

# OVERREPRESENTATION OF PEOPLE WHO IDENTIFY AS LGBTQ+ IN THE CRIMINAL LEGAL SYSTEM

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# INTRODUCTION

Individuals who identify as lesbian, gay, bisexual, transgender, queer, or who hold other marginalized sexual orientation and/or gender identities (LGBTQ+) are overrepresented within the criminal legal system.<sup>[1-4]</sup> LGBTQ+ people of color and LGBTQ+ people with disabilities experience even higher rates of criminal legal system involvement than their White LGBTQ+ peers.<sup>[1, 2, 4]</sup> This report will review factors contributing to these disparities. Additionally, the report will highlight the work of organizations addressing the needs of LGBTQ+ individuals involved in the criminal legal system and outline recommendations to address overrepresentation.

## **A Note on Terminology**

Defining LGBTQ+ identities is challenging because conceptualizations of sexual orientation and gender identity are constantly evolving at individual and cultural levels. The definitions provided here are intended to clarify how terms are used in this report, yet these definitions do not represent how all individuals conceptualize or use these terms. In addition to the identities represented by the letters of the acronym (see [Key Terms](#)), the + denotes others who hold marginalized sexual orientation and/or gender identities but do not use one of the terms in the acronym. Other members of the broader LGBTQ+ community, including intersex and gender expansive individuals, are also likely overrepresented within the criminal legal system. Even less data is available about individuals who hold these identities. This report uses the acronym LGBTQ+ to match available research, but it is not the author's intention to exclude intersex and gender expansive individuals or other individuals who hold marginalized sexual orientation and/or gender identities. This report uses the term "criminal legal system" to refer broadly to the system of law enforcement that includes surveillance, arrest, prosecution, defense, sentencing, and punishment.

## Key Terms:<sup>[5-7]</sup>

**Sexual orientation:** Used to describe patterns of sexual, emotional, and romantic attraction. Dimensions of sexual orientation include attraction, how one self-identifies (i.e., the labels or terms one uses), and behavior (i.e., with whom one engages in sexual or romantic activity). The expression of these dimensions is unique to each individual and can change across the life course.

**Gender identity:** Used to describe how one self-identifies and conceptualizes gender. Dimensions of gender identity include how one self-identifies, gender expression (i.e., how one chooses to present their gender, including clothing), and body (i.e., the range of decisions one may or may not make to medically affirm one's gender). The expression of these dimensions is unique to each individual and can change across the life course. Gender identity and sexual orientation may overlap yet are distinct concepts. Gender identity and biological sex are also different concepts.

**Lesbian:** A sexual orientation label often used by individuals who identify as women and are sexually, emotionally, and/or romantically attracted to women.

**Gay:** A sexual orientation label often used by individuals who are sexually, emotionally, and/or romantically attracted to people of their same gender identity.

**Bisexual:** A sexual orientation label often used by individuals who are sexually, emotionally, and/or romantically attracted to people of their same gender identity and people of different gender identities than their own.

**Transgender:** Often used by individuals whose gender identity differs from sex assigned at birth and/or whose gender identity falls outside of the male/female binary.

**Gender expansive:** Often used by individuals whose gender identity falls outside of the male/female binary. Used interchangeably with the term “gender nonconforming” in this report.

**Heterosexual:** A sexual orientation label often used by individuals who are sexually, emotionally, and/or romantically attracted to people of different gender identities than their own.

**Cisgender:** Often used by individuals whose gender identity aligns with sex assigned at birth.

**Queer:** This term has multiple meanings. It is often used to describe a sexual orientation and/or gender identity that falls outside of heterosexual and/or cisgender norms. It is also used as an umbrella term for the LGBTQ+ community (i.e., “the queer community”).

# RATES OF CRIMINAL LEGAL SYSTEM INVOLVEMENT

Documenting the number of LGBTQ+ individuals within the criminal legal system is difficult for several reasons. First, evolution of identity terminology makes it difficult to capture broad population estimates of the LGBTQ+ community, regardless of criminal legal involvement.<sup>[8]</sup> Secondly, data regarding sexual orientation and gender identity is not uniformly collected by criminal legal system institutions or researchers.<sup>[9]</sup> Lastly, even when these data are collected, many LGBTQ+ individuals may not feel comfortable disclosing their identities for fear of discrimination or abuse.

