

# Incarcerated LGBTQ+ Adults and Youth



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM



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The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

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# Incarcerated LGBTQ+ Adults and Youth

This fact sheet examines the criminalization and over-incarceration of LGBTQ+ adults and youth. The LGBTQ+ population is comprised of people with non-heterosexual identities—those who are lesbian, gay, bisexual, and others—and people with non-cisgender identities—those who are trans and gender non-conforming. **LGBTQ+ adults are incarcerated at three times the rate of the total adult population.<sup>1</sup> LGBTQ+ youth's representation among the incarcerated population is double their share of the general population.<sup>2</sup>**

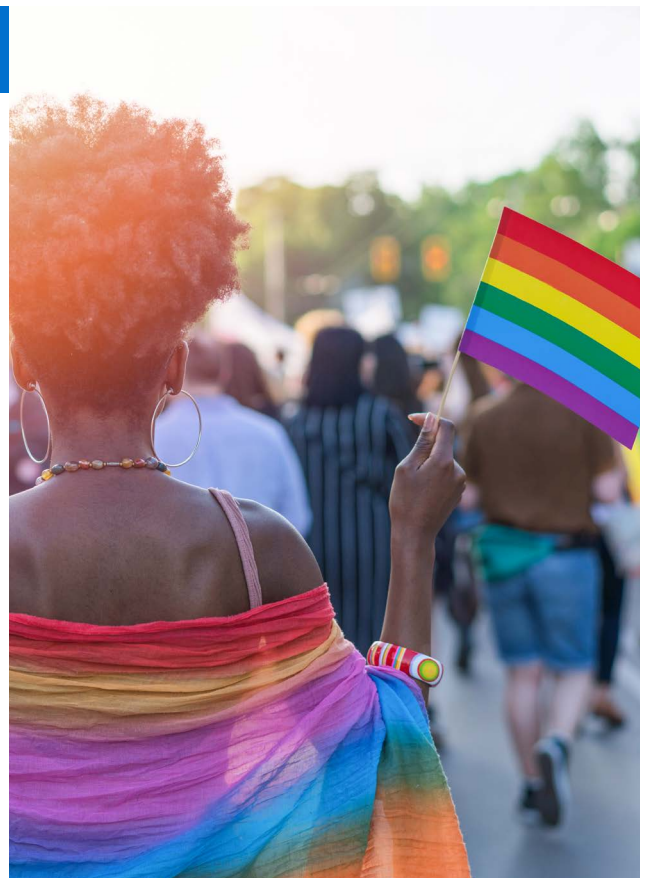
LGBTQ+ people experience high rates of homelessness, poverty, unemployment, discrimination, and violence—factors which drive their overrepresentation in the criminal legal system. In both adult and youth facilities, imprisoned LGBTQ+ people face physical, sexual, and verbal harassment and abuse, as well as a lack of gender-affirming housing, clothing, personal hygiene products, medical care, and mental health treatment. To help alleviate these harms, states and the federal government should repeal laws that criminalize LGBTQ+ people, limit the use of solitary confinement, mandate access to gender-affirming health care in correctional facilities, and invest in drug and mental health treatment and reentry programs for LGBTQ+ youth and adults.

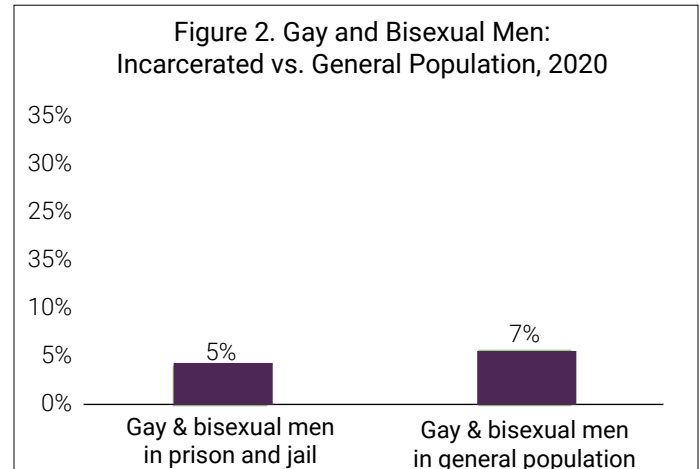
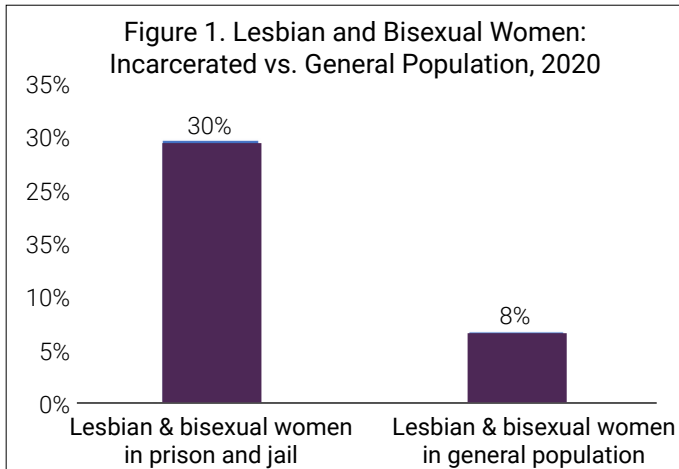
## I. POPULATION SIZE

### A. Adults

The most recent national data on incarceration and sexuality is from the 2012 National Inmate Survey. Applying the percentages from that survey to the 2020 incarcerated population suggests that there are approximately 90,000 people who self-identify as lesbian, gay, or bisexual in prisons and 34,000 in jails.<sup>3</sup> Reports from *NBC News* and *Associated Press*—published in 2020 and 2021 respectively—found that there are over 6,000 people who self-identify as trans in state and federal prisons (data are not available on the size of the jailed trans population).<sup>4</sup>

