

A ROADMAP FOR CHANGE:

Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV

MAKING THE CASE FOR FEDERAL POLICY CHANGE: ESSAYS AND EXCERPTS

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The full report and companion documents are available at:
<http://law.columbia.edu/roadmap-for-change>

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Stop the Frisk Rally, New Orleans, May 2013. *Courtesy of BreakOUT!*

March Against HIV Criminalization, Washington, D.C. *Courtesy of Queerocracy*

LGBT community organizations join launch of Communities United for Police Reform, New York City, February 2012. *Courtesy of Communities United for Police Reform*

Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012.
Courtesy of S. Narasimhan

“Know Your Rights” button created by LGBT youth leaders at Streetwise and Safe (SAS). *Courtesy of K. Lundie*

This document represents excerpts, essays and stories from the full report, ‘A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV’, highlighting the need for federal policy action

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PREFACE

BENJAMIN TODD JEALOUS

Former President, NAACP

I was born in the one-square-mile hamlet of Carmel, where there was one other black boy I knew who was my age. He lived across the street.

From the age of six months on, he has been my best friend. He truly is my brother in every way except by birth. Part of being brothers has always been our willingness to adopt each other's fight as our own.

At first, our fight was clearly about our skin color. The clerk at the five and dime would chaperone us through every aisle of the store as white friends ran in and out at will. We knew it was because we were black and therefore different, and targets for discrimination.

A few years later, my brother's preference for wigs, dresses, and make-up became an even bigger issue with our peers.

We had confronted racial bullying together. Sometimes our white friends would even come to our defense. But this time, some of my white friends suggested that I let my brother defend himself. At that moment, on that playground, I made a choice: if you pick a fight with my brother, you pick a fight with me.

This is the conviction that led me to devote my life to civil rights and social justice. And this is the conviction we must hold as progressive activists of all backgrounds as we face the criminalization of LGBTQ people and people living with HIV (PLWH).

The principles that define our nation's character do not tolerate racial bias, nor do they tolerate bias against members of any community. Existing research indicates that LGBTQ people and PLWH are overrepresented in all aspects of the penal system. The pages that follow contain recommendations for federal policy change that would represent important steps toward preventing and addressing the impacts of the crisis of mass incarceration on LGBTQ people—a crisis that is too often ignored, even by people of good conscience.

The genesis of this roadmap for policy change was a workshop convened at Columbia Law School in May 2013 where representatives of fifty grassroots, legal and advocacy organizations met to discuss a national policy agenda on LGBTQ criminal justice issues. But that was not the first time that people joined to tackle problems at the intersection of gender, sexuality and criminal justice.

One year earlier, in June 2012, I stood with a coalition of civil rights leaders, labor and LGBT leaders joined together at New York City's iconic Stonewall Inn for a press conference. We gathered to condemn Mayor Bloomberg's support of unconstitutional racial profiling in the context of the NYPD's "stop and frisk" practices, which exploded since he took office.

Some people were confused. Why were advocates for LGBT rights taking the time to speak about a "black issue"?

The answer was simple: stop and frisk was not only a "black issue." New York City police officers were also targeting people because they were LGBT, specifically LGBT youth. Moreover, some people, like my brother, are both black and LGBT, experiencing both similar and specific profiling depending on how they are perceived. For black LGBT people this is not so much an issue of solidarity between communities as it is one of survival at their intersections.

A few days after the Stonewall Inn press conference, an incredibly diverse crowd of 750,000 people marched in silence to Mayor Bloomberg's house to protest stop and frisk policing. Within a year, the City Council passed the Community Safety Act, effectively, a comprehensive ban on police profiling that included race, sexuality and gender identity.

We succeeded because City Council's Black, Latino, LGBTQ and Faith caucuses joined forces as their constituents had during the Silent March. They adopted the same spirit that I adopted on the playground that day with my brother, the spirit of the Three Musketeers—All for One and One for All.

Bayard Rustin, the gay black organizer who planned the March on Washington in 1963 and wrote the textbook on mobilizing the masses for justice, said "If we desire a society in which men are brothers, then we must act towards one another with brotherhood. If we can build such a society, then we would have achieved the ultimate goal of human freedom."

When my brother got older, and he moved to New York City, I never knew if the cops who abused him did so because he was black, or because he was transgender, or because he was gay. I didn't really care why. I just knew that the cops were wrong. We need to end institutionalized homophobia and transphobia, just as we need to end institutionalized racism. We will be more successful in both fights if we continue to see them as part of one united struggle—a struggle to achieve equality in the land of the free and home of the brave.