## ARREST

Despite difficulties with data collection, emerging data indicate that LGBTQ+ individuals experience high rates of arrest and incarceration.<sup>[10-13]</sup> According to an analysis of data from the National Survey on Drug Use and Health, gay, lesbian, and bisexual individuals were 2.25 times as likely to be arrested in the last year when compared to heterosexual individuals.<sup>[10]</sup> Furthermore, this analysis found that lesbian and bisexual women were four times more likely to be arrested than straight women. Emerging research suggests that transgender individuals are at heightened risk for arrest and that transgender women of color experience the highest rates of arrest.<sup>[11, 11]</sup> Data from the 2015 National Transgender Discrimination Survey (NTDS) assessed arrest just within the last year and found that while 2% of all respondents had been arrested within the last year, 6% of Black transgender women and 6% of Native American transgender women reported at least one arrest.<sup>[1]</sup> By comparison, an estimated 3% of the overall U.S. population is arrested each year.<sup>[12]</sup> An analysis of data from the National Longitudinal Study of Adolescent Health found that lesbian, gay, and bisexual youth were significantly more likely to be stopped by the police than their heterosexual peers.<sup>[13]</sup>

## INCARCERATION AND DETENTION

According to a study using data from the National Inmate Survey, the incarceration rate of people who self-identified as lesbian, gay, or bisexual was three times that of the general U.S. population.<sup>[2]</sup> Again, lesbian and bisexual women were found to be particularly overrepresented; the survey found that 9.3% of cisgender men in prison and 6.3% of cisgender men in jail identified as sexual minorities, while 42.1% of cisgender women in prison and 35.7% of cisgender women in jail identified as sexual minorities.<sup>[2]</sup> Transgender individuals experience particularly high rates of incarceration.<sup>[1, 4, 14]</sup> For example, 16% of transgender and gender nonconforming respondents to the 2010 NTDS reported being incarcerated in their lifetime.<sup>[14]</sup> However, only 6.6% of the U.S. population is likely to be incarcerated at some point

in their life.<sup>[15]</sup> The 2010 NTDS reported particularly high rates of incarceration among transgender people of color, with 47% of Black and 30% of Native American respondents reporting a history of incarceration.<sup>[14]</sup> LGBTQ+ youth are particularly overrepresented within the juvenile detention system; a study using data from the second National Survey of Youth in Custody found that 39.4% of girls and 3.2% of boys in juvenile correctional facilities identify as lesbian, gay, or bisexual.<sup>[4]</sup>

## DISCRIMINATION BY CRIMINAL LEGAL SYSTEM ACTORS

LGBTQ+ individuals report high rates of discrimination and harassment by criminal legal system actors, including police, judges, and prison staff.<sup>[1, 14, 16]</sup> A study of lesbian, gay, bisexual, and transgender individual's experiences of discrimination within the criminal legal system conducted by Lambda Legal found that 73% of respondents had face-to-face contact with the police within the past five years.<sup>[16]</sup> Almost a quarter (21%) reported that police had a hostile attitude towards them, 14% reported being verbally harassed by police, 3% reported sexual harassment by police, and 2% were physically assaulted by police. Furthermore, the study found that, among respondents who had been involved in the court system in the last five years, 19% overhead a judge, attorney, or other court employee make negative comments about their sexual orientation, gender identity, or expression.

## CONDITIONS OF CONFINEMENT

Inside jails and prisons, LGBTQ+ individuals experience heightened harassment and abuse.<sup>[1, 3, 14, 16-19]</sup> Prison and jail staff are often the perpetrators of this victimization; according to Lambda Legal's report, among survey respondents with a history of incarceration 7% were sexually assaulted, 12% were physically assaulted, 27% were sexually harassed, and 57% were verbally assaulted or harassed by jail or prison staff.<sup>[16]</sup> Staff also fail to prevent victimization; according to a survey conducted by Black & Pink of incarcerated LGBTQ+ individuals, 76% of respondents believe that prison staff intentionally placed them in situations where they were likely to be sexually assaulted by another prisoner.<sup>[17]</sup> Research indicates that incarcerated transgender individuals experience particularly high rates of violence and victimization.<sup>[1]</sup> Among respondents to the 2015 NTDS with a history of incarceration with the last year, 20% reported being sexually assaulted by facility staff or other inmates during that time period, five times higher than the rates of sexual assault by staff or other inmates reported by the general U.S. incarcerated population.<sup>[1]</sup> Transgender inmates are often housed according to sex assigned at birth, which heightens the risk of victimization, discrimination, and adverse mental health outcomes.<sup>[17, 18]</sup> LGBTQ+ youth in juvenile detention report vastly higher rates of victimization than their heterosexual peers; according to the 2013 National Survey of Youth in Custody, 10.5% of lesbian, gay, and bisexual youth in custody reported being sexually victimized by other youth while they were in custody compared to 1.5% of heterosexual youth.<sup>[19]</sup>

## SOLITARY CONFINEMENT

Incarcerated LGBTQ+ youth and adults report high rates of placement in solitary confinement while incarcerated.<sup>[3, 17]</sup> Black & Pink's survey of incarcerated LGBTQ+ individuals found that 85% had ever been in solitary confinement.<sup>[17]</sup> Many respondents were placed in solitary confinement to protect them from victimization; 38% of respondents who had been housed in solitary confinement were placed there at their own request in order to protect them from victimization, yet 50% of respondents were placed in solitary confinement against their will. Solitary confinement is associated with a range of adverse mental health outcomes, including anxiety, depression, paranoia, and psychosis.<sup>[20]</sup>