Women drive the higher representation of LGBTQ+ people in prisons and jails. In prisons, 33.3% of women and 5.5% of men identify as lesbian, gay or bisexual, compared to 7.6% and 6.8%, respectively, in the general population.<sup>5</sup> In jails, 26.4% of women and 3.3% of men identify as lesbian, gay or bisexual.<sup>6</sup>





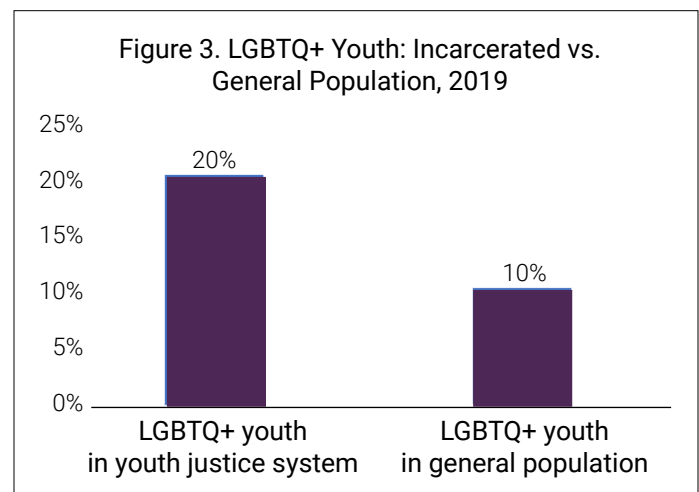
Meyer, I. H., Flores, A. R., Stemple, L., Romero, A. P., Wilson, B. D. M., & Herman, J. L. (2017). Incarceration rates and traits of sexual minorities in the United States: National inmate survey 2011-2012. *AJPH Research*, 107(2); Carson, E. A. (2021). *Prisoners in 2020: Statistical Tables*. US Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>; & Minton, T. D., & Zeng, Z. (2021). *Jail inmates in 2020—Statistical tables*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>

The over-representation of women and people of color in the incarcerated LGBTQ+ population is especially notable in the trans population: one in five (21%) trans women have experienced incarceration at some point in their lives, as have nearly half (47%) of all Black trans people.<sup>7</sup> According to the National Center for Transgender Equality, 16% of all trans people have experienced incarceration at some point during their lives.<sup>8</sup>

## B. Youth

Among minors in youth justice facilities on a typical day in 2019, 20% identified as LGBTQ+, representing approximately 7,300 people.<sup>9</sup> By comparison, only 9.5% of youth ages 13 to 17 in the general population identify as LGBTQ+.<sup>10</sup>

Within youth justice facilities, youth of color comprise 67% of the overall population, but 85% of the incarcerated LGBTQ+ population.<sup>11</sup> While 40% of detained girls identify as LGBTQ+, the figure for detained boys is 14%.<sup>12</sup>



Center for American Progress, et al. (2017), see note 2; Conron, K. J. (2020). *LGBT youth population in the United States*. UCLA School of Law Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>

## II. DRIVERS OF OVERREPRESENTATION

### Allie Reyes

In 2015, 15-year-old Allie Reyes was arrested after a fight with her mother. At the Sununu Youth Services Center in New Hampshire, Reyes was isolated on a separate floor from the girls' unit because she is trans. "When I first got there, I was immediately retraumatized. My gender was invalidated," she remembered.<sup>13</sup> After three years in and out of the facility, Reyes struggled with severe depression and an eating disorder. Reyes, who had experienced homelessness for many of her teenage years, is now an advocate for ending youth homelessness and expanding health care accessibility for young people aging out of the youth justice system.

High rates of poverty, homelessness, discrimination, and violence against LGBTQ+ adults and youth perpetuate their overrepresentation in the criminal legal system. LGB+ adults are twice as likely as the general population to experience homelessness in their lifetimes.<sup>14</sup> In 2019, 22% of LGBTQ+ people lived in poverty, with 31% of Black LGBTQ+ people living in poverty, as compared to 16% of cisgender straight people.<sup>15</sup> LGB+ people are more likely to have

substance use disorders than straight people, often resulting from social stigmatization, fear of rejection, and lack of acceptance.<sup>16</sup>

These factors, along with family rejection, employment discrimination, the high cost of gender-affirming health care, and the absence of safe shelters and culturally competent substance use services can lead LGBTQ+ people to engage in street-based economies—such as drug sales and sex work—that increase their risk of criminal legal involvement and police violence. LGBTQ+ youth, often fleeing abuse and lack of acceptance, are over twice as likely to report homelessness than non-LGBTQ+ youth,<sup>17</sup> and often experience disproportionate enforcement of low-level offenses (e.g., loitering, sleeping outside, panhandling, and prostitution). Adverse experiences at home or in foster care can affect young people's performance in school, fueling the school-to-prison pipeline: 90% of LGBTQ+ youth in detention have been suspended or expelled from school at least once.<sup>18</sup>

Police bias, anti-trans laws, and discriminatory bail practices contribute to higher rates of incarceration for LGBTQ+ people, especially trans women of color. LGBTQ+ people are nearly four times as likely as straight people to be victims of violent crime.<sup>19</sup> For trans victims of domestic violence (particularly trans persons of color), or for those acting in self-defense, police involvement can often result in their own arrest.<sup>20</sup> Black trans women regularly report that police fail to take their reports of violence seriously.<sup>21</sup> Further, legal strategies such as the "LGBTQ+ panic defense" are often used to justify acts of violence *against* members of the LGBTQ+ community, sometimes positing that the perpetrator





committed an act of self-defense triggered by the identity of the victim.<sup>22</sup> “Walking while trans” policies and practices—in which police routinely profile trans women of color as sex workers—also increase risk of police violence and arrest.<sup>23</sup> In 2018, under New York’s recently repealed “Loitering for the Purpose of Prostitution” statute, 91% of those arrested were Black and Latinx.<sup>24</sup> The statute criminalized behaviors such as repeatedly attempting to stop or wave at a vehicle or attempting to talk to other individuals on the street.<sup>25</sup>

