

For LGBT youth lacking strong family support and LGBT youth from low-income families that may not be able to afford counsel, the lack of counsel can be detrimental. Fifty years ago, the U.S. Supreme Court held that youth under the age of 18 have a constitutional right to counsel. And yet, many youth don't receive counsel or receive adequate counsel. Young people are frequently encouraged to waive the right to counsel even when they have it, leaving them without a legal advocate during court proceedings.<sup>110</sup> Only 42% of youth in custody in 2007 reported they had legal counsel,<sup>111</sup> and the majority of youth in custody across the United States are youth of color, including 42% who are black and 19% who are Hispanic.<sup>112</sup> And even if they do have counsel, LGBT young people, like LGBT adults, may receive counsel from attorneys who lack basic understanding of LGBT issues and are unable to effectively advocate for their clients.<sup>113</sup>

As described on page 16, immigrants are not guaranteed counsel for immigration proceedings, and access of counsel is a key factor in whether an individual is ultimately deported. LGBT immigrants, many of whom are people of color, may struggle to receive asylum without access to knowledgeable and competent counsel. When immigrants do not have knowledgeable counsel during immigration and criminal proceedings, they may take plea deals or serve sentences that effectively prevent them from ever residing in the United States legally.

**Discrimination by judges, prosecutors, and court staff.** LGBT people of color 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 and people of color are less likely to receive pre-trial release; judges, prosecutors, and court staff frequently discriminate against LGBT people in the courtroom; and LGBT people and people of color are more likely to receive harsh sentences. The net result for LGBT people of color is that they are disproportionately likely to be held in confinement facilities, including prisons, jails, juvenile facilities, and immigration detention facilities.

**Bias in pre-trial release.** Judges, prosecutors, and pre-trial service coordinators make recommendations and decisions about whether an individual should be released before or during a trial. Factors taken into consideration in these decisions include the severity of the crime, an individual's connection to the community, their previous record, family support, and the risk of the individual not appearing for trial.

## Criminal Justice Issues on Tribal Lands

Analysis of data from the National Health Interview Survey conducted by the Williams Institute finds that 2.4% of Native American, American Indian, and Alaskan Native adults ages 18 and older identify as lesbian, gay, or bisexual.<sup>114</sup> The National Transgender Discrimination Survey included approximately 350 respondents who identified as American Indian or Alaskan Native and transgender or gender non-conforming (often using terms such as “Two-Spirit” to describe their gender identity and expression).<sup>d</sup> These respondents were more likely to live in extreme poverty, to report living with HIV, and to have experienced extreme violence or harassment at work, in schools, and when seeking health care.<sup>115</sup>

For LGBT and non-LGBT Native American people living on native lands, such as reservations, their relationship to the criminal justice system is complicated. Federally recognized Native American and Alaskan Native tribes have substantial rights of self-government, including the ability to make and enforce civil and criminal laws, to tax, and to establish membership.<sup>116</sup> Tribal courts generally have jurisdiction over civil issues for both native and non-native individuals living on or doing business on a federally recognized reservation. They also have criminal jurisdiction over crimes committed by tribal members residing or doing business on the reservation, including maintaining a judicial, prosecutorial and defense bar, correctional systems, and law enforcement. Tribes use a variety of forums for handling disputes, including family and community forums, traditional courts, quasi-modern tribal courts, and modern tribal courts that function much like federal and state courts.<sup>117</sup>

Frequently, however, criminal violations in Native American and Alaskan Native communities fall under several jurisdictions, and individuals who commit crimes interact with multiple criminal justice agencies.<sup>118</sup> Who has jurisdiction is dependent on several factors, including the identity of the alleged offender and the victim, the severity of the crime, and where the crime occurred. In general, crimes committed on reservations fall under the jurisdiction of the tribe. However, only alleged offenders who are Native American are covered by the tribe’s jurisdiction.<sup>119</sup> Most serious crimes, such as murder, manslaughter, arson, burglary, and robbery, are under the authority of federal law enforcement, including the U.S. Attorney and the Federal Bureau of Investigation. If a Native American alleged offender was involved, the tribe may also have jurisdiction.<sup>120</sup> Tribal courts can sentence individuals to no more than three years in reservation correctional facilities.<sup>121</sup>

Across the country, there are more than 200 police departments operating on reservations ranging in size from two or three officers to more than 200 officers.<sup>122</sup> Some law enforcement departments on tribal land are autonomous and the officers are tribal employees. Other departments are administered by the Bureau of Indian Affairs and the officers are federal employees. In 2013, there were 79 jails or detention centers operating on reservations holding 2,287 individuals.<sup>123</sup>

While the experiences of Native American people within tribal criminal justice systems is outside the scope of this report, several reports indicate that the treatment of Native American people within these systems, particularly in jails and correctional facilities, is poor. For example, a 2004 report by a Department of the Interior inspector found that many tribal jails were over capacity, understaffed, and in need of physical repairs.<sup>124</sup> Individuals in tribal jails received poor medical care and there were higher levels of suicide, attempted suicide, and death of individuals in tribal jails than in comparable prisons and jails.<sup>125</sup>

<sup>d</sup> In some Native American cultures and communities, the term “Two-Spirit” refers to individuals having a blend of female and male spirits in one person. Given that this term emphasizes an individual’s gender within a community and culture, it is frequently distinguished from LGBT identities.

