

UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

Executive Summary

February 2016



Authors



Partners



This report was authored by:

Center for American Progress

The Center for American Progress (CAP) is a think tank dedicated to improving the lives of Americans through ideas and action. CAP combines bold policy ideas with a modern communications platform to help shape the national debate. CAP is designed to provide long-term leadership and support to the progressive movement. CAP's policy experts cover a wide range of issue areas, and often work across disciplines to tackle complex, interrelated issues such as national security, energy, and climate change.

Movement Advancement Project

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight, and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen efforts for maximum impact. MAP's policy research informs the public and policymakers about the legal and policy needs of LGBT people and their families.

Contact Information

Center for American Progress

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

Movement Advancement Project (MAP)

2215 Market Street
Denver, CO 80205
1-844-MAP-8800
www.lgbtmap.org

The full report and a condensed version are available online at www.lgbtmap.org/criminal-justice.

This report was developed in partnership with:

Advancement Project

Advancement Project is a next generation, multi-racial civil rights organization. Rooted in the great human rights struggles for equality and justice, we exist to fulfill America's promise of a caring, inclusive and just democracy. We use innovative tools and strategies to strengthen social movements and achieve high impact policy change. Learn more at www.advancementproject.org.

Forward Together

Forward Together is a multi-racial, multi-issue organization that is changing how we think, feel, act, and make policy about families. Whether chosen or biological, we work to ensure that all families have the power and resources they need to thrive. We work at the intersections of race, gender, and sexuality—and find ways to shift our culture and policy in the areas of reproductive justice, economic justice, and ending mass incarceration. For more information, visit www.forwardtogether.org.

JustLeadershipUSA

JustLeadershipUSA is dedicated to cutting the U.S. correctional population in half by 2030, while reducing crime. JLUSA empowers people most affected by incarceration to drive policy reform. Learn more at www.justleadershipusa.org.

MAP thanks the following major* funders, without whom this report would not have been possible.

Craig Benson
David Bohnett Foundation
David Dechman & Michel Mercure
David Geffen Foundation
Evelyn and Walter Haas Jr. Fund
Ford Foundation
Gill Foundation
Esmond Harmsworth
Jim Hormel
Johnson Family Foundation
Amy Mandel & Katina Rodis
Weston Milliken
The Palette Fund
Mona Pittenger
H. van Ameringen Foundation
Wild Geese Foundation

*Individual and institutional funders greater than \$5,000

EXECUTIVE SUMMARY

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

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

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

As this report makes clear, efforts to reform the criminal justice system must address the experiences of LGBT people, particularly LGBT people of color. The report documents how pervasive stigma and discrimination, discriminatory enforcement of laws, and discriminatory policing strategies mean that LGBT people are disproportionately likely to interact with law enforcement and enter the criminal justice system. It also shows how LGBT people are treated unfairly once they

enter the justice system and are disproportionately likely to be incarcerated and face abuse once incarcerated. Lastly, the report focuses on how LGBT people face additional challenges in the struggle to rebuild their lives after experiences with law enforcement—and particularly time spent in a correctional facility.