LGBTQ+ people can also experience unwarranted pretrial detention due to discriminatory bail practices. The Center for Lesbian Rights reports that LGBTQ+ people receive higher bail amounts than others

because they are perceived as flight risks or dangers to the community.<sup>26</sup> Pretrial judges and parole board members may also fail to recognize chosen families as legitimate support networks for release, or acknowledge the responsibilities that LGBTQ+ people have to non-legally adopted children.<sup>27</sup> Some research suggests that LGBTQ+ people are more likely to be convicted of violent crimes that result in longer prison sentences than straight people.<sup>28</sup> As sentencing reforms have mainly focused on non-violent convictions, LGBTQ+ people are left facing lengthy sentences with fewer chances for review and release.<sup>29</sup>

# Recommended Reforms

## 1. Prevention and Enforcement

- Decriminalize sex work and repeal anti-loitering laws that are used to profile and target trans people, as recommended by the Transgender Law Center.<sup>30</sup> Decriminalize low-level quality of life offenses associated with poverty and homelessness, such as sleeping in public, loitering, disorderly conduct, and panhandling. Research has found that misdemeanor non-prosecution not only benefits individuals, but also improves public safety.<sup>31</sup>
- Broaden anti-discrimination laws and adopt the kinds of provisions found in the End Racial and Religious Profiling Act (ERRPA), which would prohibit federal, state, and local law enforcement from targeting people based on “actual or perceived” race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation.<sup>32</sup>
- Repeal HIV-criminalization laws. As of 2021, 35 states had laws that punish non-disclosure of HIV status prior to consensual sex. These laws disproportionately impact Black and LGBTQ+ communities, and in some states, can add penalty enhancements to sex work and solicitation convictions.<sup>33</sup> States should instead invest in harm reduction and treatment services, including HIV prevention programs, screenings, antiretroviral therapies, and access to condoms and sterile syringes.

## 2. Sentencing and Sentence Review

- Incorporate sexuality and gender identity into training programs for pretrial and sentencing judges, similar to those provided by the Williams Institute’s Judicial Education Program, and create similar trainings for police, prosecutors, and public defenders.<sup>34</sup>

- Consider circumstances of incarceration—including conditions of confinement, the impact of a person’s incarceration on family and community, and any evidence of physical, sexual, or psychological abuse while incarcerated—at the point of sentencing and in sentencing reviews and parole hearings.
- Remove strict behavioral standards from sentencing review legislation, parole hearing criteria, and policies that disadvantage LGBTQ+ people. As LGBTQ+ people are more likely to receive disciplinary write-ups for issues related to their identity (e.g., using gender-affirming clothing and products, and reporting sexual misconduct), second look bills that require incarcerated people to have few or no disciplinary write-ups on their records would disproportionately impact LGBTQ+ people’s chances for resentencing or release.<sup>35</sup>
- Monitor and create accountability to eliminate disparities in sentencing resulting from discretionary bias and based on criminal histories.

## 3 Culturally-Competent Services

- Create emergency and transitional housing specifically for LGBTQ+ youth and adults. Ensure that all treatment and social service providers who receive referrals from the criminal legal system and all alternatives-to-incarceration programs are qualified to provide inclusive and culturally-competent care.
- Promote economic and financial security, ensure access to stable housing, and protect the civil rights of LGBTQ+ people, as detailed by the Center for American Progress.<sup>36</sup>

### III. CONDITIONS OF CONFINEMENT

#### Charles Rhines

Charles Rhines was executed in 2019 in South Dakota, after serving 27 years in prison for a burglary-turned murder. Following Rhines' trial in 1992, multiple jurors provided sworn testimony that their death sentence decision was swayed by the fact that Rhines was a gay man. According to one juror, the jury knew that Rhines was gay, and "thought that he shouldn't be able to spend his life with men in prison."<sup>37</sup> Another juror stated that there was "lots of discussion of homosexuality. There was a lot of disgust." In 2019, Rhines' case was examined by the U.S. Supreme Court. The ACLU filed an amicus curiae in support of Rhines, arguing that bias against LGBTQ+ people in jury deliberations "interferes with the right to a fair and impartial jury."<sup>38</sup> The Supreme Court ultimately upheld Rhines' sentence, and he was executed later that year.

#### A. Sexual Assault and Harassment in Custody

LGBTQ+ adults and youth in the criminal legal system are at an increased risk of sexual assault and harassment from other incarcerated people and staff, compared to cisgender and straight people. The 2012 National Inmate Survey found that 12% of LGB people in prison and 9% in jail reported experiencing sexual victimization from another incarcerated person, as compared to 1% of straight people in prisons and jails.<sup>39</sup> Of LGB people in prisons and jails, 5% and 4% respectively reported sexual victimization from staff, compared to 2% of incarcerated straight people.<sup>40</sup> That same year, 40% of trans people in state and federal prisons reported sexual victimization.<sup>41</sup> In the Bureau of Justice Statistics' 2009 National Survey of Youth in Custody, 20% of LGB+ youth reported sexual victimization by other youth or staff, compared to 11% of straight youth.<sup>42</sup>

Sexual assault in prisons remains a significant issue, especially for those who identify as LGBTQ+, due in part to obstacles created by federal laws. In 2003, the Prison Rape Elimination Act (PREA) established national standards for federal and state facilities to analyze and prevent incidents of sexual assault in prisons, jails, and detention facilities (as PREA is tied to federal funding, it does not have jurisdiction over jails, although some have adopted the standards).<sup>43</sup> PREA established standards surrounding correctional leadership and accountability, sexual assault prevention, training, reporting, data collection, discipline, investigations, medical and mental health services and prosecution.<sup>44</sup> All facilities covered



under PREA are audited at least once every three years, during which the facility's practices and procedures are observed to measure compliance with the standards.<sup>45</sup> But the rates of sexual assault presented above have occurred amidst these audits—underscoring the need for more rigorous enforcement.