There is evidence that judges and other legal staff are biased in their assessment of risk for individuals based on many non-pertinent characteristics, such as race, sexual orientation and gender identity. For example, black and Hispanic people are more likely to be confined while awaiting trial, compared to white people.<sup>126</sup> Research finds that being confined prior to trial increases the possibility of a prison sentence, even when controlling for the type and severity of the offense.<sup>127</sup>

LGBT young people, particularly LGBT youth of color, face disadvantages in the arraignment process and are more likely to be placed in a facility to await trial, rather than being sent home.<sup>128</sup> Some LGBT youth of color are disconnected from their families, may be homeless or at risk of homelessness, are involved in the child welfare system, and may have unsafe and unsupportive school experiences that result in lower academic performance. All these factors are taken into consideration in making placement decisions, and together they may mean that LGBT youth of color are more likely to be await trial in a juvenile facility than their peers. Disparities are seen for youth of color and LGBT youth. For example, in Cook County, which includes the City of Chicago, the Cook County Juvenile Temporary Detention Center detained 4,267 youth in 2013, of whom 85% were black.<sup>129</sup> Most of these youth were awaiting trial. Similarly, 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.<sup>130</sup> 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.

As noted on page 15, LGBT unauthorized immigrants and those seeking refugee or asylum status, the majority of whom are people of color, are frequently detained by immigration officials even if those pose no flight risk or are no danger to their community and should be eligible for release.

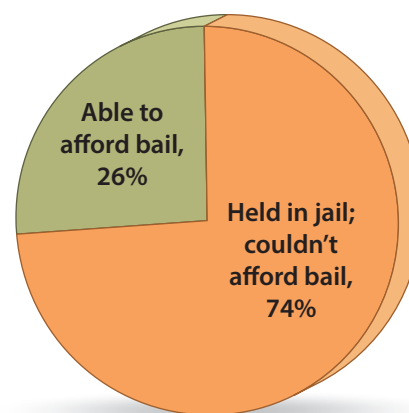
Even if granted pretrial release, individuals are required to pay money to go home, often in the form of a bond or bail.<sup>131</sup> For low-income individuals, including individuals lacking strong family support, it can be impossible to raise the money necessary to obtain pretrial release. Given the lack of support from family and higher rates of poverty among LGBT people, particularly transgender people and LGBT people of color, LGBT people of color often face unique barriers in affording

bond. This is particularly true for LGBT immigrants in immigration detention facilities who may lack strong connections here in the United States and can struggle to afford the bond required for their release pending the outcome of their immigration hearings. 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 13*.<sup>132</sup> Individuals forced to stay in jail because they cannot afford bond can lose their jobs, suffering additional financial consequences.

**Bias in court proceedings.** Discrimination against LGBT people, particularly LGBT people of color, 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. As noted above, research finds that judges and prosecutors may pursue more serious charges, impose higher bail amounts, and impose greater sentences on people of color. In addition to these tangible, quantifiable injustices, judges and prosecutors may use racially-coded language or interact with defendants of color in different ways than they do for white defendants, which can influence the outcome. Adding to the challenges facing LGBT people in the system, prosecutors and judges often use misinformation and stereotypes during trials to persuade judges and juries of the guilt of LGBT people. As described on page 16, LGBT immigrants frequently encounter judges who are unfamiliar with the challenges

**Figure 13: 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.

facing LGBT people in other countries or who use incorrect language to refer to transgender immigrants.

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.<sup>133</sup> Nearly half (44%) reported their experience with the court system as negative.

**Bias in sentencing.** Evidence shows that bias often occurs in sentencing, and works against LGBT people of color. Prosecutors, for example, are more likely to charge people of color with crimes carrying heavier sentences than white people;<sup>134</sup> once charged, people of color are more likely to be convicted;<sup>135</sup> and once convicted, they face stiffer sentences.<sup>136</sup> Similarly, judges are more likely to sentence people of color to prison and jail rather than community supervision, and judges are more likely to give black and Latino defendants longer sentences than white people, controlling for the type of offense.<sup>137</sup> There are also large disparities in sentences given to citizens versus noncitizens.<sup>138</sup> These disparities remain even after accounting for relevant legal differences such as crime severity and criminal history.<sup>139</sup> 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.



In 2014, youth of color 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.<sup>140</sup> While similar numbers are not available specifically for LGBT youth of color, given that the majority of LGBT youth in juvenile justice facilities are youth of color, these sentencing disparities likely impact them as well.

**Discrimination during jury selection.** It is much harder for LGBT people of color to have a jury of their peers. Current federal law prohibits discrimination in jury selection based on race and ethnicity, but there is evidence that potential jurors are frequently excluded because of their race or ethnicity. A report examining juries in eight southern states found that individuals who are African American are discriminated against when considered for jury service.<sup>141</sup> In Houston County, Alabama, for example, 80% of African Americans who

qualified for service from 2005 to 2009 were struck by prosecutors in death penalty cases, leaving all-white juries in half the cases and a single black juror in the other half of cases. In Jefferson Parish, Louisiana, between 2003 and 2012, prosecutors were more than three times more likely to strike a black juror than a non-black juror.<sup>142</sup>

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.<sup>143</sup> 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.”<sup>144</sup> In early 2014, a federal appellate court ruled that it is impermissible to base jury-selection decisions on the potential jurors’ sexual orientation, due to federal protections prohibiting discrimination in jury service based on sex.<sup>145</sup>

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

## Challenge #2: Unfair and Inhumane Treatment in Confinement Facilities

When LGBT people of color are placed in confinement facilities to await trial or as part of a sentence, they are extremely vulnerable to harassment, discrimination, and inhumane treatment. In many ways, these facilities—including juvenile justice facilities, jails or prisons, community corrections facilities such as halfway houses, or immigration detention facilities—are outside of public view or understanding. Regardless of why someone is placed in a facility, the conditions of their detention should ensure their overall physical, mental, and emotional safety and offer opportunities to build skills that will help them successfully rebuild their lives upon release. Unfortunately, most confinement facilities in the United States fail at these most basic goals. For LGBT people of color, life in confinement can be particularly difficult, resulting in greater negative impact on their physical, mental, and emotional well-being.