## HEALTHCARE

LGBTQ+ inmates are routinely denied inclusive health care, particularly transgender affirming care and HIV treatment.<sup>[1, 17, 23]</sup> Black & Pink's survey of LGBTQ+ inmates found that 67% of respondents had been diagnosed with a mental illness, yet 48% of those with a diagnosis were not receiving mental health care.<sup>[17]</sup> Many transgender individuals choose to receive hormone therapy as a component of medically affirming one's gender.<sup>[21]</sup> Hormone therapy has been found to improve quality of life and reduce depression and anxiety among transgender individuals.<sup>[22]</sup> Of respondents to the 2015 NTDS who had been taking hormones prior to incarceration, 37% were prohibited from receiving hormones while in jail or prison.<sup>[1]</sup> A study of incarcerated transgender women in Massachusetts identified a combination of structural barriers (e.g., requiring specific documentation of prior hormone usage in order to receive hormones while incarcerated) and interpersonal barriers (e.g., medical staff who were unfamiliar with providing care to transgender individuals or who refused to provide care due to anti-transgender bias) responsible for restricting hormone access.<sup>[23]</sup>

Rates of HIV are higher among incarcerated populations as compared to the general U.S. population; it is estimated that the HIV prevalence rate in prisons in 2015 was 1.3% among incarcerated individuals compared to 0.3-0.4% among the general population.<sup>[24-26]</sup> Nationwide, Black gay men and transgender women bear a disproportionately high burden of HIV.<sup>[27]</sup> Efforts to increase access to HIV treatment among incarcerated individuals have generally contributed to improved treatment outcomes during incarceration. Yet research indicates that, once released, formerly incarcerated individuals experience a decrease in HIV treatment, often to levels lower than those prior to incarceration.<sup>[28]</sup>



# PATHWAYS AND PIPELINES INTO THE CRIMINAL LEGAL SYSTEM FOR LGBTQ+ INDIVIDUALS

The following section highlights just a few of the pathways and pipelines funneling LGBTQ+ individuals into the criminal legal system and contributing to overrepresentation. Each subsection begins with a short vignette, an anonymous composite based upon experiences shared by LGBTQ+ individuals and prior research meant to illustrate the pathway or pipeline. Examining these pathways and pipelines helps to untangle the complex web of social and structural inequality driving overrepresentation of LGBTQ+ individuals within the criminal legal system and can help inform prevention efforts.

## CRIMINALIZATION OF LGBTQ+ IDENTITIES

It is necessary to situate pathways and pipelines into the criminal legal system within a broader context of historical and present-day criminalization of LGBTQ+ identities and the crisis of mass incarceration. Bias and stigma against LGBTQ+ individuals contribute to perceptions of LGBTQ+ individuals as deviant.<sup>[29]</sup> People of color are similarly construed as criminal or threatening,<sup>[30]</sup> as a result, LGBTQ+ people of color are particularly impacted by these stereotypes. Mogul, Richie, and Whitlock<sup>[29]</sup> argue that the origins of criminalization of LGBTQ+ identities are rooted in racism, stating “Indigenous peoples, enslaved Africans, and immigrants, particularly immigrants of color, were systematically policed and punished based on actual or projected ‘deviant’ sexualities and gender expressions, as an integral part of colonization, genocide, and enslavement” (p. 1).

In more recent U.S. history, stereotypes about deviance were perpetuated by laws targeting LGBTQ+ communities, such as those that criminalized homosexual sex and wearing clothing of the “opposite” sex.<sup>[29]</sup> These laws have, for the most part, been overturned or repealed, or are no longer enforced, yet they contributed to lasting cultural representations and perceptions of LGBTQ+ individuals as deviant. More recent laws criminalize aspects of LGBTQ+ identities in less direct ways. For example, in recent years many states have attempted to pass legislation restricting access to public restrooms and locker rooms for transgender individuals.<sup>[31, 32]</sup> While many of these have not been passed, the governor of Tennessee signed two new bills into law in May of 2021.<sup>[33]</sup> Some of these legislative attempts, if passed into law, could have resulted in transgender individuals being arrested and charged with indecent exposure for using public restrooms that align with their gender identity.<sup>[34]</sup> Regardless of engagement in criminalized activities, LGBTQ+ people are

subjected to heightened police surveillance due to these perceptions of deviance.<sup>[16, 35]</sup> Additionally, this bias contributes to disparities in charges filed, adjudication, and sentencing of LGBTQ+ individuals.<sup>[16, 29]</sup>