When sexual assaults occur, the 1996 Prison Litigation Reform Act (PLRA) makes it more difficult for incarcerated people to file lawsuits in federal court, requiring them to exhaust all avenues of the prison's grievance process and pay all court filing fees in full.<sup>46</sup> PLRA also stipulates that lawsuits for mental or emotional injury cannot be filed without proof of physical injury.<sup>47</sup> While PREA sets up an exception to the PLRA exhaustion process for sexual assault complaints—eliminating extra hurdles such as time limits on filing grievances, strict procedural requirements, “informal” resolution requirements, and prohibitions on assistance for filing grievances<sup>48</sup>—it does not create a private right of action for incarcerated people.

## Recommended Reforms

- Repeal the Prison Litigation Reform Act.<sup>49</sup>
- Improve PREA implementation, oversight, and audits, and establish stiffer penalties for non-compliance. For states and agencies that do not meet the federal standards, PREA currently allows for a denial of only 5% of federal criminal justice assistance.<sup>50</sup>



## B. Solitary Confinement

The use of solitary confinement is pervasive in the United States, and is sometimes used for the protective custody of vulnerable populations and victims of assault.<sup>51</sup> Research demonstrates that the clinical impacts of isolation on both youth and adults can be similar to those of physical torture; responses to solitary confinement can include perceptual distortions and hallucinations, increased anxiety, rage, fear, lack of impulse control, depression, sleep problems, self-mutilation, and lower levels of brain function.<sup>52</sup> Prison officials disproportionately place LGBTQ+ people in solitary confinement because of their gender identity or sexuality, citing concerns for their safety. In 2014, Black & Pink surveyed 1,200 imprisoned people nationwide who subscribed to the organization's publication and found that 85% of imprisoned LGBTQ+ respondents had been in solitary confinement at some time during their sentence.<sup>53</sup> In contrast, 20% of the total prison population spent time in solitary confinement between 2011 and 2012.<sup>54</sup> According to Black & Pink, many imprisoned trans people are placed in "indefinite, prolonged solitary confinement—conditions classified by the U.N. as torture—ostensibly for their own protection."<sup>55</sup> Although PREA discourages the placement of people who are especially vulnerable to sexual assault in "protective custody," the practice continues with little to no judicial oversight;<sup>56</sup> very few states ban or regulate the use of solitary confinement.

Staff at youth detention centers often isolate LGBTQ+ youth for similar reasons. This kind of isolation limits access to programs and services, and increases risk of harassment and abuse by staff. In 2016, the Department of Justice prohibited the use of solitary confinement for youth in federal custody, but the prohibition does not extend to youth confined under state laws.<sup>57</sup>

## Recommended Reforms

- Limit the use of solitary confinement to 15 days for all incarcerated people and ban solitary confinement for vulnerable populations, such as children, pregnant people, and people with mental illnesses, as dictated by the United Nations Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules"), adopted in 2015.<sup>58</sup>
- Provide avenues for incarcerated people to contest their placement and eliminate the use of solitary confinement for protection.
- Implement state legislation similar to New York's Humane Alternatives to Long-Term Solitary Confinement (HALT) Act, which limits the use of solitary confinement to 15 days and establishes rehabilitative alternatives, such as Residential Rehabilitation Units.<sup>59</sup> In 2019, New Jersey passed the Isolated Confinement Restriction Act, which limits solitary confinement to 20 consecutive days and prohibits its use against vulnerable populations, including LGBTQ+ people.<sup>60</sup>

## IV. HEALTH CARE

Hormone therapy and gender-affirming surgery are medical necessities that are exceptionally difficult for trans and gender non-conforming people in prison to access.<sup>61</sup> Incarcerated people and advocates note that it can take months or years for people in prison to obtain gender dysphoria diagnoses, which are required for treatment.<sup>62</sup> Among respondents to Black & Pink's survey, only 43% of imprisoned transgender, nonbinary, and Two-Spirit respondents had been diagnosed with gender dysphoria, while 31% were denied diagnoses<sup>63</sup>—often due to substantial delays in receiving care, administrative barriers, denial for non-medical reasons, or staff who are unequipped to provide gender-affirming health care.<sup>64</sup> Similarly, only 23% of these respondents reported taking hormones at the time of the survey, while 44% were reportedly denied access to hormones.<sup>65</sup> In a 2009 national study of trans women in the United States, 21% were denied hormones and 15% were denied regular medical care while incarcerated.<sup>66</sup> According to Disability Rights Washington, most U.S. jurisdictions do not allow incarcerated people access to gender-affirming surgery.<sup>67</sup>

The majority of staff in the youth justice system are untrained and lack an understanding of the medical needs of LGBTQ+ youth.<sup>68</sup> Not only does placing gender non-conforming youth in facilities that do not align with their identity increase their risk of violent victimization, it also limits their access to appropriate services, such as gender-affirming clothing, personal products, and medical treatments. In some cases, trans youth in confinement have to get a court order to receive appropriate medical care.<sup>69</sup>

Rejection of transgender health care is not limited to prisons. During the 2022 state legislative cycle, at least 20 anti-trans youth medical bans have been introduced that would criminalize gender-affirming care for trans people under age 18.<sup>70</sup> For example, Idaho's House Bill 675—passed by the House in March of 2022—could result in sentences of life in prison for parents who support their children in receiving hormones or surgeries.<sup>71</sup>