Let us all have courage. Let us all be free.

FOREWORD

CECE MCDONALD¹

As a black transwoman, I am used to facing discrimination based on gender identity and race.

I have been stopped many times by officers who use inaccurate stereotypes to justify harassing me and my peers. The night of June 5th, 2011 was no different. I went out with friends to a grocery store, and on the way we were stopped by officers who had gotten a “noise complaint” in the area. In a neighborhood full of loud bars closing down, my friends and I knew all too well that these officers were racially profiling a group of black youth who were “up to no good.”

They eventually stopped harassing us and we continued toward the store until we passed a group of white people outside a bar who began spewing racial epithets at us. I know that exchanges such as these never end well, so my first instinct was to get away.

As I turned, a woman who was yelling at us threw a drink at me. Discombobulated, I turned back as she broke the glass on my face. Blood ran into my eyes and mouth, and she grabbed my hair. I did not fight, thinking I might worsen what had been done to my face. Instead, I yelled for help from my friends who broke us up.

With blood all over me, all I could focus on was getting to the grocery store to call police. I reached the parking lot of the bar and my friends yelled for me to turn around. With my ears still ringing, I finally heard them in time to turn and find a man from the same group chasing me. He threw two bottles at my head and missed. When he wasn’t satisfied with that, he continued walking toward me. My first reaction was to scare him away, so I pulled scissors from my purse. Instead, this made him angrier and he tried to grab my hair, so I defended myself.

I was being attacked, and I stood my ground. Every day, I have to live with the fact that I took another person’s life. This is hard for me to accept, no matter how evil they were. This does not change the fact that every person should have a right to protect themselves when they are in danger. Unfortunately, the criminal justice system does not take this into account with minority groups.

Police officers use many stereotypes of black trans people to dehumanize me, such as assuming that I am a sex worker. I’ve been interrogated while standing at a bus stop because I “looked like” another black trans person police were looking for, so this treatment is nothing new to me. When police arrived, they saw a white man on the ground and a black trans person with scissors. They chose to not see the blood

from my wounds and kept me from the ambulance nearby. I had complications with my face for weeks after the incident because of the improper treatment.

“I do not want to sensationalize my story as a black transwoman in prison. I was one of millions of people who are wrongfully put in jail; many of whom will never have the opportunity to tell their story.”

Anyone who does not realize that our judicial system affects a hugely disproportionate number of people of color is living under a rock. People of color and trans people are seen as “unfit for society,” and are therefore targeted by our justice system. Regardless of how I looked in court, my “peers”—a jury including only two people of color—were going to see me as a black trans person.

Many cases of self-defense in my area have been thrown out by the District Attorney when they involved a white person defending her or his life against a person of color. However, they chose to prosecute me, and brought up my past indiscretions, including a bounced check, to further incriminate me. They even tried me on a second murder charge in case they couldn’t find me guilty on the first.

They placed me in holdings according to their definition of my anatomy instead of my gender identity, and would not allow professionals to come and speak about violence against transwomen in prisons. But that is not why I speak out today. I do not want to sensationalize my story as a black transwoman in prison. I was one of millions of people who are wrongfully put in jail, many of whom will never have the opportunity to tell their story. I went through the same struggles of oppression and depression with many others. I was not a transwoman in prison: I was a person in prison.

Many who are seen as “unfit for society” are funneled into jails by our biased system. I speak out for those people whom the justice system has failed, and there are far too many of us. This is why it is important that we reform the criminal justice system, period. To stop the biased policing and unfair sentencing of all minority groups, including LGBT people.



CeCe MacDonald while incarcerated
IMAGE: LESLIE FINEBERG

1 The foreword was transcribed from a thirty-minute interview Aisha Moodie-Mills conducted with CeCe McDonald on March 13, 2014 exclusively for inclusion in this brief. To listen to the full interview visit americanprogress.org.

INTRODUCTION & SUMMARY



Members of FIERCE march in Silent March to End Stop and Frisk, New York City, June 2012

IMAGE: A. RITCHIE

CeCe McDonald’s story of victimization and criminalization is unfortunately not unique. Each year in the United States, thousands of lesbian, gay, bisexual, transgender, Two Spirit, queer, questioning and gender non-conforming (LGBT)² people and people living with HIV (PLWH)³ come in contact with the criminal justice system and fall victim to similar miscarriages of justice.