## SCHOOL-TO-PRISON PIPELINE

Victoria<sup>1</sup> is a 15-year-old Latinx woman who identifies as queer. Her family is very supportive of her identity, but she has a lot of trouble at school. Her school has policies prohibiting public displays of affection between students, yet they are never enforced for straight students. However, Victoria and her girlfriend have gotten detention several times for holding hands at school. Victoria has also experienced a lot of bullying by other students, including being called derogatory names, receiving threatening notes in her locker, and being pushed or tripped in the hallways. One day, Victoria and her girlfriend were sitting together in the cafeteria. A group of students walked by and pushed their trays off the table, spilling their lunches onto the floor. One of the students called them a derogatory name as they all started to walk away. Out of frustration, Victoria stood up and pushed one of the students. The student turned and started hitting and punching Victoria. Victoria fell to the ground and put her hands up to protect herself. A school resource officer rushed in to break up the fight and everyone was sent to the principal’s office. The other students were suspended, but because Victoria already had several detentions on her record, she was expelled.

Advocates and organizers use the term “school-to-prison pipeline” to describe the direct and indirect impact of policies that push students out of schools and into the criminal legal system.<sup>[36]</sup> A component of the school-to-prison pipeline is the enactment of zero tolerance policies, which are intended to prevent victimization and bullying by harshly punishing violence in schools through suspensions and expulsions.<sup>[37]</sup> These policies increase the likelihood of youth coming into contact with law enforcement, particularly because many schools have police officers, often referred to as “school resource officers,” stationed there to handle rule infractions.<sup>[35, 38-40]</sup> Zero tolerance policies have contributed to disproportionate rates of detention, suspension, and expulsion among students of color.<sup>[41, 42]</sup> Additionally, research suggests that LGBTQ+ youth are disproportionately impacted by zero tolerance policies.<sup>[40, 43]</sup> Like Victoria, many LGBTQ+ students experience bullying in school.<sup>[39]</sup> According to the most recent National School Climate Survey, 82% of lesbian, gay, bisexual, and transgender respondents had experienced verbal harassment at school, and 36.7% reported being physically harassed.<sup>[39]</sup> Yet many do not receive help from

<sup>1</sup> All of the vignettes in this report are composites based on experiences shared by LGBTQ+ individuals and existing research.<sup>[3, 13, 40, 43]</sup>

school staff and instead defend themselves, which often results in punishment in accordance with zero tolerance policies<sup>[40]</sup> Additionally, LGBTQ+ youth, particularly LGBTQ+ youth of color, are more likely to be punished for non-violent school infractions, such as public displays of affection and dress code violations.<sup>[40]</sup>

Bullying and discrimination by school staff lead many LGBTQ+ students to skip school or drop out; according to the National School Climate Survey, 34.9% of respondents intentionally missed at least one day of school in the past month because they felt unsafe or uncomfortable at school.<sup>[39]</sup> Among 18-24-year-old respondents to Lambda Legal's survey, 9% reported being verbally assaulted by school security or police and 23% said they heard school security or police use anti-LGBTQ+ language.<sup>[16]</sup> School pushout due to unsafe school climates, in turn, contributes to heightened risk for criminal legal system involvement. For example, youth who are not in school can be arrested for truancy, and LGBTQ+ youth are more likely to be charged with truancy when compared to their heterosexual peers.<sup>[44]</sup> Not finishing high school increases the likelihood of criminal legal system involvement.<sup>[45]</sup>

## HOMELESSNESS, UNEMPLOYMENT, AND POVERTY

Mia<sup>2</sup> is a 29-year-old Black transgender woman. Mia came out to her mother when she was 16. Her mother is very religious and is unsupportive of Mia's transition. She kicked Mia out of the house, and Mia became homeless. Despite being homeless, Mia finished high school and started college. However, she had difficulty finding a job because her IDs did not match her name or gender identity. She'd heard that, in order to legally change her name, she'd need her birth certificate. Her birth certificate was at her mom's house and her mom still refused to talk to her, so she stopped looking into the legal name change process. When she was 19, a friend asked if she wanted to participate in a robbery. Mia didn't want to do it, but she was still experiencing homelessness, had no money, and no way to meet her basic needs. She agreed to join her friend, but she ended up getting arrested. She served four years in prison in a men's facility. After being released from prison, she was unable to change her name due to a state law that bars individuals with felony convictions from changing their names for ten years after completing their sentences. And with a felony conviction on her record, she is having an even harder time finding a job.