## Story: Safety and Health Care in Confinement - Ashley Diamond's Fight for Safety and Adequate Medical Care

Courtesy: Southern Poverty Law Center/Robin Henson



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>.

**Improper Placement.** The Prison Rape Elimination Act (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.

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

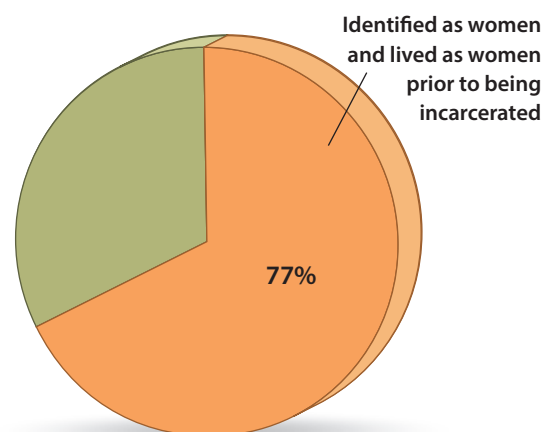
Emerging research shows that LGBT people and people of color are more likely to be placed in solitary confinement. Data from the Bureau of Justice Statistics shows that 21% of black people in prisons had spent time in "restrictive housing" compared to 16% of white people.<sup>146</sup> Individuals who identified as American Indian, Alaskan Native, Asian, Native Hawaii, Pacific Islander, or more than one race also reported higher rates of placement in solitary confinement in prison (20%) and jail (22%) compared to white individuals. The same study found that 28% of LGB people in prison and 22% in jail had been placed in solitary confinement compared to 18% of heterosexual people in prisons and 17% in jails. The study did not provide statistics for LGB people of color. Correctional officers often incorrectly think that segregating LGBT people or placing them in solitary confinement is best either for the individual's own safety or because the officers believe that LGBT people are a danger to others. These types of placement decisions are in direct contradiction with PREA regulations. Nevertheless, prison officials have discretion in how they run their prisons.

Vast research shows the negative impact of segregated units and isolated units on incarcerated people's mental health.<sup>147</sup> Segregating or isolating incarcerated people limits their ability to access programs and services available to the general prison population. Segregation also further stigmatizes LGBT people—highlighting their status as LGBT and increasing hostility toward them.<sup>148</sup> Additionally, when individuals are placed in protective custody or isolated, they are at increased risk for harassment and abuse by correctional officers because of reduced visibility and oversight.

Although PREA standards call for individualized placement determinations that take into consideration an individual's identity as transgender, transgender people

**Figure 14: Transgender Women Frequently Placed in Men's Prisons in California**

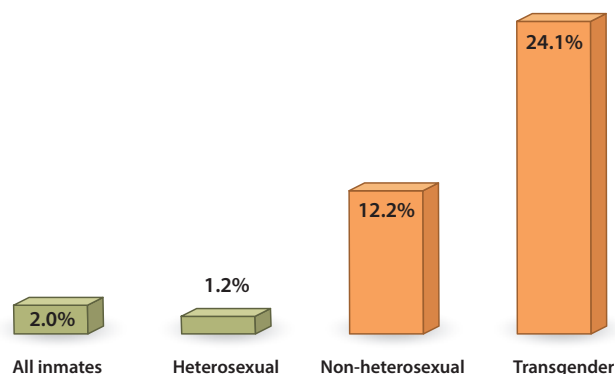
Of Transgender Women in Men's Prisons in California



Source: Lori Sexton et al., "Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons" (University of California, Irvine, June 10, 2009).

**Figure 15: High Rates of Sexual Assault by Other Inmates in Prisons and Jails**

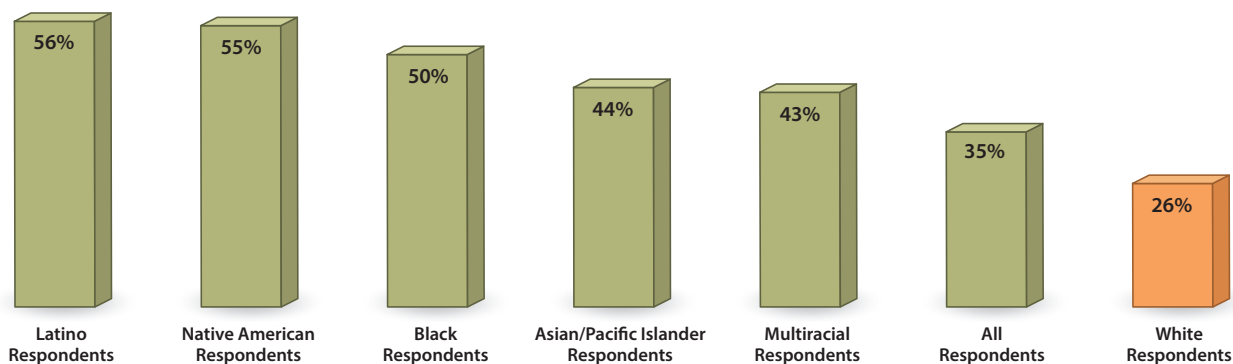
Percent of People in Prisons and Jails Reporting Sexual Assault by Other Inmates



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).

are almost exclusively placed in jails, prisons, immigration detention facilities, and community correctional settings in accordance with the sex recorded on their birth certificates. In other words, transgender women are frequently placed in men's facilities and transgender men are frequently housed in women's facilities. According to a study of California Department of Corrections facilities, over three-quarters (77%) of transgender women in men's prisons identified as women and lived their lives as women outside of prison, as shown in *Figure 14*.<sup>149</sup>



**Figure 16: Percent of Formerly Incarcerated Transgender People Reporting Harassment by Other Inmates**

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

**Harassment and Physical and Sexual Assault by Staff.** LGBT people are particularly vulnerable in confinement facilities. While data is not available about the experiences specifically of LGBT people of color, given the racial disparities in incarceration rates, it is likely that many of the LGBT people reporting high rates of physical and sexual assault are people of color.