According to a recent national study, a startling 73% of all LGBT people and PLWH surveyed have had face-to-face contact with police during the past five years.¹ Five percent of these respondents also report having spent time in jail or prison, a rate that is markedly higher than the nearly 3% of the U.S. adult population who are under some form of correctional supervision (jail, prison, probation, or parole) at any point in time.²

In fact, LGBT people and PLWH, especially Native and LGBT people and PLWH of color, are significantly overrepresented in all aspects of the penal system, from policing, to adjudication, to incarceration. Yet their experiences are often overlooked, and little headway has been made in dismantling the cycles of criminalization that perpetuate poor life outcomes and push already vulnerable populations to the margins of society.

The disproportionate rate of LGBT people and PLWH in the criminal system can best be understood in the larger context of widespread and continuing discrimination in employment, education, social services, health care, and responses to violence.

Far too often, families reject LGBT youth at a young age and they are forced to fend for themselves, triggering a lifetime of economic and social instability. In all too many instances, even LGBT youth with supportive families find themselves living outside of a family home due to familial poverty or deportation. Family rejection and homelessness are top predictors that a young person will come in contact with the criminal justice system because of police targeting of homeless and low-income communities and people engaged in survival economies — such as drug sales, sex work, and other criminalized activity—to quite literally survive.³

Schools can also play a critical role in pushing youth onto the streets, from hostile school climates that leave LGBT youth feeling unsafe, to harsh discipline policies that have a disparate impact of perpetuating a school-to-prison pipeline.⁴

2 In this document, we use the term “LGBT” in a manner that is explicitly inclusive of queer identified, questioning, gender non-conforming and Two Spirit people. Two Spirit is a term that refers to a multiplicity of historic and present-day Indigenous gender identities and expressions and sexualities.

3 In this document, we use the term “PLWH” to denote individuals living with HIV and AIDS.

The policing of gender and sexuality pervades law enforcement and the operation of courts and the penal system, often operating within the larger context of racial profiling and targeting of homeless and low-income communities, and disproportionately affecting LGBT people of color.⁵

What's more, LGBT people, specifically transgender women of color and LGBT youth of color, are endemically profiled as being engaged in sex work, public lewdness, or other sexual offenses. Police in

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many jurisdictions use possession of condoms as evidence supporting arrests for prostitution-related offenses. Surely, no heterosexual white man would be arrested on suspicion of prostitution for carrying condoms in his pocket. Yet policing tactics that hyper-sexualize LGBT people, and presume guilt or dishonesty based on sexual orientation or gender identity, are deployed by law enforcement every day.

It is important to note that the profiling, arrests, and incarceration of LGBT people and PLWH are not simply a response to greater incidences of illicit behavior within the community. Deep-seated homophobia and transphobia, as well as stereotypes about race and gender, all manifest in biased policing practices that presume LGBT people and PLWH, especially those of color, are inherently guilty or deserving of victimization.

LGBT people and PLWH are often targets rather than perpetrators of violence, enduring significant rates of violence and harassment at the hands of both community members and law enforcement. Transgender people of color in particular are three times more likely to be victims of harassment and assault than non-transgender people. Yet, according to the National Coalition of Anti-Violence Programs, 48% of survivors who reported the violence to the police, reported incidents of police misconduct.⁶ Under these conditions, many people are afraid of the police and have nowhere to turn for help when they are victimized.

As outlined in the full policy brief, available at <http://law.columbia.edu/roadmap-for-change>, justice continues to be elusive and conditional for LGBT people and PLWH due to a range of unequal laws and policies that dehumanize, victimize, and criminalize these populations, even as attitudes toward and acceptance of LGBT people have reached an all-time high.

In recent years, issues affecting LGBT people and PLWH have garnered new attention and support, and significant changes at the federal level have been achieved. There is now in place the first National HIV/AIDS Strategy designed to reduce HIV-related health disparities, especially among people of color and LGBT people. Regulations implementing the 2003 Prison Rape Elimination Act include protocols written to directly address the need to safeguard this population. The Obama Administration has adopted LGBT-inclusive employment non-discrimination policies (even as the Employment Non-Discrimination Act, which would provide federal protections for all LGBT workers, languishes in Congress), and it has worked to address LGBT issues in numerous realms.