Due to a complex web of family rejection, homelessness, unemployment, poverty, bias, and discrimination, LGBTQ+

individuals may turn to criminalized activities like theft, panhandling, and sex work in order to survive.<sup>[1, 18, 46]</sup> Heightened police surveillance increases the likelihood of LGBTQ+ individuals being arrested and charged for forms of criminalized survival.<sup>[1, 16, 35]</sup> LGBTQ+ individuals experience high rates of homelessness.<sup>[47]</sup> Of respondents to the 2015 NTDS, 30% had experienced homelessness at some point in their lives.<sup>[1]</sup> Family rejection plays a large role in homelessness, particularly among LGBTQ+ youth.<sup>[48]</sup> According to a national survey of social service providers who work with LGBTQ+ homeless youth, 46% of respondents became homeless because they ran away from home due to family rejection of their sexual orientation and/or gender identity, and 43% were forced out by parents because of their identity.<sup>[48]</sup> Homelessness itself is criminalized; many cities in the U.S. have laws prohibiting sleeping outside or in a vehicle, "camping" in public spaces, panhandling, loitering, or sitting or lying down in particular public places.<sup>[49]</sup>

Both unemployment and poverty can result in engaging in criminalized activities in order to survive. LGBTQ+ individuals experience high rates of unemployment.<sup>[50]</sup> According to data from the Williams Institute, 9% of lesbian, gay, bisexual, and transgender adults surveyed were unemployed compared to only 5% of adults who do not identify as lesbian, gay, bisexual and/or transgender.<sup>[50]</sup> Unemployment rates are even higher among transgender individuals.<sup>[1]</sup> As Mia experienced, the lack of identity documents that reflect individuals' names and gender identities can pose a barrier to employment. Processes for obtaining legal name and gender marker changes differ state to state, but often require producing identity documents, obtaining documentation from mental health or medical providers, appearing before a judge, and paying court filing fees. While Mia may have been able to obtain a new birth certificate to replace the one at her mother's house, many individuals are unsure how or cannot afford the expense.<sup>[1]</sup> Even with the necessary documents, filing for a name change is prohibitive for many; of respondents to the 2015 NTDS, 35% said they have not attempted a legal name change because they could not afford it.<sup>[1]</sup> Yet name changes can play an important role in interrupting the pathway into the criminal legal system; one study examining the impact of legal name changes among transgender women of color found that women who had obtained a name change were significantly more likely to have stable housing and a higher monthly income compared to the pre-name change group.<sup>[51]</sup> Poverty and involvement in the criminal legal system are closely linked, and rates of poverty are higher among lesbian, gay, bisexual, and transgender individuals. The Williams Institute reports that 22% of lesbian, gay, bisexual, and transgender people are estimated to live in poverty in the U.S. compared to 16% of cisgender, straight adults.<sup>[52]</sup> LGBTQ+ people of color report even higher poverty levels.<sup>[1, 52]</sup> On top of all of these disparities and inequalities, LGBTQ+ individuals with a history of criminal legal system involvement experience heightened discrimination and exclusion from employment, education, and other opportunities because of their records, leading to continued homelessness, unemployment, and poverty. This creates a revolving door back into the system.<sup>[53, 54]</sup>

<sup>2</sup>All of the vignettes in this report are composites based on experiences shared by LGBTQ+ individuals and existing research.<sup>[1, 3, 18, 46]</sup>

## VIOLENCE AND VICTIMIZATION

Jay<sup>3</sup> is a 34-year-old White gay man. He lives with his partner, Robbie. Robbie has been emotionally abusive towards Jay in the past and occasionally physically abusive. During one terrifying incident, Jay locked himself in the bathroom of their apartment and called 911. When the officers arrived, they separated Jay and Robbie. Jay told the officers what happened but could tell that they were being dismissive. They didn't arrest Robbie, and Jay overheard one of them saying on the way out "this isn't a domestic violence incident, it's just two roommates fighting." After that, Jay was hesitant to call the police and felt like he had no way to protect himself. A few weeks later Robbie became physically abusive again. This time he had his arm pressed up against Jay's neck, and Jay was struggling to breathe. Jay had a pocket knife in his pocket, and quickly pulled it out and stabbed Robbie in the leg. Robbie called the police that time, and when they came, they only arrested Jay.

LGBTQ+ individuals experience high rates of violence and victimization, including child abuse, intimate partner violence, sexual assault, and bias-related victimization.<sup>[1, 55-59]</sup> Yet many LGBTQ+ individuals feel uncomfortable seeking support, especially from the police.<sup>[16]</sup> Lambda Legal's survey found that 62% of LGBTQ+ respondents who had been victims of a physical assault felt that the police did not fully address their complaints.<sup>[16]</sup> Additionally, 41% of respondents to the Lambda Legal survey who had experienced intimate partner violence and 39% of respondents who experienced sexual assault felt that the police did not fully address their complaints.<sup>[16]</sup> Among respondents to the 2015 NTDS, 57% reported feeling either somewhat or very uncomfortable asking the police for help.<sup>[1]</sup> As in Jay's example, in situations involving intimate partner violence, LGBTQ+ individuals experience higher rates of dual arrest and wrongful arrest when compared to cisgender, heterosexual individuals.<sup>[60]</sup> According to a study using data from the National Incident-Based Reporting System, incidents with same-sex couples were substantially more likely to result in dual arrest when compared to heterosexual couples.<sup>[60]</sup> LGBTQ+ individuals are also deterred from accessing other supportive services, including shelters for survivors of intimate partner violence or counseling, due to anti-LGBTQ+ discrimination.<sup>[57, 58, 61, 62]</sup>