LGBT people experience harassment and discrimination by staff and inmates; they frequently experience sexual assault and violence; and, all too often, they are poorly protected because of a lack of staff training and insufficient oversight. 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.<sup>150</sup> 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.<sup>151</sup>

Several surveys of young people find high rates of sexual misconduct and assault by staff in juvenile detention facilities. An analysis of the 2012 National Survey of Youth in Custody found that rates of staff sexual misconduct were significantly higher for black youth (8.4% of youth reporting) than all other racial or ethnic groups.<sup>152</sup>

Transgender women, in particular, face safety concerns within immigration detention facilities. In a U.S. Government Accountability Office study of substantiated sexual abuse and assault allegations

against staff in Immigration and Customs Enforcement detention facilities between October 2009 and March 2013, 20% of cases involved transgender detainees.<sup>153</sup>

**Harassment and Sexual Assault by Fellow Inmates.** LGBT people are at high risk of harassment, assault, and violence from other inmates. In a 2008 study by the Bureau of Justice Statistics, 11.2% of people in prisons and jails who identified as something other than heterosexual—including lesbian, gay, bisexual, or other—reported sexual victimization by another inmate, compared to only 1.3% of heterosexual people.<sup>154</sup> As shown in *Figure 15* on the previous page, data from the 2011-2012 National Inmate Survey also found higher rates of sexual victimization: 12.2% of individuals who identified as lesbian, gay, bisexual, or other had been sexually assaulted by other inmates, compared to only 1.2% of heterosexual people.<sup>155</sup>

In the National Transgender Discrimination Survey, of those transgender people who reported being incarcerated at some point during their lives, 35% reported being harassed by other inmates, 37% had been harassed by correctional officers or staff, while 16% reported physical assault and 15% report sexual assault. Black, Native American, and multiracial respondents reported higher rates of harassment by peers than did white respondents, as shown in *Figure 16*.

Physical assault and sexual violence are an enormous problem in juvenile justice facilities across the nation. Studies find that girls, in particular, who are in juvenile justice facilities report incredibly high rates of sexual violence, and they rarely receive adequate support or protection within facilities.<sup>156</sup> Rates of youth-

on-youth sexual assault were the highest for youth self-identifying as lesbian, gay, or bisexual in the 2012 National Survey of Youth in Custody; 7.0% of LGB youth had been sexually assaulted by another youth compared to 1.6% of heterosexual youth.<sup>157</sup> Given that 85% of LGBT and gender nonconforming youth in juvenile justice facilities are youth of color, it is very likely that these youth are at increased risk.

LGBT people, particularly transgender people, are also extremely vulnerable within immigration detention facilities. According to a study by the Center for American Progress, more than half of the complaints by LGBT detainees to the Department of Homeland Security's Office of Inspector General over a five-year period included reports of sexual or physical abuse.<sup>158</sup> A 2013 analysis found that transgender people comprise one out of every 500 individuals in immigration detention, but one out of every five confirmed sexual assault incidents involved a transgender person.<sup>159</sup>

**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.<sup>160</sup> And yet medical care, including mental and behavioral care, is inadequate in many confinement facilities. In immigration detention facilities, medical care for all detainees, including LGBT people of color, has been consistently considered substandard, even for basic care. In July 2015, several organizations filed a complaint with the Department of Homeland Security about the lack of adequate medical care provided to individuals detained in facilities in Texas and Pennsylvania.<sup>161</sup>

Given the disproportionate representation of black and Latino people in jails and prisons, and the overrepresentation of LGBT people in these facilities, the inconsistent and varied medical care is a key issue for LGBT people of color.

**HIV care.** The majority of individuals with HIV in correctional settings acquired the disease before they were incarcerated.<sup>162</sup> Yet, rates of lifetime incarceration for individuals living with HIV are high; 20-26% of Americans living with HIV have spent time in a correctional facility.<sup>163</sup> In 2008, 1.4% of the total adult prison population (state and federal combined) were living with HIV, with slightly higher rates for female prisoners (1.7%) and lower rates for

male prisoners (1.3%) (compared to 0.6% of the American population).<sup>164</sup> In jails specifically, African American and Latino individuals are more likely to be diagnosed with HIV than are white individuals.<sup>165</sup> For example, African American men are five times as likely as white men and twice as likely as Latino men to be diagnosed with HIV. African American women are twice as likely to be diagnosed in jail as white or Latino women.

The Centers for Disease Control and Prevention recommend testing all incarcerated individuals for HIV during initial screening and intake as part of routine medical care. Federal and state prisoners in 2004 reported relatively high rates of being tested (77%), with much lower rates in local and county jails (18.5%).<sup>166</sup> Testing rates are generally lower in states that only test when an individual requests it, compared to those states that conduct mandatory testing or that test prisoners unless they explicitly state they do not wish to be tested.<sup>167</sup> For this reason, the CDC recommends opt-out testing for all incarcerated people, ideally with tests administered upon entry into a facility and then offered as part of routine medical care.<sup>168</sup>

Individuals with HIV have reported difficulties continuing their medical regime while held in immigration detention facilities. For example, Bamby Salcedo, a transgender Latina immigrant from Mexico, was placed in the San Pedro Detention Center in California for 45 days. She needs to take an HIV antiretroviral drug twice a day. Even after notifying authorities upon arrival of her medication needs, she did not receive the drug for two weeks.<sup>169</sup>

**Transgender-inclusive health care.** For transgender people in prisons, many of whom are people of color, challenges to accessing transgender-inclusive health care are substantial. For example, even when hormone therapy or surgery is deemed medically necessary, some officials may delay or deny this care. An article published in the *Journal of Correctional Health Care* examined letters written by transgender people in state and federal facilities to the *TIP Journal* (Trans in Prison).<sup>170</sup> Of 129 letters examined, 55% addressed transgender health issues and 42% reported abuse (23% involving physical abuse or harassment and 19% involving sexual abuse by other inmates, corrections officers, or both).