LGBT equality has gained momentum, but it remains unevenly distributed and incomplete. Even where it exists, legal equality has not yet translated into lived equality for LGBT people, especially poor people and people of color. Moreover, there is still little justice for LGBT people like CeCe and countless others who remain significantly vulnerable because of unfair criminal justice policies. Significant policy reforms are needed to ensure that they receive equitable treatment.

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The good news is that the time is ripe, now more than ever, for the federal government to leverage this momentum and intervene to address the criminalization of LGBT people and the harms they face once within the system.

The full document and recommendations outline a range of policy solutions that would go a long way towards addressing discriminatory and abusive policing practices, improving conditions for LGBT prisoners and immigrants in detention, de-criminalizing HIV, and preventing LGBT youth from coming in contact with the system in the first place. Additionally, we identify many areas of opportunity for the federal government to support improved outcomes for LGBT people and eliminate some of the systemic drivers of incarceration through federal programs relating to housing, employment, health care, education, immigration, out of home youth, violence response and prevention, and social services.

Above all, the goal of the full document and recommendations is to set forth a roadmap of policy actions that the federal government can take to reduce the criminalization of LGBT people and PLWH, particularly people of color who are LGBT and/or living with HIV, and address significant safety concerns faced by these populations when they come in contact with the criminal justice system.

NATURE OF THE BRIEF

The full report is one of the first comprehensive publications to offer federal policy recommendations to address the myriad criminal justice issues that impact LGBT people and PLWH.

Each issue certainly warrants additional research to further understand the drivers of contact with law enforcement and incarceration for LGBT people and PLWH, the structural barriers to safety both within and beyond the criminal justice system, and the challenges LGBT people and PLWH face at each point of contact with the system. We encourage advocacy organizations and federal agency staff to adopt and advance the components of the roadmap towards reducing the criminalization of LGBT people and PLWH.

Specifically, the roadmap is intended to: 1) guide federal engagement with federal, state, and local law enforcement agencies, jails, and prisons; 2) inform the implementation of the Prison Rape Elimination Act (PREA); 3) advocate for additional reforms beyond PREA; 4) generate momentum around the LGBT policy priorities that members of this working group have presented to the current Administration over the last four years; 5) highlight and address drivers of criminalization of LGBT people and PLWH; and 6) provide analysis that will serve as a resource for policy makers and advocates alike.



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2013
IMAGE: S. NARASIMHAN



LGBTQ demonstration in support of litigation challenging NYPD stop and frisk practices in New York City, March 2013 IMAGE: A. RITCHIE

Six key topic areas organize the discussion:

Policing and Law Enforcement.

In this section, we outline policy reforms that could be implemented by the Department of Justice (DOJ) and other federal government agencies to reduce discriminatory profiling and policing practices, unlawful searches, false arrests and discriminatory targeting of LGBT people and PLWH, and to put an end to the use of condom possession as evidence of intent to engage in prostitution-related offenses or lewd conduct. We also offer recommendations to facilitate the implementation of the new PREA regulations in police lock-ups, and increase safety for LGBT individuals in police custody.

Prisons and Detention Centers.

Here we propose reforms for DOJ and the Federal Bureau of Prisons (BOP) to address issues associated with incarceration, including and beyond the implementation of the PREA regulations, access to LGBT-inclusive sexual health care (including STI/HIV prevention) and sexual health literacy programs for prisoners, and classification and housing policies.

Immigration-related Issues.

Here we provide recommendations for Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) to reduce exclusion, profiling, detention, and deportation of immigrants who are LGBT and/or living with HIV; address conditions of confinement and access to essential general and sexual health care services in immigrant detention centers; ensure adoption of policies within ICE and DHS on LGBT people and PLWH and other serious, chronic health needs in systems; and address administrative discretion regarding applicability of prior criminal convictions in immigration hearings.

Criminalization of Youth.

A top predictor of adult involvement with the criminal justice system is youth involvement. Here we outline policy solutions that the Department of Education (ED) and DOJ can employ to dismantle the school-to-prison pipeline for LGBT youth, eliminate discrimination in family courts, reduce incarceration of LGBT youth, and ensure that youth have access to LGBT-inclusive sexual health services in juvenile detention facilities.

HIV Criminalization.

There is still a patchwork of state laws across the country that criminalize PLWH for consensual sex and conduct, such as spitting and biting, that pose no measurable risk of HIV transmission and that do not require evidence of intent to harm for convictions. Most of these laws are serious felonies, and ten of them attach sex offender status to those convicted under them. There are parallel policies in the U.S. armed forces that have resulted in the discharge or incarceration of PLWH in the military. Here we outline measures that are needed to modernize current laws, practices, and policies that criminalize HIV exposure, nondisclosure, and transmission.