Lacking legal or other supportive services, many LGBTQ+ individuals are left with few good options to protect themselves from victimization. There are no available data regarding the number of LGBTQ+ individuals who have been arrested or incarcerated for defending themselves from victimization. However, the links between experiencing victimization and

criminal legal system involvement among cisgender women are well-established.<sup>[35, 63]</sup> Given the high rates of victimization among LGBTQ+ individuals, it likely plays an important part in shaping pathways into the criminal legal system, yet more research is necessary to better understand these connections. Among LGBTQ+ individuals, victimization likely also has indirect effects on criminal legal system involvement; for example, victimization at work or school may result in decreased employment or educational opportunities and increase the likelihood of turning to criminalized activities in order to survive.<sup>[1, 3, 4, 18, 37, 40, 46]</sup>

## PATHWAYS AND PIPELINES SUMMARY

The pathways and pipelines outlined in this report are just a few examples of the many social and structural factors contributing to the overrepresentation of LGBTQ+ individuals within the criminal legal system. These factors are similar to those driving overrepresentation of other communities within the criminal legal system, including heterosexual and cisgender people of color and people with disabilities or mental health conditions.<sup>[29, 35, 44]</sup> Tracing these pathways and pipelines also illuminates broader problems with our reliance on the criminal legal system to maintain social control and the role that the criminal legal system plays in perpetuating inequality. Interrupting these pathways and pipelines requires diverting resources from the criminal legal system and funding social and educational services. The following engaged section highlights several organizations that are already engaged in these efforts.

<sup>3</sup>All of the vignettes in this report are composites based on experiences shared by LGBTQ+ individuals and existing research.<sup>[16, 58]</sup>

# SPOTLIGHTING ORGANIZATIONS

There are a growing number of organizations working to address the overrepresentation of LGBTQ+ individuals within the criminal legal system. The work of a few organizations and individuals are highlighted below. Many of these organizations connect their work to broader efforts to address mass incarceration, acknowledging that the same structural inequalities impacting LGBTQ+ individuals are also drivers of the broader crisis of mass incarceration, including discrimination and poverty. Their work demonstrates the importance of operating on multiple levels, including providing direct support to formerly and currently incarcerated LGBTQ+ individuals, advocating for resources to be diverted from the criminal legal system and toward services and programs that will interrupt pathways and pipelines into the system, and creating cultural shifts in how we think about criminality, violence, and punishment.

## BREAK OUT!

Based in New Orleans, Break Out!'s goal is to end the criminalization of LGBTQ+ youth through organizing, advocacy, and support. Their work spans many areas, but each is intrinsically linked to the pathways by which LGBTQ+ youth are funneled into the criminal legal system. For example, they engage in organizing and advocacy work to interrupt the school-to-prison pipeline. They help students start LGBTQ+ youth groups in high schools with the goal of increasing school safety. They also assist young people who have been pushed out of school to earn a general education diploma. They have successfully advocated to reduce the fees associated with legal name changes in Orleans Parish. Additionally, they provide know-your-rights trainings for young people and staff at youth-serving organizations.

## TRANSFORMATIVE JUSTICE LAW PROJECT

Based in Chicago, the Transformative Justice Law Project (TJLP) provides legal advocacy and support to transgender and gender expansive individuals. In addition to criminal defense work, TJLP operates the Name Change Mobilization project. Launched in 2011, the Name Change Mobilization supports individuals as they navigate the legal name change process. Staff and trained volunteers assist petitioners with filling out paperwork, obtaining necessary documentation, and filing the petition. TJLP can also help with requesting fee waivers, which requires that petitioners appear before a judge. Petitioners can request that a volunteer or attorney attend their name change hearing and accompany them to the DMV to obtain their new driver's license or state identification. Additionally, TJLP provides information about how to change other legal documents, including birth certificates, social security cards, and passports. In Illinois, individuals with felony convictions are unable to change their names for ten years after completing their sentences, and those with identity theft convictions or who are required to

be on the sex offender registry are barred for life, making Illinois one of only nine states in the U.S. to enforce waiting periods or permanent restrictions due to criminal records.<sup>[61]</sup> Attempts to change the law through legislation have, to date, been unsuccessful. Thus, in 2019, TJLP filed a federal lawsuit to challenge the constitutionality of the name change restrictions. The case is pending. For more information, see [www.tjlp.org](http://www.tjlp.org).