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

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

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

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

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

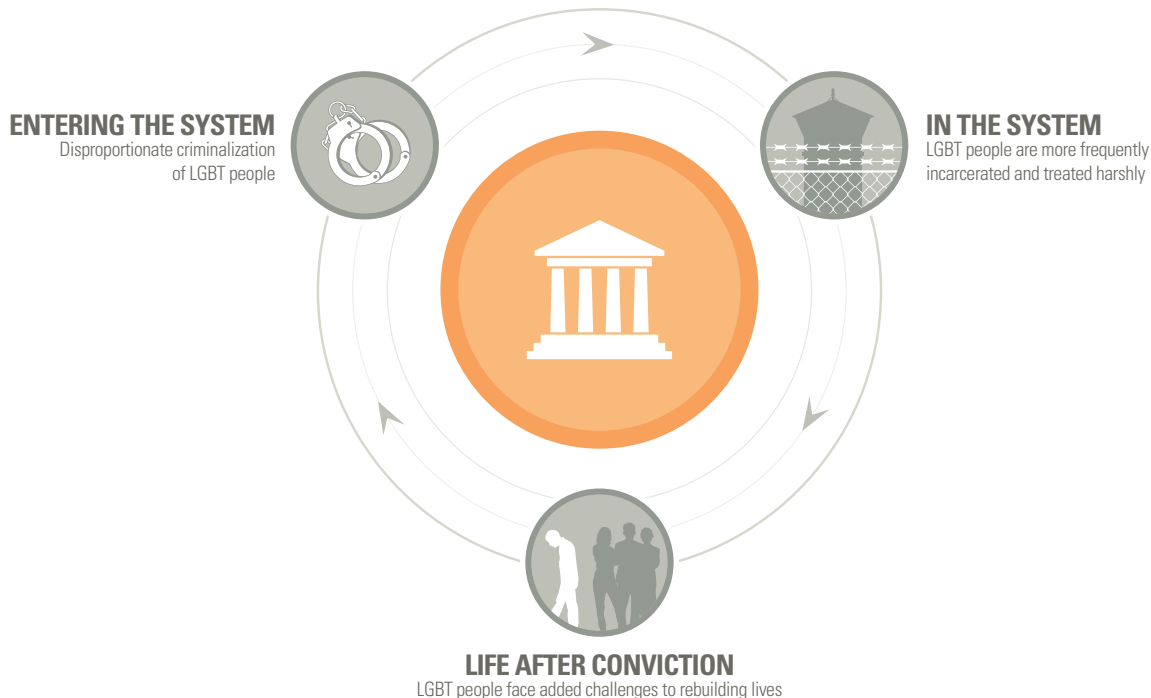
^c Allen J. Beck and Thomas P. Bonczar, “Lifetime Likelihood of Going to State or Federal Prison,” (Bureau of Justice Statistics, March 6, 1997), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1042>.

^d Angela Irvine, “Time to Expand the Lens on Girls in the Juvenile Justice System,” *National Council on Crime & Delinquency*, March 26, 2015, <http://www.nccdglobel.org/blog/time-to-expand-the-lens-on-girls-in-the-juvenile-justice-system>.

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

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

Unjust: How the Broken Criminal Justice System Fails LGBT People



- **Discriminatory enforcement of laws criminalizes LGBT people's lives.** Discriminatory criminalization of LGBT people happens in numerous ways. HIV criminalization laws, for example, rely on outdated science and are enforced based on stigma. The result is that people living with HIV are in constant fear of being prosecuted and jailed. In a study from prosecutions under California's HIV criminalization statutes, 99% of individuals charged were ultimately convicted, and nearly all served time in prison or jail.⁹ In addition, state indecency laws are enforced based on stereotypes and disproportionately target LGBT people engaged in consensual sex. Last but not least, drug law enforcement disproportionately targets people of color and low-income people, including LGBT people.
- **Harmful policing strategies and tactics push LGBT people into the criminal justice system.** How police enforce the law results in certain communities becoming targets. Police may launch a crackdown on "undesirable" behavior, which results in an unfair spike in arrests of LGBT people. In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by the police.^h Officers also may use force or abuse their power during interactions with LGBT people and people of color, in particular, resulting in sexual and physical abuse, misconduct,

neglect, and even death. Recent years have seen increased attention to the toll of harmful policing strategies on communities of color, low-income people, and LGBT people, many of whom are also people of color and/or low-income.

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

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

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

⁹ Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," (The Williams Institute, December 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-December-2015.pdf>.

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

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

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

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

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

- **Lack of support for LGBT people in probation, parole, and re-entry programs.** LGBT people often face unique needs for support in finding housing and jobs and accessing essential services. They experience discrimination at high rates and frequently lack family support, and transgender people in particular may need additional assistance finding appropriate health care. Rarely do probation, parole, and re-entry programs take into consideration the discrimination that LGBT people experience in many areas of life, including employment, housing, and public accommodations.
- **Having a criminal record harms LGBT people's ability to support themselves and be a part of their families and communities.** The challenges for individuals with criminal records are substantial in the

United States and touch every aspect of one's life. In many ways, these individuals continue to be punished for their crimes long after they have completed their sentences. For people who already struggle with pervasive stigma and discrimination, such as LGBT people and people of color, a criminal record compounds daily discrimination to create substantial barriers to rebuilding one's life and avoiding future interactions with the criminal justice system. For LGBT immigrants, regardless of immigration status, having a criminal record can easily lead to deportation.

Fixing a Broken System

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

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

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

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

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

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

Center for American Progress



1333 H Street NW, 10th Floor • Washington, DC 20005
202-682-1611
www.americanprogress.org



movement advancement project ▶

2215 Market Street • Denver, CO 80205
1-844-MAP-8800
www.lgbtmap.org