Drivers of Incarceration.

We know that LGBT people and PLWH experience higher rates of homelessness and poverty, lower levels of education, and high rates of family and community rejection. Here we identify key policy reforms that could be taken up by various federal agencies to address the disparities of LGBT people and PLWH in the criminal justice system, and the consequences of the criminalization these populations currently face.

Our policy analysis and recommendations are given life through essays from academic experts in the field, advocates, and formerly incarcerated LGBT people introducing each chapter, as well as through stories and case studies that demonstrate the need for systemic reforms.

BACKGROUND: CONTRIBUTORS AND COLLABORATORS

The full report and recommendations are the culmination of an 18-month collaboration with key advocates, activists, and practitioners working with LGBT people and PLWH in the criminal justice system.

In May 2013, a working group made up of the authors of the report convened a group of over 50 activists, policy advocates, lawyers, and grassroots organizations working on LGBT, criminalization, and racial justice issues at the local, state, and federal levels for a two-day meeting at Columbia Law School⁷ to discuss and articulate a legislative and policy agenda for action on behalf of the communities we serve—namely LGBT people and PLWH who have come in contact with the criminal justice system.



Participants at convening held at Columbia University School of Law May 2013
IMAGE: RICKKE MANANZALA

Our goals were to gather the collective wisdom and expertise of individuals who have been advocating on various fronts to address the criminalization of LGBT people; foster communication across movements, sectors, and regions; and build a network of advocates that can more effectively and strategically achieve policy change in the administration of criminal justice at the federal, state, and local levels. The full report and recommendations reflect a crowdsourced aggregate of the ideas, recommendations, and proposed outcomes of that meeting in the federal realm, and aggregates the best thinking and visions of multiple perspectives of the movement, from incarcerated individuals to grassroots organizers, to academics, to litigators, to federal policy advocates. They represent an innovative and unprecedented feat of collaboration around a common purpose and a reminder that while tactics may occasionally differ, our end goal is ultimately the same: ending the criminalization of and miscarriages of justice towards LGBT people and PLWH.

“ I speak out for those people whom the justice system has failed, and there are far too many of us.”

CeCe McDonald

Early drafts of the full report were circulated to the attendees of the meeting, other experts in the field, and incarcerated individuals, for additional feedback to ensure that the issues raised and policies proposed accurately reflected their needs and priorities.⁸ The authors would like to thank all of those who collaborated with us and contributed to the process, and honor all of the individuals who, like CeCe McDonald and countless others whose names we will never know, have resisted and survived the criminalization of LGBT people and PLWH across time and space.



Community United Against Violence (CUAV) members, staff and board at May Day march
IMAGE: CUAV

2

POLICING & LAW ENFORCEMENT



Cover of Gay City News, New York City, June 2012
IMAGE: GAY CITY NEWS

President Obama’s 2013 State of the Union address made history by recognizing LGBTQ and Two Spirit communities’ resistance to discriminatory policing during the Stonewall Uprising as a critical moment in the march toward equality. Today, the discriminatory policing and abuse of LGBTQ and Two Spirit people which features prominently in the origin story of the modern LGBTQ rights movement is widely perceived to be relegated to the now distant past by more recent legal, legislative, and policy victories.

Yet profiling and discriminatory policing of LGBTQ people persists. Moreover, it often takes place within larger patterns of racial profiling, discriminatory use of stop and frisk, immigration enforcement, and other policing practices contributing to the mass incarceration of people of color in the U.S.

LGBTQ people of color, youth, homeless people, and immigrants experience both similar and different forms of profiling and discriminatory policing as other members of our communities. Even as discriminatory policing of LGBTQ people often takes unique forms rooted in policing of gender and sexuality, it remains a central feature of race and poverty-based policing.

As Mitchyll Mora, research and campaign staff at Streetwise and Safe (SAS), a New York City-

based organization focused on profiling and policing of LGBTQ youth of color, testified during recent debates around the NYPD’s discriminatory use of ‘stop and frisk’ practices:

“Most of the time, my experiences of ‘stop and frisk’ look like those of countless other Latin@ youth in this city, especially when I am dressed in a way perceived to be ‘hood’ by the police. We know from the statistics that discriminatory policing practices target Brown and Black bodies, and disproportionately affect young people aged 14-21.