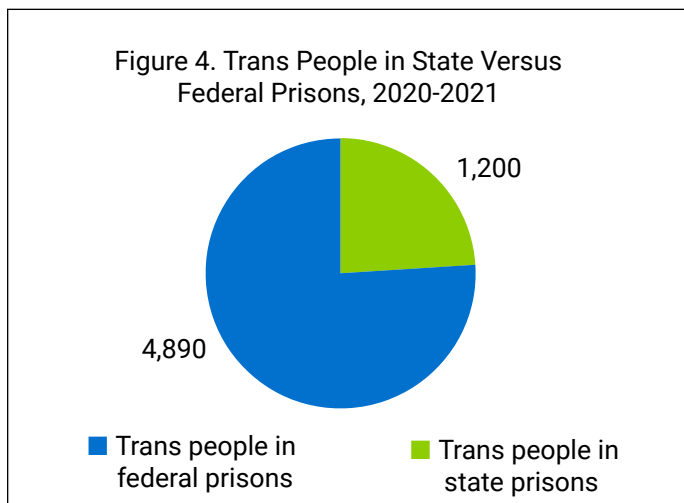
### Recommended Reforms

- Require state and federal facilities to provide incarcerated people with access to the underwear, uniforms, and personal hygiene products of their choice.
- Repeal past and reject future laws that criminalize health care for trans and gender non-conforming youth. Prosecutors and law enforcement officials should decline to enforce and prosecute family members and health care providers under these laws.<sup>72</sup>
- Treat gender dysphoria as a serious medical need, for which incarcerated trans and gender non-conforming people must have access to clinically-indicated care.
- Invest in counseling and mental health treatment for incarcerated LGBTQ+ people, regardless of whether they have a diagnosed psychological disorder.

## V. HOUSING, SEARCHES, AND GENDER EXPRESSION

### A. Housing

Incarcerated trans people should be given a choice as to where they are housed and by whom they are searched. A study of 315 trans women incarcerated in 27 California prisons found that 65% preferred to be housed in men's facilities.<sup>73</sup> In January 2022, the Federal Bureau of Prisons revised its housing policies for trans people in prison to require that a transgender or intersex person's views on their own safety be given "serious consideration" in housing and programming assignments.<sup>74</sup> However, despite this reform, trans people leaving prison are often placed in re-entry programs and transitional housing that do not match their identity, resulting in violence, harassment, and even parole violations for trans people who dress according to their gender identity.<sup>75</sup> Also, this federal-level change does not apply to state prisons, where the majority of trans people are incarcerated.



Balsamo, M., & Ibrahim, M. (2021, Sept 17). Justice Department reviewing policies on transgender inmates. *Associated Press*. <https://apnews.com/article/religion-crime-prisons-minnesota-illinois-007d87693249a9831867a5289c09e612>; Sosin, K. (2020, Feb 26). Trans, imprisoned—and trapped. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436>

### B. Searches

Incarcerated trans people are at a high risk of sexual harassment from staff during searches and strip searches. PREA has limits on cross-gender searches, but the regulations do not prioritize trans and intersex people's expressed preference for the gender of the correctional officer searching them. Searches can be especially traumatic for incarcerated trans people, as they are often searched by an officer of a different gender, and are sometimes searched "simply so that prison staff can see their genital characteristics, or for the purpose of humiliating or harassing them."<sup>76</sup>

### C. Gender Expression

LGBTQ+ people in prison face a striking lack of resources and support necessary for their health and safety. Gender-affirming clothing and products for gender non-conforming people are extremely limited inside prisons, and their use often results in unwarranted disciplinary write-ups and punishments. Black & Pink's survey of 1,200 imprisoned members found that only 21% of respondents had access to underwear and cosmetics that matched their gender identity.<sup>77</sup> In 2021, trans men incarcerated in Texas reported that they had been required to wear sports bras and women's underwear, and to keep their hair longer than 2.5 inches (or risk disciplinary write-up); they were also unable to purchase chest binders.<sup>78</sup>



While federal correctional staff are prohibited from repeatedly mis-gendering trans and non-binary incarcerated people, protections such as these are lacking at the state level.<sup>79</sup> In a 2017 survey of 21 states, Prison Policy Initiative found that only three states (Delaware, Pennsylvania, and Vermont) required staff to use preferred pronouns, and only Vermont required staff to use preferred names.<sup>80</sup> Name changes are exceedingly difficult to accomplish in prison; even post-incarceration, at least 57% of the LGBTQ+ population live in states with additional restrictions and requirements regarding name changes for formerly incarcerated people.<sup>81</sup>

**Incarceration exacerbates harm against an already vulnerable population. The drivers of the over-incarceration of LGBTQ+ people—poverty, homelessness, discrimination, social stigmatization, and violence—are systemic issues that should be effectively and equitably addressed through investments in inclusive social services, not compounded by incarceration.**

## Recommended Reforms

- Allow incarcerated trans, non-binary, and intersex people to choose whether to be housed and searched according to their gender identity. If security concerns are found to contradict an individual's preferred housing placement or search preference, senior management must certify in writing the specific and articulable basis why the individual's housing or search preferences cannot be accommodated. This written statement must be provided to the incarcerated person and they must also be provided a meaningful opportunity to object.<sup>82</sup>
- Allow trans, non-binary, and intersex people to choose whether to be placed in transitional housing that matches their gender identity and expand re-entry programs to address specific challenges faced by LGBTQ+ people leaving prison.

## ENDNOTES

<sup>1</sup> Lesbian, gay, and bisexual people are incarcerated at three times the rate of the general population: Meyer, I. H., Flores, A. R., Stemple, L., Romero, A. P., Wilson, B. D. M., & Herman, J. L. (2017). Incarceration rates and traits of sexual minorities in the United States: National inmate survey 2011-2012. *AJPH Research*, 107(2). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227944/pdf/AJPH.2016.303576.pdf>. The trans population is incarcerated at a rate many times greater than that of the general population (based on a non-random sample): Grant, J. M., Mottet, L. A., & Tanis, J. (2011). *Injustice at every turn: A report of the national transgender discrimination survey*. National Center for Transgender Equality. [https://transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf)

<sup>2</sup> Center for American Progress, Movement Advancement Project, & Youth First. (2017). *Unjust: LGBTQ youth incarcerated in the juvenile justice system*. <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>; Conron, K. J. (2020). *LGBT youth population in the United States*. UCLA School of Law Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>

<sup>3</sup> We estimate that 62,302 imprisoned men and 27,657 imprisoned women identified as LGB, and 15,817 men and 18,427 women in jail identified as LGB. Meyer et al. (2017), see note 1; Carson, E. A. (2021). *Prisoners in 2020: Statistical Tables*. US Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>, & Minton, T. D., & Zeng, Z. (2021). *Jail inmates in 2020—Statistical tables*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>. This analysis excludes those who identify as having sex with people of the same sex but do not identify as lesbian, gay, or bisexual.