**Disrespect in Daily Life.** 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. However, there are numerous other, less blatant ways in which LGBT people, many of whom are likely people of color, in confinement facilities have their needs ignored. Facilities rarely ensure that prisoners, and particularly transgender prisoners, can maintain their dignity or have opportunities to gain needed skills that will help them successfully rebuild their lives after being released.

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.<sup>171</sup> 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.<sup>172</sup> In some instances, transgender detainees in immigration detention facilities are required to prove they had been receiving medical care related to gender dysphoria, such as hormone therapy, before entering ICE custody. But, particularly for individuals seeking asylum from home countries where they face persecution for being transgender, this is frequently an impossible standard. For individuals who cannot demonstrate that they were receiving hormone therapy prior to being taken into ICE custody, ICE requires an assessment to determine whether treatment is medically necessary. Reports from detainees suggest that even after medical assessment, requests for medical care related to gender dysphoria have been denied.

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 legal name changes.<sup>173</sup> Without a legal name change, they are often subject to constant harassment and humiliation as staff and other inmates refuse to use their current name.

### Challenge #3: Lack of Support in Preparing for Re-Entry

Obtaining skills, staying connected to family, and coordinate re-entry planning services are all crucial components for people who are preparing to leave prison, and they are also important for people who may have longer or indefinite sentences as they have been shown to reduce violence in prisons, for example, and they can provide meaningful opportunities inside prison.<sup>174</sup>

In federal and state prisons, re-entry planning includes helping inmates with education, employment searches and job search skills prior to release. Funding for educational and vocational programs in prisons has declined, even as the prison population has increased across the nation. However, most prisons offer some academic or educational programs, such as GED programs, basic literacy programs, or special education programs, but many fewer offer college courses. Given the low rates of educational attainment for many incarcerated people, particularly people of color, access to these programs is crucial for securing employment upon release and reducing recidivism rates.<sup>175</sup>

Maintaining connections with family can also be incredibly important for LGBT people of color who are incarcerated. Black children are more than seven-and-a-half times more likely than white children to have a parent in prison; for Hispanic children the ratio is two-and-a-half times.<sup>176</sup> Prison administrators have broad discretion in the ways in which they allow inmates to receive visitors. From facility to facility, policies regarding visitation vary greatly.<sup>177</sup> It can be challenging for children to visit a parent who is in jail, in prison, or detained. The spaces for visitation are frequently not child-friendly, making it difficult for children to remain seated and calm. Some facilities restrict visitation entirely or rely on costly video conferencing, which can make staying connected, particularly with young children, very difficult.<sup>178</sup>

LGBT parents often lack legal ties to the children for whom they are parenting due to challenges in obtaining second-parent adoptions. Federal Bureau of Prisons requires that inmates place individuals on a visiting list; individuals added to the list must be approved by the bureau, which may be unlikely if there is no legal relationship to the person in prison or jail.<sup>179</sup> Given childrearing rates for LGBT people of color, LGBT people of color in prisons and jails may face substantial challenges to seeing their children.

Finally, as individuals prepare for release from prison or jail, they may participate in re-entry planning programs. 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. Many programs focus on employment, but few take into consideration the compounding of discrimination that LGBT people of color, particularly transgender people of color, may experience when seeking employment upon

release. Some state and local corrections departments provide inmates who are due to be released with assistance in obtaining identity documents, either directly or through referrals to other agencies. For some transgender inmates, however, it is difficult, if not impossible, to obtain identity documents that accurately reflect their gender identity. Without a driver's license with an accurate gender marker and name, transgender people who are released from prison face additional challenges in finding jobs.

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. LGBT people placed in residential settings like these report violence and harassment by fellow residents and by staff. Transgender people may be placed in facilities that do not reflect their gender identity and may be prohibited from dressing in accordance with their gender identity, for example.

Given the overrepresentation of people of color in the criminal justice system, including LGBT people of color, the lack of comprehensive, supportive, and rehabilitative prison re-entry programs is problematic. Few LGBT people of color leaving prisons have the tools needed to truly rebuild their lives—to find safe, affordable housing, employment to provide for their needs, and adequate health care; to reconnect and reestablish family ties and connections to community.

## WHAT IMPACT DOES HAVING A CRIMINAL RECORD HAVE ON LGBT PEOPLE OF COLOR?

**Life After Conviction:** People who have criminal records face extraordinary struggles to rebuilding their lives. And, given the incredibly high rates of incarceration for people of color, the compounding of a criminal record, racial and ethnic discrimination, and sexual orientation and gender identity discrimination mean that LGBT people of color face numerous difficulties and rarely receive the support they need to rebuild their lives. On the whole, many parole, probation, and re-entry programs are understaffed, underfunded, and focus heavily on employment or treatment for substance use. These programs largely ignore the wide range of challenges—and substantial barriers—facing LGBT people of color when it comes to securing basic necessities such as food and shelter and reunifying with their families. The system also fails LGBT people of color, 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 of color struggling and vulnerable to re-arrest, serving time in prison, and never outliving a criminal record. And immigrants, both with legal authorization to be in the United States and without, may be deported as a result of having a criminal record.

### Struggle #1: Lack of Support in Probation, Parole, and Re-Entry Programs

The problems facing all people released from the criminal justice system are significant. Compounding these problems for LGBT people of color is the fact that parole and re-entry programs lack competency to address their specific needs. 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.