## BLACK & PINK

Black & Pink is a national organization working to address the needs of LGBTQ+ people in the criminal legal system. Black & Pink provides support to currently incarcerated LGBTQ+ individuals through a newsletter distributed to 19,000 incarcerated individuals and a pen pal program matching incarcerated individuals with allies on the outside. Black & Pink describes their pen pal program as a harm reduction strategy because it connects incarcerated individuals to a network outside of prison with whom they can share experiences of discrimination or victimization. Pen pals can then share this information with Black & Pink to help inform advocacy efforts. Centered in Omaha, Nebraska, Black & Pink also supports eleven volunteer-led chapters around the country. In addition to pen pal matching, chapters engage in mutual aid projects, connecting community volunteers to currently and formerly incarcerated LGBTQ+ individuals to help meet basic needs. In 2014, Black & Pink conducted a survey of LGBTQ+ incarcerated individuals, among the largest surveys of LGBTQ+ people in prison.<sup>[17]</sup> Recognizing the need for housing and other basic resources to prevent criminal legal system involvement and support recently incarcerated individuals, in 2020 Black & Pink opened a Lydon House in Omaha. Named for Black & Pink's founder, in its first year Lydon House provided housing to six residents and wrap around services to 50 community members impacted by incarceration. For more information, see [www.blackandpink.org](http://www.blackandpink.org).

## CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE DISTRICT ATTORNEY

In 2021, San Francisco District Attorney Chesa Boudin announced a new policy mandating practices related to pronoun use for people with whom their office works, including people accused of crimes, witnesses, and victims.<sup>[64]</sup> Noting the disproportionately high number of transgender individuals who come into contact with the criminal legal system and the detrimental impact of misgendering transgender individuals, the policy directive states that these practices is an important first step in mitigating the "harmful norms around sexuality and gender identity [that] are reinforced in our courtrooms and throughout the legal system" (p. 2). The policy requires that prosecutors and staff members of the district attorney's office ask about pronouns and note an individual's pronouns in their file. Additionally, the policy includes direction for prosecutors to note if an individual's chosen name differs from their legal name and to use the chosen name. Furthermore, prosecutors must ask the defense about pronouns of anyone accused of a crime, and to document and use those pronouns.

# RESEARCH, POLICY, AND DIRECT SERVICE RECOMMENDATIONS

Addressing the overrepresentation of LGBTQ+ individuals within the criminal legal system requires concerted efforts at multiple levels, including research, policy, and direct services for LGBTQ+ individuals. As illustrated in the previous section, there are many organizations and individuals already engaged in this work. Much of this work is happening outside of the criminal legal system. Working within the system poses many challenges, including needing to navigate around institutional policies and practices that may be biased against LGBTQ+ individuals. However, as demonstrated by the example from the San Francisco District Attorney's Office, individuals working within the criminal legal system can also play important roles in increasing safety and providing direct support to LGBTQ+ individuals. The following recommendations are starting points for this important work. Additional information and recommendations can be found in the [For Further Learning](#) section at the end of this report.

## ADDRESSING THE CRIMINALIZATION OF LGBTQ+ IDENTITIES

As detailed in this report, perceptions of LGBTQ+ individuals, particularly LGBTQ+ people of color, as deviant and criminal contribute to the overrepresentation of LGBTQ+ individuals in the criminal legal system. Addressing these perceptions is a part of the larger work of combatting hetero/cissexism, racism, and other forms of oppression. There are many steps that individuals and organizations can take to engage in this work, including:

- Engage in on-going education and self-reflection to combat hetero/cissexism and bias.
- Learn about the historical and present-day criminalization of LGBTQ+ identities.
- Ensure that the voices of LGBTQ+ communities are centered in efforts to address mass incarceration by including LGBTQ+ individuals in organizations and leadership roles.
- Organize and advocate to redirect funds from the criminal legal system and toward meeting basic needs of LGBTQ+ and other marginalized communities.
- Implement mechanisms to hold criminal legal system actors accountable for bias against LGBTQ+ individuals.
- Organize against new waves of anti-LGBTQ+ legislation, including bills aimed at restricting access to public restrooms and locker rooms.

## RESEARCH

This report highlights the need for on-going research to better understand the rates of arrest and incarceration of LGBTQ+ individuals, particularly those who have been overlooked by research to date (i.e., intersex and gender expansive communities). Further research is also necessary to understand the experiences of incarcerated LGBTQ+ individuals and their

needs upon re-entry. Understanding the pathways and pipelines by which LGBTQ+ individuals enter the criminal legal system is also critical for informing prevention efforts. The following are suggestions for future research:

- Include questions regarding gender identity and sexual orientation on surveys conducted among people in jails and prisons and returning to communities. However, it is imperative that confidentiality and safety be prioritized in data collection, including barring police, prison guards, or other criminal legal system actors from obtaining access to the identities of specific individuals in their facilities. Surveys should also collect data criminal legal system involvement and experiences of other members of the broader LGBTQ+ community, including intersex and gender expansive individuals.
- In keeping with best practices related to collection of gender identity and sexual orientation data,<sup>[65]</sup> survey responses should include a write-in option instead of or in addition to multiple choice options. This practice allows individuals to self-identify and is more respectful of the evolving and complex nature of identity labels and terminology.