<sup>4</sup> There are approximately 1,200 trans people in federal prisons: Balsamo, M., & Ibrahim, M. (2021, Sept 17). Justice Department reviewing policies on transgender inmates. *Associated Press*. <https://apnews.com/article/religion-crime-prisons-minnesota-illinois-007d87693249a9831867a5289c09e612>. There are at least 4,890 trans people in state prisons (with data missing from Alabama, Alaska, Indiana, Tennessee, and Utah): Sosin, K. (2020, Feb 26). Trans, imprisoned—and trapped. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/transgender-women-are-nearly-always-incarcerated-men-s-putting-many-n1142436>

<sup>5</sup> Meyer et al. (2017), see note 1; Anderson, L., File, T., Marshall, J., McElrath, K., & Sherer, Z. (2021). *New household pulse survey data reveals differences between LGBT and non-LGBT respondents during COVID-19 pandemic*. United States Census Bureau. <https://www.census.gov/library/stories/2021/11/census-bureau-survey-explores-sexual-orientation-and-gender-identity.html>

<sup>6</sup> Meyer et al. (2017), see note 1.

<sup>7</sup> “Trans women” refers to people who were assigned male at birth, but identify as women. Grant et al. (2011), see note 1.

<sup>8</sup> Grant et al. (2011), see note 1.

<sup>9</sup> Twenty percent of youth in a survey of seven facilities identified as LGBTQ+ according to a 2014 study: Center for American Progress, et al. (2017), see note 2. Applying this percentage to the 36,479 youth in correctional facilities in 2019 results in an estimate of 7,295. Office of Juvenile Justice and Delinquency Prevention. (2019). *Statistical briefing book: Juveniles in correction*. <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qa-Date=2019>

<sup>10</sup> Conron (2020), see note 2.

<sup>11</sup> Center for American Progress, et al. (2017), see note 2; Hockenberry, S. (2022). *Juveniles in residential placement, 2019*. U.S. Department of Justice Office of Justice Programs. <https://ojjdp.ojp.gov/publications/juveniles-in-residential-placement-2019.pdf>

<sup>12</sup> Wilber, S. (2015). *A guide to juvenile detention reform: Lesbian, gay, bisexual and transgender youth in the juvenile justice system*. Annie E. Casey Foundation. <https://assets.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualand-transgenderyouthinjj-2015.pdf>. Another source estimates that 3.2% of incarcerated boys identify as LGBTQ+: Center for American Progress, et al. (2017), see note 2.

<sup>13</sup> Kruse, M., Kwan, B., Hall, A., & Allen, J. (2020). Kids imprisoned: LGBTQ youth confront inconsistent, unreliable patterns of incarceration. *News 21*. <https://kidsimprisoned.news21.com/lgbtq-kids-discrimination-justice-system/>

<sup>14</sup> Wilson, B., Choi, S. K., Harper, G. W., Lightfoot, M., Russel, S. & Meter, I. H. (2020). *Homelessness among LGBT adults in the US*. UCLA Williams Institute School of Law. <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>

<sup>15</sup> Badgett, M. V. L., Choi, S. K., & Wilson, B. (2019). *LGBT poverty in the United States*. UCLA Williams Institute School of Law. <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>