Probation and parole programs are notorious for the lack of support they provide for those seeking to re-enter the local community. There have been cases in which a transgender person's dressing in accordance with their gender identity has resulted in a violation of parole terms.<sup>180</sup> Together, the lack of support and the rigorous requirements placed on people on probation or parole contribute in high levels of recidivism among parolees and recently released individuals, particularly LGBT people and people of color.

Young people in the juvenile justice system, where LGBT youth of color are greatly overrepresented, regularly struggle to continue their education both in juvenile facilities and upon release. Approximately two-thirds of young people eventually drop out of school after being involved in the system.

LGBT people of color also face challenges in finding health care in their communities when they are released from the system. Given the high rates of uninsurance for people of color, as well as LGBT people, it is likely that this is a particularly problem for LGBT people of color, including transgender people of color. Given the unique physical and mental healthcare needs of LGBT people, this is of particular concern.

### Struggle #2: 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



## 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.

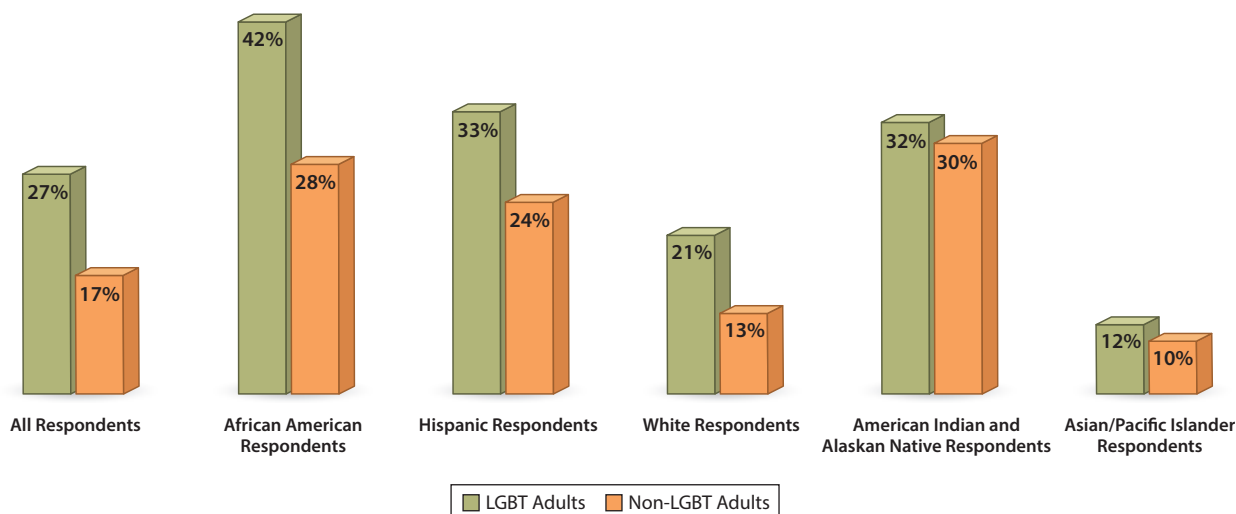
I hope that my story can help to further transgender rights in correctional institutions. What happened to me should never happen to anyone just because of who they are. I'm thankful I stood up for myself and thankful that Lambda Legal was able to help me.

- Donisha McShan

Reprinted, with permission, from Donisha McShan, "In My Own Words: Donisha McShan," Lambda Legal.



Figure 17: Percent of Respondents Reporting Not Having Enough Money for Food In the Past Year



Source: Taylor N.T. Brown, Adam P. Romero, and Gary J. Gates, "Food Insecurity and SNAP Participation in the LGBT Community," The Williams Institute, July 2016.

records continue to be punished by society even after they have completed their adjudicated sentences.<sup>181</sup> For LGBT immigrants, a criminal record may result in deportation, in many instances to countries which are extremely unsafe for LGBT people. 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.

**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. In major urban areas, between 30-50% of individuals currently under community supervision, such as probation or parole, are homeless.<sup>182</sup> In a 2014 survey of formerly incarcerated individuals, 79% reported being denied housing because of their records.<sup>183</sup>

Formerly incarcerated individuals struggle to find private housing even if they can afford it. An estimated 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.<sup>184</sup>

Given the higher rates of incarceration for people of color, particularly African Americans and

Latino people, the impact of criminal records-based barriers to housing create a disparate impact on these communities. In April 2016, the U.S. Department of Housing and Urban Development issued guidance stating that when such policies result in disparate impacts on communities protected by federal housing law, including based on race and ethnicity, these policies violate federal law.<sup>185</sup> This discrimination is compounded by the high levels of housing discrimination reported by LGBT people in general.<sup>186</sup>

**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.

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.<sup>187</sup>

Many individuals rely on Medicaid, a joint federal-state program for low-income individuals, for health insurance. As a result of the Affordable Care Act, some states expanded Medicaid eligibility to cover more individuals. However, research finds that states that

have failed to expand Medicaid are also states with high numbers of communities of color, particularly black and Latino communities *and* states with high rates of incarceration such as Oklahoma, Alabama, Mississippi, Texas, Missouri, Georgia, Florida, and Idaho, all of which have rates of incarceration higher than the national average and have very limited Medicaid eligibility standards.<sup>188</sup>

**Difficulties Finding Employment.** LGBT people frequently experience employment discrimination because of who they are or who they love. This is particularly problematic for LGBT people of color with criminal records, who also face barriers to stable employment because of their records and their race. A lack of stable employment is the single greatest predictor of recidivism among individuals with criminal records.<sup>189</sup>

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 “Fair Chance Hiring” movement.<sup>190</sup>

Given the racial imbalances in the U.S. criminal justice system, workers of color—most often black and Latino men, including those who are LGBT—are more substantially impacted when employers improperly rely on criminal records to influence hiring decisions. Of all nonworking men between the ages of 24 and 54, 34% are men with criminal records.<sup>191</sup>

Research has also uncovered the particular barriers to re-entry for formerly incarcerated women. In one study, of women submitting resumes, women with criminal records were least likely to receive positive responses; and African American women were the most likely to face barriers related to having a criminal record.<sup>192</sup>

Among applicants with criminal records, employers oftentimes give a greater benefit of the doubt to white applicants. The Equal Employment Opportunity Commission (EEOC) has noted that criminal background checks and their use

in hiring decisions have a disparate impact on applicants of color. In a study of applicants with criminal records, only 5% of African Americans with a criminal record received a call back from a potential employer (as did 14% of African American applicants without a record) compared to 17% of white applicants with the same criminal record (and 34% of white applicants without a record).<sup>193</sup> These are dismal numbers for both groups, but show a clear disadvantage for black applicants.