But other times, when I am dressed in a different way, when an officer perceives me to be gay or gender nonconforming, my experiences look different. The policing of Brown and Black people begins with the color of our skin, our race, our ethnicity, and our youth, but it does not end there.

These experiences look like a friend of mine, a trans-identified woman, being told to unzip her pants to reveal her genitals to satisfy the curiosity of a police officer. They look like a young queer person being profiled and arrested for a prostitution-related offense based on condoms found on them when they are ordered by an officer to empty their pockets or open up their purse. They look like young lesbian women being sexually harassed and assaulted by police during stops, or being told by officers that they wouldn’t get stopped if they didn’t dress “like a boy.” They look like my

experience earlier this year, when, during the fourth of five baseless stops in a two-year period, a police officer frisking me called me a “faggot” and grabbed my ass.

My body, my life, my very being as a young Brown gay person is policed by the NYPD. Our bodies, our lives, our very beings as LGBTQ youth of color are policed by the NYPD.”

In the decade since Amnesty International conducted the first national study of LGBTQ experiences of policing in the U.S., the patterns of discriminatory policing we identified have continued unabated. LGBTQ people—and particularly LGBTQ youth, people of color, Native and homeless LGBTQ people—experience frequent profiling, sexual, homophobic and transphobic harassment, stops and searches, and often face profiling and targeting for “lewd conduct” and prostitution-related offenses. Demands for identification and “consent” searches during street and car stops take on a different character once identification that does not comport with expected or expressed gender is produced, when an officer decides they need to satisfy doubts or curiosity about a gender non-conforming person’s anatomy, or when a search produces condoms. Even police responses to violence feature profiling and discrimination against LGBTQ people, producing dual or discriminatory arrests of LGBTQ survivors of homophobic, transphobic, sexual, or domestic violence. Once in police custody, LGBTQ people face further danger and harassment through verbal abuse, searches, placement and assaults in sex-segregated police lockups.

No matter what form discriminatory policing of LGBTQ people takes, there can be no question that it contributes to the criminalization and mass incarceration of communities of color and low-income communities in the U.S. Police officers represent the first point of contact with the criminal legal system. Their day-to-day decisions regarding who to stop, question, search,

arrest, charge, or protect are deeply informed by enforcement of racialized gender and sexual norms, and play a significant role in driving LGBTQ people into the criminal legal system.

There is a wealth of expertise among small grassroots organizations who have challenged discriminatory policing of LGBTQ people—and particularly LGBTQ youth, people of color and trans and gender non-conforming people—before, during, and since Stonewall. In recent years, these voices have informed groundbreaking Department of Justice consent decrees with police departments in New Orleans and Puerto Rico, the adoption of police department policies and practices governing interactions with transgender and gender non-conforming people, and the passage of historic legislation in New York City which created the first enforceable ban on profiling based on sexual orientation and gender identity alongside race, religion, gender, age, disability, housing, immigration, and HIV status. These grassroots organizations working at the front lines of LGBTQ criminal justice issues must continue to be the ones driving and informing local, state, and national level policymaking around criminal justice issues.

There is still much more to be done at the federal level to address harmful and discriminatory policing practices across the country, and to interrupt ongoing yet often invisible pathways to criminalization and violation of the rights of LGBTQ people. By tackling these persistent policing patterns and practices, we will further honor the legacy of Stonewall.

ANDREA J. RITCHIE

**Coordinator, Streetwise and Safe (SAS),
co-author, *Queer (In)Justice: The Criminalization
of LGBT People in the United States***

IN THEIR OWN VOICES

In 2012 at around 9pm, I left a BreakOUT! meeting. I was walking toward my friend's house. I stopped at a convenience store where I encountered an NOPD officer who was in the process of stopping another transgender girl. I kept walking because it didn't have anything to do with me. At first, they looked at me and didn't say anything. I made it half a block when another unit swarmed in front of me. They stopped me and asked me for my identification. They asked me for my name and my social security number. They asked if I'd been arrested ever and what I had been arrested for. They asked if I'd ever been arrested for prostitution—I told them I had never been arrested for prostitution. I was terrified and nervous. I was detained and in handcuffs but I was never told what I was being arrested for. At processing they told me I was being charged for Crimes Against Nature—charges that were subsequently dropped. When I went to court...the Judge called me a punk and a faggot under his breath...A lot of NOPD officers are abusing their authority by targeting young Black transgirls as they walk down the street. They are targeted simply by how they are dressed. But what is more disturbing is that they are targeted because walking down the street while being young, Black and transgender is considered a crime.