- <sup>16</sup> Boyd, C. J., Veliz, P. T., Stephenson, R., Hughes, T. L., & McCabe, S. E. (2019). Severity of alcohol, tobacco, and drug use disorders among sexual minority individuals and their “not sure” counterparts. *LGBT Health*, 6(1): 15-22.
- <sup>17</sup> Voices of Youth Count. (2017). *Missed opportunities: Youth homelessness in America, national estimates*. Chapin Hill at the University of Chicago. <https://voicesofyouth-count.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hill-2017.pdf>
- <sup>18</sup> Wilber (2015), see note 12.
- <sup>19</sup> Flores, A. R., Langton, L., Meyer, I. H., & Romero, A. P. (2020). *Victimization rates and traits of sexual and gender minorities in the United States: Results from the National Crime Victimization Survey, 2017*. UCLA School of Law Williams Institute. <https://williamsinstitute.law.ucla.edu/press/ncvs-lgbt-violence-press-release/>
- <sup>20</sup> Fields, S. E. (2020). The elusiveness of self-defense for the black transgender community. *Nevada Law Journal, Forthcoming*, 21(975), 975–995.
- <sup>21</sup> Fields (2020), see note 20.
- <sup>22</sup> Holden, A. (2019). *The gay/trans panic defense: what it is, and how to end it*. American Bar Association. <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>
- <sup>23</sup> Carpenter, L. F., & Marshall, R. B. (2017). Walking while trans: Profiling of transgender women by law enforcement, and the problem of proof. *William & Mary Journal of Race, Gender, and Social Justice*, 24(3), 5–38.
- <sup>24</sup> HRC Staff. (2020). *Urge the New York State Assembly to repeal the walking white trans ban and hold police accountable*. Human Rights Campaign. <https://www.hrc.org/news/urge-the-new-york-state-assembly-to-repeal-the-walking-while-trans-ban-and>
- <sup>25</sup> Urban Justice Center. (n.d.). *Loitering for the purposes of prostitution New York State*. <https://sexworkersproject.org/downloads/2016/20160930-loitering-prostitution-new-york-state.pdf>
- <sup>26</sup> National Center for Lesbian Rights. (2017). *The impact of cash bail on LGBTQ people and people living with HIV*. <https://www.nclrights.org/wp-content/uploads/2017/07/LGBTQ-Cash-Bail-Reform-Two-Pager-FINAL.pdf>
- <sup>27</sup> L. Egyes (personal communication, March 7, 2022).
- <sup>28</sup> Meyer et al. (2017), see note 1.
- <sup>29</sup> See Ghandnoosh, N. (2019). *The next step: Ending excessive punishment for violent crimes*. The Sentencing Project. <https://www.sentencingproject.org/publications/the-next-step-ending-excessive-punishment-for-violent-crimes/>
- <sup>30</sup> Transgender Law Center. (n.d.). *Trans agenda for liberation: Pillar 5 freedom to thrive*. <https://transgenderlawcenter.org/trans-agenda-freedom-thrive>; See also American Civil Liberties Union. (n.d.). *Is sex work decriminalization the answer? What the research tells us*. [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_sex\\_work\\_decrim\\_research\\_brief\\_new.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief_new.pdf)
- <sup>31</sup> See Agan, A. Y., Doleac, J. L., & Harvey, A. (2021). *Misdemeanor prosecution*. National Bureau of Economic Research. <https://www.nber.org/papers/w28600>
- <sup>32</sup> End Racial and Religious Profiling Act, S. 597, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/597/text>
- <sup>33</sup> National LGBTQ Task Force & The Center for HIV Law & Policy. (2017). *The intersection of sex work and HIV criminalization: An advocate’s toolkit*. [https://www.thetaskforce.org/wp-content/uploads/2014/09/Sex-Work-HIV-Toolkit-FINAL-R2\\_0.pdf](https://www.thetaskforce.org/wp-content/uploads/2014/09/Sex-Work-HIV-Toolkit-FINAL-R2_0.pdf)
- <sup>34</sup> Williams Institute. (n.d.). *Judicial education*. UCLA School of Law. <https://williamsinstitute.law.ucla.edu/programs/judicial-education/>
- <sup>35</sup> See S.B. 378, 2022 Sess. (VA 2022). <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+SB378>; On second look reforms, see Ghandnoosh, N. (2021). *A second look at injustice*. The Sentencing Project. <https://www.sentencingproject.org/publications/a-second-look-at-injustice/>
- <sup>36</sup> Medina, C., Gruberg, S., Mahowald, L., & Santos, T. (2021). *Improving the lives and rights of LGBTQ people in America: A roadmap for the Biden administration*. Center for American Progress. <https://www.americanprogress.org/article/improving-lives-rights-lgbtq-people-america/>
- <sup>37</sup> Miller, I. (2019, Nov. 4). Anti-gay prejudice may have driven jurors to sentence a man to death. His execution is today. Vox. <https://www.vox.com/2019/11/4/20947647/execution-anti-gay-charles-rhines>
- <sup>38</sup> Brief for the Supreme Court as Amici Curiae, *Charles Russel Rhines v. Darin Young, Warden, South Dakota State Penitentiary*, Capital Case No. 18-8029 U.S. (2019). [https://drive.google.com/file/d/1YL\\_OECCJlIkuccyam-7Ueq6kBopckypJ/view](https://drive.google.com/file/d/1YL_OECCJlIkuccyam-7Ueq6kBopckypJ/view)
- <sup>39</sup> Note that these are only reported rates of victimization, and actual rates are assumed to be higher. Beck, A. J., & Berzofsky, M. (2013). *Sexual victimization in prisons and jails reported by inmates, 2011–12*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>
- <sup>40</sup> Beck & Berzofsky (2013), see note 39.
- <sup>41</sup> Beck, A. J. (2014). *Sexual victimization in prisons and jails reported by inmates, 2011-2012*. Bureau of Justice Statistics. [https://bjs.ojp.gov/content/pub/pdf/svpjri1112\\_st.pdf](https://bjs.ojp.gov/content/pub/pdf/svpjri1112_st.pdf)