While not focusing on individuals with records, several studies, including resume studies, have examined the impact of discrimination on LGBT job-seekers and have found that candidates who are LGBT are disfavored over those who are not.

**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, and LGBT people of color report higher rates of food insecurity than both white LGBT people and non-LGBT people of color, as shown in *Figure 17* on the previous page.<sup>194</sup> Given their high reliance on SNAP and research showing that LGBT people of color 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 of color to feed themselves and their families. Other programs providing important assistance to individuals and families in poverty include Temporary Assistance for Needy Families (TANF), which provides direct cash assistance, child care, education and job training, transportation assistance, and other services to low-income individuals with children.

All federal social service programs have limitations for individuals with criminal records. TANF and SNAP, for example, have a federal lifetime “drug felon ban,” meaning individuals with a drug-related felony cannot receive assistance at any point in their life. Research shows that the TANF drug felon ban disproportionately harms women, children, and communities of color.<sup>195</sup> As many as 92,000 women in 23 states have been or will be unable to access TANF assistance because of the ban.<sup>196</sup>

**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 programming, or can take classes that count toward obtaining an associate's or bachelor's degree. But people exiting the criminal justice system still face considerable barriers to pursuing higher education. Any student convicted of a drug-related felony or misdemeanor while receiving federal student aid is ineligible for subsequent aid.<sup>197</sup> Many colleges and universities ask students about their criminal history, and approximately 20% of colleges completed background checks on applicants.<sup>198</sup>

These barriers can be even more pronounced for LGBT people of color. Given the harassment, violence, and disproportionate discipline that LGBT students, particularly LGBT students of color, 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.

**Impact on Immigration Status and Ability to Stay in the United States.** During immigration court hearings, judges must make decisions about whether individuals should be able to remain in the United States or be deported. The consequences of a criminal conviction on immigrants, particularly those who are not citizens, are devastating. Such convictions could result in deportation or ineligibility for immigration relief programs, including Deferred Action for Childhood Arrivals (DACA). Moreover, a criminal record makes it significantly harder for immigrants to become legal residents; it can also lead to denial of citizenship.

**Loss of Political Participation.** When LGBT people of color return to their communities after spending time in prison, they are frequently excluded from making decisions about the future of their communities—through restrictions on identity documents, voting, serving on juries, and holding public office. Combined with the pervasive discrimination experienced by LGBT people of color in general, these barriers can leave them feeling less invested in and excluded from their communities.

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.<sup>199</sup>

It is estimated that 5.9 million Americans are unable to vote because of laws disenfranchising people with felony convictions.<sup>200</sup> 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 such as LGBT people of color who are already impacted by discriminatory laws, the inability to vote and perhaps have an influence on laws and policy can be especially frustrating.

Even in states where individuals with criminal records can apply to restore their right to vote, there are disparities in the application of these laws. Despite the fact that two-thirds of Alabama's prisoners are black, nearly two-thirds of individuals whose voting rights have been restored in recent years have been white.<sup>201</sup> In Alabama, 30% of voting-age black men lack the right to vote because of criminal records.<sup>202</sup>

## CONCLUSION

Public consciousness is finally awakening to the experiences of communities of color with law enforcement, particularly black and Latino communities, fueling a conversation about the need for criminal justice reform. Given the disproportionate rates of incarceration of these communities combined with emerging research showing disproportionate criminal justice involvement for LGBT people, especially LGBT youth, policy advocacy and reforms focused on criminal justice must be cognizant of the experiences of LGBT people of color. Supporting LGBT people of color in schools, in families, and communities is crucial to fostering safety and security. But systemic change is also needed to eliminate bias, profiling, and brutality by law enforcement and to change outdated and discriminatory laws that target LGBT people of color, LGBT people, and communities of color. The ways in which the justice system and detention facilities operate do little to promote justice but rather are institutions that perpetuate disadvantage, discrimination, and violence. And when LGBT people of color are released from detention, robust systems are needed to ensure successful re-entry with a focus on long-term skills, rebuilding connections to family, access to affordable health care and housing, and more. Changing the criminal justice system in the United States, and how people of color, particularly LGBT people, interact with the system is not a simple task, but it is one that is necessary and cannot wait.

## More In-Depth Content is Available

This report provides an overview about LGBT people of color and the criminal justice system. It is designed to be a primer, but it is not an exhaustive resource. For more detailed policy analyses, statistics, stories from youth, spotlights on innovative programs and initiatives around the country, please visit [www.lgbtmap.org/criminal-justice](http://www.lgbtmap.org/criminal-justice).

For example, the following can be found in the broader report, [Unjust: How a Broken Criminal Justice System Fails LGBT People](#):

- Detailed recommendations focused on three key areas: reducing the number of LGBT people who interact with the criminal justice system; improving the conditions of confinement for LGBT people; and improving systems to ensure that LGBT people with criminal records can rebuild their lives and avoid the cycle of incarceration.
- Innovative programs from around the country working to address the needs of LGBT people, particularly transgender people, who are at risk for involvement in the criminal justice system, such as job training programs for transgender people; LGBT-focused shelters and service providers for individuals experiencing homelessness; programs connecting incarcerated LGBT people with community; and more.
- Key reports, practice guides, and resources.