## INTERRUPTING PATHWAYS AND PIPELINES AND PROMOTING ALTERNATIVES TO THE CRIMINAL LEGAL SYSTEM

Addressing the overrepresentation of LGBTQ+ individuals requires interrupting the pathways and pipelines funneling LGBTQ+ individuals into the system. Individuals and organizations working within and outside of the criminal legal system can all play roles in this work. In addition to the examples shared previously in this paper, here are several recommendations for ongoing prevention:

- Engage in creative program development to interrupt pathways into the criminal legal system for LGBTQ+ individuals. For example:
  - Create restorative justice programs in schools to address bullying and victimization without involving the police
  - Provide support and counseling to families of LGBTQ+ individuals to reduce family rejection
  - Offer assistance to transgender and gender expansive individuals as they navigate the legal name change process and advocate to reduce barriers to obtaining name changes
  - Create housing programs specifically for LGBTQ+ individuals to reduce homelessness
  - Develop employment and educational opportunities for LGBTQ+ individuals to reduce poverty
  - Ensure that services for survivors of victimization are inclusive of LGBTQ+ individuals
- Advocate for the decriminalization of factors contributing to pathways. For example, eliminate legislation criminalizing homelessness and sex work. Instead of relying on the criminal legal system to address forms of criminalized survival, use restorative justice practices and referrals to programs to help individuals meet their basic needs.

## ADDRESSING CONDITIONS OF CONFINEMENT FOR LGBTQ+ INDIVIDUALS

Individuals working within prisons and jails can play a crucial role in ensuring safety and meeting the basic needs of currently incarcerated LGBTQ+ individuals. While these efforts will not reverse overrepresentation, they are still important harm reduction strategies. Some suggestions include:

- Inside jails and prisons, provide LGBTQ+ inclusive medical and mental health services, including treatment by qualified clinicians following informed consent models for gender-affirming care.<sup>[21]</sup>
- Link recently released individuals to medical treatment to ensure ongoing access to medical care received while incarcerated, particularly HIV treatment.
- Develop and follow best practices for making housing designations that reflect an individual's gender identity and safety needs.
- Include professionals and experts from outside jails and prisons in boards or committees that oversee housing transfer requests based on gender identity. Prison and jail staff may not have the necessary experience to make these decisions and/or may be biased. The inclusion of outside professionals provides additional oversight for these decisions.

## MEETING RE-ENTRY NEEDS OF LGBTQ+ INDIVIDUALS

LGBTQ+ individuals may not feel welcome in re-entry programs and services or may have specific needs such as LGBTQ+-affirming and/or HIV-related health care. Organizations like Black & Pink are already working to address this gap by providing LGBTQ+-specific re-entry services. Additional recommendations for individuals and organizations working in re-entry include:

- Ensure that existing re-entry services, including housing, employment training, and substance use services, are inclusive of LGBTQ+ individuals.
- Simultaneously, design new re-entry services that meet the distinct needs of LGBTQ+ communities.

# FOR FURTHER LEARNING

## GENERAL INFORMATION REGARDING LGBTQ+ IDENTITIES

PFLAG [resources for allies](#)

Human Rights Campaign guide, "[Human Rights Campaign resources for allies](#)"

UC Davis LGBTQIA Resource Center, "[Basic tips for expanding your allyship](#)"

## ORGANIZATIONS

[Black and Pink](#)

Report, "[Coming out of concrete closets](#)"

[Hearts on a Wire](#)

[Just Detention International](#)

[LGBT Books to Prisoners](#)

[Survived and Punished](#)

[Sylvia Rivera Law Project](#)

[Transgender Law Center](#)

[Transformative Justice Law Project of Illinois](#)

## REPORTS

Center for American Progress

Report, "[Beyond bullying: How hostile school climate perpetuates the school-to-prison pipeline for LGBT youth](#)"

The Fenway Institute

Report, "[Emerging best practices for the management and treatment of incarcerated lesbian, gay, bisexual, transgender, and intersex, \(LGBTI\) individuals](#)"

Lambda Legal

Report, "[Protected and Served?](#)" survey exploring discrimination by police, courts, prisons and school security against LGBT people and people living with HIV in the U.S.

Movement Advancement Project

Report, "[Unjust: How the broken criminal justice system fails LGBT people of color](#)"

National Center for Transgender Equality

Report, "[Standing with LGBT prisoners: An advocate's guide to ending abuse and combating imprisonment](#)"

Prison Policy Initiative

Briefing, "[Visualizing the unequal treatment of LGBTQ people in the criminal legal system](#)"

Williams Institute

Reports, briefs, and fact sheets on [LGBTQ+ communities and criminalization](#)

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