- <sup>42</sup> Beck, A. J., Harrison, P. G., & Guerino, P. (2010). *Sexual victimization in juvenile facilities reported by youth, 2008-09*. Bureau of Justice Statistics. [https://www.njjn.org/uploads/digital-library/resource\\_1439.pdf](https://www.njjn.org/uploads/digital-library/resource_1439.pdf)
- <sup>43</sup> See National PREA Resource Center. (n.d.). *Prison Rape Elimination Act*. <https://www.prearesourcecenter.org/about/prison-rape-elimination-act>
- <sup>44</sup> Smith, B. V. (2008). *The prison rape elimination act: Implementation and unresolved issues*. Articles in Law Reviews & Other Academic Journals. 891. [https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1896&context=facsch\\_lawrev](https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1896&context=facsch_lawrev)
- <sup>45</sup> What is a PREA Audit?. (n.d.). *National Prea Resource Center*. <https://www.prearesourcecenter.org/audit/overview>
- <sup>46</sup> American Civil Liberties Union. (n.d.). *Know your rights: The Prison Litigation Reform Act (PLRA)*. [https://www.aclu.org/sites/default/files/images/asset\\_upload\\_file79\\_25805.pdf](https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf)
- <sup>47</sup> See note 46.
- <sup>48</sup> National PREA Resource Center. (n.d.). *115.52 Exhaustion of administrative remedies*. <https://www.prearesourcecenter.org/standard/115-52>
- <sup>49</sup> See Human Rights Watch. (2009). *No equal justice: The Prison Litigation Reform Act in the United States*. <https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>
- <sup>50</sup> Smith (2008), see note 44.
- <sup>51</sup> See Vera Institute of Justice. (2021). *Why are people sent to solitary confinement? The reasons might surprise you*. <https://www.vera.org/downloads/publications/why-are-people-sent-to-solitary-confinement.pdf>
- <sup>52</sup> American Civil Liberties Union. (2014). *Briefing paper: The dangerous overuse of solitary confinement in the United States*. [https://www.aclu.org/sites/default/files/assets/stop\\_solitary\\_briefing\\_paper\\_updated\\_august\\_2014.pdf](https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf)
- <sup>53</sup> Lydon, J., Carrington, K., Low, H., Miller, R., & Yazdy, M. (2015). *Coming out of concrete closets: A report on Black & Pink's national LGBTQ prisoner survey*. Black & Pink. [https://docs.wixstatic.com/ugd/857027\\_fcd066f0c-450418b95a18ab34647bd15.pdf](https://docs.wixstatic.com/ugd/857027_fcd066f0c-450418b95a18ab34647bd15.pdf)
- <sup>54</sup> Beck, A. J. (2015). *Use of restrictive housing in US prisons and jails, 2011-2012*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/urhuspj1112.pdf>
- <sup>55</sup> Lydon et al. (2015), see note 53.
- <sup>56</sup> Lydon et al. (2015), see note 53.
- <sup>57</sup> Center for American Progress, et al. (2017), see note 2.
- <sup>58</sup> United Nations Office on Drugs and Crime. (2015). *The United Nations standard minimum rules for the treatment of prisoners*. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-book.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf)
- <sup>59</sup> The New York State Senate. (2021). *Senate passes 'HALT' solitary confinement act*. <https://www.nysenate.gov/newsroom/press-releases/senate-passes-halt-solitary-confinement-act>
- <sup>60</sup> ACLU New Jersey. (2019). *Gov. Murphy answers call for change from advocates and solitary survivors*. <https://www.aclu-nj.org/en/press-releases/gov-murphy-signs-isolated-confinement-restriction-act-law>
- <sup>61</sup> Doctors and courts have found that hormone therapy and gender-affirming surgery can be considered medically necessary and have recognized that gender dysphoria is a "legitimate medical condition constituting a 'serious medical need.'" Lambda Legal. (n.d.). *FAQ: Equal access to health care*. <https://www.lambdalegal.org/know-your-rights/article/trans-related-care-faq>. See *Good & Beal v. Iowa Department of Human Resources*, 18-1158 U.S. (2019). [https://www.aclu-ia.org/sites/default/files/good\\_beal\\_order\\_sup\\_ct.pdf](https://www.aclu-ia.org/sites/default/files/good_beal_order_sup_ct.pdf)
- <sup>62</sup> Sosin (2020), see note 4.
- <sup>63</sup> Lydon et al. (2015), see note 53.
- <sup>64</sup> ACLU Illinois. (n.d.). *Transgender prisoners sue the Illinois Department of Corrections for inadequate medical treatment*. <https://www.aclu-il.org/en/transgender-prisoners-sue-illinois-department-corrections-inadequate-medical-treatment>
- <sup>65</sup> Lydon et al. (2015), see note 53.
- <sup>66</sup> Reisner, S. L., Bailey, Z., & Sevelius, J. (2014). Racial/ethnic disparities in history of incarceration, experiences of victimization, and associated health indicators among transgender women in the U.S. *Women & health*, 54(8), 750–767.
- <sup>67</sup> Sosin (2020), see note 4.
- <sup>68</sup> Center for American Progress, et al. (2017), see note 2.
- <sup>69</sup> Wilber (2015), see note 12.
- <sup>70</sup> Freedom for All Americans. *Legislative tracker: Youth healthcare bans*. (2022). <https://freedomforallamericans.org/legislative-tracker/medical-care-bans/>
- <sup>71</sup> H.B. 675, 2022 Reg. Sess. (Ida. 2022). <https://legislature.idaho.gov/sessioninfo/2022/legislation/h0675/>



<sup>72</sup> See Fair and Just Prosecution. (2021). *Joint statement from elected prosecutors and law enforcement leaders condemning the criminalization of transgender people and gender-affirming healthcare*. <https://fairandjustprosecution.org/wp-content/uploads/2021/06/FJP-Trans-Criminalization-Joint-Statement.pdf>

<sup>73</sup> Jenness, V., Sexton, L., & Sumner, J. (2019). Sexual victimization against transgender women in prison: Consent and coercion in context. *Criminology*, 2019(57), 603–631.

<sup>74</sup> Federal Bureau of Prisons. *Transgender offender manual*. (2022). <https://www.bop.gov/policy/progstat/5200-08-cn-1.pdf>

<sup>75</sup> Center for American Progress, et al. (2017), see note 2.

<sup>76</sup> National Center for Transgender Equality. (n.d.). *LGBTQ people behind bars: A guide to understanding the issues facing transgender prisoners and their legal rights*. <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>

<sup>77</sup> Lydon et al. (2015), see note 53.

<sup>78</sup> Stahl, A. (2021, December 3). Strip searches, trauma, isolation: Trans men describe life behind bars. *NBC News*. <https://www.nbcnews.com/nbc-out/out-news/strip-searches-trauma-isolation-trans-men-describe-life-bars-rcna6490>

<sup>79</sup> See note 74.

<sup>80</sup> Oberholtzer, E. (2017). *The dismal state of transgender incarceration policies*. Prison Policy Initiative. <https://www.prisonpolicy.org/blog/2017/11/08/transgender/>

<sup>81</sup> Center for American Progress & Movement Advancement Project. (2016). *Unjust: How the criminal justice system fails transgender people*. <https://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

<sup>82</sup> Thornton, T. (2020). *Governor Newsom signs Senate Bill 132 to respect gender identity during incarceration*. California Department of Corrections and Rehabilitation. <https://www.cdcr.ca.gov/insidecdcr/2020/09/29/governor-newsom-signs-senate-bill-132-to-respect-gender-identity-during-incarceration/>



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