## RECOMMENDATIONS

The recommendations below are purposefully high-level and broad, but they are key to reducing the drivers of criminal justice involvement for LGBT people of color; to ensuring fair treatment within the justice system and safety, dignity, and healthcare within the confinement facilities; and improving the supports for LGBT people of color with criminal records to improve opportunities and reduce recidivism.

**Work to eliminate discrimination against LGBT people of color across many areas of life, including in families and schools, and when seeking employment, housing, and health care.**

- Federal and state lawmakers should pass nondiscrimination laws prohibiting discrimination in employment, education, housing, healthcare, and public accommodations.
- Policymakers should take steps to reduce family poverty; reform immigration policies to keep families together; provide affordable, safe housing; and reduce mass incarceration to improve the stability and security of families.
- Enforcement of existing laws designed to eliminate racial and ethnic discrimination in all areas of life should be bolstered.
- Federal and state laws and school district policies should ensure nondiscrimination in education and prohibit bullying in schools. These laws should, however, also work to reduce the school-to-prison pipeline by advancing policies and initiative that keep students in school and limiting the presence of law enforcement in schools.
- Federal and state regulators and insurance companies should remove insurance exclusions for transition-related care for transgender people.
- State lawmakers should pass laws allowing transgender people to obtain accurate identity documents; states and localities should issue guidance easing the processes for updating documents.

**Reduce discrimination and racial and ethnic disparities in the criminal justice system.**

- Federal and state lawmakers should pass legislation requiring that a proposed new law or modification

to a criminal penalty for an existing crime must be examined to determine whether it will have a disparate racial impact and impact on other specific communities.<sup>203</sup>

- Legislators should pass federal and state laws requiring courts, upon the request of a party in a case, to instruct the jury not to let bias, sympathy, prejudice, or public opinion about race, ethnicity, nationality, sexual orientation, or gender identity, among other characteristics, influence its decision. Courts also should improve juror guidance to reduce discrimination.

**Reform and modernize HIV criminalization laws, laws criminalizing consensual sex, and drug laws.**

- States should repeal all laws that criminalize the transmission of HIV and other diseases.
- State and local law enforcement should not criminalize consensual sex between adults ensuring access to condoms without fear that their possession or presence will be used as evidence to justify stops, arrest or prosecution for any prostitution-related offense or lewd conduct-related offense.
- Law enforcement should deprioritize enforcement of laws criminalizing prostitution. Efforts should be made to provide supportive services requested by people in the sex trades, including drug treatment and housing, rather than focusing on arrests.
- Congress and the states should pass sentencing reforms to allow for judicial and prosecutorial discretion to take into account the circumstances surrounding a crime. Another priority: exploring and implementing alternatives to criminal charges, such as substance abuse assistance, alternative justice methods, and restorative justice programs.

**Reduce Profiling and Discrimination 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.”<sup>204</sup> This guidance should be applied to all federal government agencies. Cities and counties should adopt similar guidance.
- Government at all levels should build strong boundaries between immigration enforcement and law enforcement to prioritize community safety and to encourage immigrants, regardless of legal status, to report violence and other concerns to police without fear of deportation.

**Reduce the number of people held in confinement facilities—including adults in prisons and jails, youth in juvenile justice facilities, and immigrants lacking legal authorization in detention centers.**

- Federal and state legislators should revisit mandatory sentencing guidelines, mandatory minimums, and increased penalties, especially for non-violent offenses, including non-violent drug crimes.
- Federal and local jurisdictions and judges should reduce reliance on bail and increase the ability of individuals to be released pre-trial and those awaiting immigration proceedings.
- Federal, state, and local agencies should use risk assessment instruments to determine whether individuals should be released while awaiting trial and to determine the least burdensome bail amount, including nonmonetary pre-trial release options.
- Federal, state, and local legislators should increase funding for the expansion of community-based alternatives to incarceration, including drug treatment programs and mental health programs.

**Improve conditions of confinement, including for LGBT people.**

- Implement PREA requirements for individualized placement of LGBT people, including transgender people, based on an individual’s concerns about safety.
- For all instances when mandatory detention does not apply, immigration enforcement officials should

release detainees, particularly transgender detainees given the lack of safety within facilities for this vulnerable population. Facilities should ensure the physical safety and medical needs of LGBT detainees.

- Develop and implement nondiscrimination policies with education and ongoing training for staff. Training should specifically address working with LGBT people, including procedures for searches and prohibitions on harassment, violence, abuse, and 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.
- Provide access to appropriate clothing and grooming products for transgender people. Agencies should give all inmates the ability to choose available clothing and grooming items so they can express their gender identity through clothing, hairstyle, and other means of gender expression.

**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 gender identity and sexual orientation at the federal, state, and local levels in employment, housing, and public accommodations to ensure equal access to all programs and services. Ensure that prison and jail re-entry programs provide a holistic assessment of an individual’s needs.
- Parole and probation officers and staff in prisons and re-entry facilities should assess needs including access to safe, affordable needs; competent, affordable health care; educational resources; employment; and more with a focus on the needs of LGBT people.
- As part of re-entry planning, agencies should assist transgender people in obtaining accurate identity documents necessary to access public benefits and assisting LGBT people in finding housing and employment, and more.

**Remove barriers that people with criminal records, including LGBT people of color, face.**

- Congress should repeal the federal ban on TANF cash assistance and SNAP food assistance and limitations on public housing assistance for individuals with drug-related felony convictions or other criminal convictions. State should exercise their ability to extend such benefits.
- States should pass fair chance hiring legislation limiting employers' consideration of criminal records.

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