Member, BreakOUT!

Gay men of color, along with women and transgender people of color, are among the Black and Latina/os disproportionately subjected to more than 685,000 stops and frisks by the NYPD last year. I know, because I am one of them.

Sometimes our experiences are no different than the rest of our communities. For instance, I was first stopped and frisked just months after I moved to New York as I was riding my bicycle in Fort Greene, as part of the NYPD's "quality of life" policing. The second time I was stopped, police rummaged

through my bags of recently washed clothes as I was on my way home from a laundromat in Bed-Stuy. This time, presumably the goal was finding weapons or drugs. But, as in 99.9% of stops conducted by the NYPD [in 2011], no gun or contraband was found among my clean boxer briefs.

At other times, our experiences are marked by homophobia and transphobia in addition to racism and policing of poverty. This past December, my friends and I were stopped, questioned, and searched in Marcus Garvey Park in Harlem—not on the pretense that we had weapons or contraband—but because we were three Black gay men in a park. The fact that we were dancing to Beyoncé was presumably enough to give rise to reasonable suspicion that we were engaged in unlawful sexual activity.



Streetwise and Safe (SAS) campaign staff speak out at Communities United for Police reform rally in support of Community Safety Act, New York City, July 2013

IMAGE: NEW YORK CIVIL LIBERTIES UNION

*Chris Bilal, Campaign Staff,
Streetwise and Safe (SAS)*

Stop and frisk affects women of color such as myself. It affects LGBT youth of color such as myself. I have been stopped numerous times by police in the West Village and Chelsea neighborhoods. For instance, I was stopped and frisked three years ago when I was leaving Chi Chiz, a primarily African American LGBT club in the West Village at around 2 AM with a group of four friends who were transgender women and gay men. As we left the club, we were immediately stopped by police who told us to put our hands on the wall. They told us it was a “routine search.” There was no reason to believe we were committing any crime. We did what they told us to. I was facing the wall, they pat my arms down, ran their hands between my chest, patted my pockets and then went inside my pockets and pulled my wallet out, checked my ID, made sure none of us had any warrants, and then told us we were free to go, but we better not be around when they came around again. After they walked away, I felt violated. I felt like they took something from me. I felt demoralized. I felt like I wasn’t safe, I was afraid that they would lock me up just for being outside.



LGBTQ youth leaders from Streetwise and Safe (SAS) advocate for an enforceable ban on police profiling in New York City, July 2013

IMAGE: A. RITCHIE

*Don Thomas, Youth Leader,
Streetwise and Safe (SAS)*

In October 2014, I was accompanying a transgender woman to a court date for a default warrant in New Bedford, Massachusetts. When her name was called and she was brought before the judge they placed her in cuffs and sent her into the holding area before they could go forward with the probation violation

hearing. When the court officer brought her into the holding area he asked her, “are you a man or a woman?” When she responded that she was a woman he grabbed her genitals and said, “women don’t have dicks.” While she was crying he called her names and continued to make comments about her breasts and genitals. All of this was reported to me after the incident as she was allowed to return home because she was already on a GPS unit. There was no one else around watching the court officer. The individual who was assaulted did not want any reports filed or comments made to the court because she was fearful that it would result in her getting in more trouble, possibly getting locked up in jail again, or having another incident of being alone with another court officer.



LGBT community organizations join launch of Communities United for Police Reform, New York City, February 2012

IMAGE: COMMUNITIES UNITED FOR POLICE REFORM

Rev. Jason Lydon, Black and Pink

“ When the police take our condoms or lock us up for carrying condoms, they are putting our lives at risk. How am I supposed to protect myself from HIV and STIs when I am scared to leave my house with condoms in my purse?”

The practice of using condoms in prostitution related offenses affects my community, LGBT young people, because we are often profiled as being engaged in the sex trades. One time, I was going to a kiki ball on a Saturday night in the West Village. I was standing on the street talking with some friends and an officer approached me. She asked me for my ID. I gave it to her. At that time I didn't have my name legally changed. She not only would not call me by my real name, but she kept calling me a man and a faggot. She took a picture of my ID and sent it to the 6th precinct.

