

LGBTQ Individuals and the Justice System

Criminalization, Victimization, and Incarceration



LGBTQ OVERREPRESENTATION IN THE JUSTICE SYSTEM

- The incarceration rate of lesbian, gay, and bisexual adults is three times higher than that of the general adult population (1,882 per 100,000 compared to 612 per 100,000).
- Among youth in the juvenile justice system, 13-15% are LGBTQ, compared to 5-7% of the general population.

DISCRIMINATION AND INSTABILITY LEAD TO CRIMINALIZATION

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals face many inequalities, some of which put them at greater risk of involvement with the criminal justice system. For example, LGBTQ youth are overrepresented in the child welfare system, and LGBTQ adults have higher rates of unemployment and poverty compared to heterosexual adults. Furthermore, same-sex couples face housing discrimination, and 23% of respondents to the 2015 U.S. Transgender Survey experienced some type of housing stability because of being transgender. These disadvantages contribute to higher rates of homelessness and criminalization as LGBTQ people are more likely to be stopped, questioned, and arrested for living on the street.

LGBTQ youth and transgender women of color face particular challenges. In New York City, for example, researchers estimate that 10-50% of homeless LGBTQ youth engage in survival sex work to meet basic needs of food and shelter, putting them at even greater risk of justice system involvement. Many transgender women of color report experiencing arbitrary police stops on suspicion of prostitution, frequently accompanied by physical, sexual, and verbal harassment. The NYPD patrol guide includes directions for treating LGBTQ people fairly (including using preferred gender pronouns and names), but these directions are not always followed. Advocates against quality-of-life policing have called for improved services instead of criminalization of economically marginalized

communities, including homeless LGBTQ youth and transgender women of color.

Intimate partner violence (IPV) also increases the likelihood of engagement with the criminal justice system for LGBTQ people. LGBTQ people are more likely to stay in abusive situations due to financial and housing instability, and are less likely to have access to services and emergency shelters. Furthermore, according to a National Coalition of Anti-Violence Programs survey, in almost one third (31%) of police responses to IPV incidents, the LGBTQ survivor was arrested rather than the abusive partner. The recently released recommendations from the NYC Domestic Violence Task Force, for which ISLG provided management and support, aim to better serve the needs of marginalized communities, including LGBTQ people.

HATE CRIME VICTIMIZATION

In 2009, President Obama signed The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, expanding the 1968 federal hate crime law to include gender identity and sexual orientation. According to the Federal Bureau of Investigation, one in five (20.1%) single-bias hate crime incidents reported in 2015 targeted victims due to sexual orientation or gender identity. In May 2017, a Mississippi court convicted a man of a hate crime in the 2015 murder of his transgender ex-girlfriend, the first federal hate crime conviction for violence against a transgender person. However, some states do not include sexual orientation or gender identity as a protected category in their hate crime laws.

The jury is out as to whether hate crime laws are effective in protecting LGBTQ individuals and other disadvantaged groups. There is a lack of research indicating that hate crime laws deter violence, and advocates point to incidents in which survivors of hate crimes have been punished. For example, a Minnesota court convicted CeCe McDonald, a transgender woman of color, for defending herself in an anti-LGBTQ anti-black attack in 2011.

In each issue of Narrowing the Gap, we focus on one group adversely affected by inequality. These groups include children, immigrants, individuals currently in jail or on probation, individuals living in poverty, individuals with a physical or intellectual disability, individuals with less than a high school diploma, lesbian/gay/bisexual/transgender/queer individuals, racial and ethnic minorities, religious minorities, seniors, single parents, and women.

NYC'S TRANSGENDER HOUSING UNIT

In 2005, the NYC Department of Correction (DOC) shut down its longstanding gay and transgender housing unit, [citing safety reasons](#). At the urging of [advocates](#), DOC opened a new [Transgender Housing Unit](#) in 2014 to house up to 30 transgender women assigned to men's facilities. Housing placement is voluntary, and the staff assigned to the facility have specific training to maintain dignity and respect for those incarcerated in that unit.

In 2016, in response to the Board of Correction's adoption of the [federal Prison Rape Elimination Act \(PREA\)](#), DOC announced plans to close the Transgender Housing Unit, claiming that its current approach to housing transgender inmates is [in violation of PREA](#). [Advocates](#) have argued that closing the unit threatens the safety of transgender and gender nonconforming individuals, and the [Board of Corrections has requested](#) that the Transgender Housing Unit remain open until DOC has developed an adequate replacement housing model for transgender inmates. The [Independent Commission on New York City Criminal Justice and Incarceration Reform](#), on which ISLG served, recently recommended designating transgender units in both men's and women's facilities.

CONDITIONS OF CONFINEMENT

The [2011-2012 National Inmate Survey](#) found that non-heterosexual individuals report higher rates of sexual victimization in jails and prisons than heterosexual individuals, both by other inmates and by staff. The same survey found that, from 2011 to 2012, 39.9% of transgender adults in prisons and 26.8% of transgender adults in jails reported sexual victimization. [A Lambda Legal survey](#) found that transgender and gender nonconforming (TGNC) people of color were even more likely than TGNC respondents overall to report harassment and/or assault by jail or prison staff.

[Housing assignments](#) that are inconsistent with gender identity have been linked to increased risk of victimization, and [60%](#) of TGNC respondents to the Lambda Legal survey reported being placed in a sex-segregated facility that did not match their gender identity.

When LGBTQ individuals are targeted for violence and sexual assault, some correctional departments respond by [placing them in solitary confinement involuntarily](#). Lesbian, gay, and bisexual inmates [are more likely to spend](#)

[time in restrictive housing](#) than heterosexual inmates. Prolonged isolation can have [extreme psychological consequences](#), including anxiety, chronic depression, and self-mutilation. [Restrictive housing](#) can also prevent inmates from accessing standard in-custody and re-entry programming aimed at reducing recidivism.

REENTRY AND LACK OF SOCIAL SERVICES

Formerly incarcerated individuals face many challenges, and LGBTQ people are disproportionately affected in certain ways. For example, [in a number of states](#), anyone with a criminal record (including drug-related felonies) is banned from adopting a child or becoming a foster parent. This is particularly challenging for LGBTQ people because same-sex couples are [much more likely](#) to raise both adopted and foster children than different-sex couples.

In addition, social service providers are not always equipped to meet the needs of LGBTQ youth and adults: lack of understanding and respect toward LGBTQ individuals has been reported in [parole, probation, and re-entry programs](#), as well as in [homeless shelters](#) and among [mental health care providers](#).

GAPS IN THE DATA

The U.S. Census Bureau collects data on [same-sex couple households](#), but it was recently announced that the 2020 Decennial Census and the annual American Community Survey [will not include questions](#) about sexual orientation or gender identity. The [National Inmate Survey](#) collects data on sexual orientation but very limited data on gender identity. Research and advocacy organizations are working to fill these data gaps. For example, the [National Center for Transgender Equality](#) has conducted two surveys of transgender Americans, including questions about experiences with the criminal justice system. However, until there are national, annually collected data, our understanding of the inequalities faced by the LGBTQ population will remain limited.

In New York City, [a bill was recently passed](#) requiring government agencies to collect data on sexual orientation and gender identity. A similar bill is [currently being considered](#) by the New York State Senate Committee. Better data collection may improve how criminal justice agencies (e.g., police, probation, courts, corrections) identify and address the needs of LGBTQ youth and adults.