The dispatcher told her that my record was clear but instead of letting me go, she said she wanted to see in my purse. I didn't know my rights then or I would have not consented to the search. I thought I had to show her the contents of my purse.

When she looked inside, she saw two condoms. She called the precinct back and asked for a police car to come. I asked her, “Why are you locking me up? I can't carry condoms?” She replied, “You are getting locked up for prostitution.” I was taken to the precinct and put in with the men. I was 17 years old. This is my story but this is also the story of many of my friends who are Lesbian, Gay, Bisexual and Transgender, young, and of color.

When the police take our condoms or lock us up for carrying condoms, they are putting our lives at risk. How am I supposed to protect myself from HIV and STIs when I am scared to leave my house with condoms in my purse? For my community, it is not only being put at risk for HIV, STIs, and unwanted pregnancies, but having to be harassed and assaulted by police officers for being transgender or queer.

***Trina, Youth Leader,
Streetwise and Safe (SAS)***



“Know Your Rights” buttons created by LGBT youth leaders at Streetwise and Safe (SAS), IMAGE: K. LUNDIE

3 PRISONS



Artwork by Yeniell Hernandez, FL, incarcerated Black and Pink member

Every day, the lives and the physical integrity of lesbian, gay, bisexual, and transgender people are at stake within our prison systems.”⁹ These are words from the report of the National Prison Rape Elimination Commission (NPREC), a group of experts convened by Congress to study the epidemic of sexual violence in prison. The NPREC made critical findings that led to the Department of Justice’s inclusion of important protections for LGBT people in the final regulations of the Prison Rape Elimination Act (PREA). The regulations limit the use of protective custody, which is routinely used to place LGBT people in solitary confinement for their “protection,” and mandate the end to harassing and abusive searches to determine genital characteristics, which transgender and gender non-conforming people have often been subjected to in custody.¹⁰

Yet, there are many serious problems with the implementation of PREA, and LGBT people face ongoing violence in custody. In my work as an attorney serving imprisoned LGBT people, it is clear that “sexual violence is central to the operation of the prison regime...[where i]ncarceration is itself an act of racialized sexual violence.”¹¹ As black trans activist and prison survivor, CeCe McDonald, said when she was released from prison this year, “Prisons aren’t safe for anyone, and that’s the key issue.”¹² For LGBT people, some particularly widespread and harmful

sites of violence include the systemic denial of healthcare and the regular use of isolation.

Federal courts have repeatedly ruled that transition-related health care is medically necessary and officials are liable for their deliberate indifference to this need, but the reality for many transgender people in custody is that this care is routinely withheld.¹³ Despite case law establishing that trans people should be able to get the health care they need,¹⁴ one transgender woman we have worked with in North Carolina has been denied an evaluation for Gender Dysphoria (GD) for the past eight years.¹⁵ The majority of transgender people in custody across the country are facing the same problem. Every day I hear from people who are denied care they need to survive. Corrections agencies continue to claim that transition-related health care is not “real” health care. Even where policies have been implemented to provide hormones and surgery for transgender prisoners, like in Massachusetts or New York, people are often evaluated by providers who either don’t believe in providing the care or are not qualified to make a diagnosis. In one evaluation I read recently, the clinician determined that because the individual, who identified as a transwoman, had an interest in cars and was attracted to other women, that she could not have GD. Whereas in the past, people were never sent for evaluations at all, in the systems that have been sued and are forced

to evaluate people for GD, clinicians simply routinely deny that the patient has GD. This makes access to care even more difficult because once a medical determination has been made that the care is unnecessary, regardless of how biased the evaluation, it becomes almost impossible to override. The result is that thousands of transgender people are being denied critical medical care in our nation's prisons, jails, and immigration detention facilities.

For many LGBT and gender non-conforming people, protective custody remains the default placement for periods of days, months, years, and in some cases, decades. In addition to the conditions themselves amounting to torture, solitary confinement usually restricts a person's access to education, work, and program opportunities. These opportunities are not only essential for maintaining a person's mental health, but are usually necessary for achieving good time credit and being paroled. This means that LGBT people, who are likely to serve much of their sentence in isolation, are also more likely to serve the maximum time (or longer) of non-life sentences.¹⁶

Rather than fulfill their constitutional obligation to keep people safe from violence, corrections agencies continue to use solitary confinement to warehouse vulnerable people. I am working with one transgender girl without any criminal convictions who is now being held in isolation in a boy's facility. The agency that is housing her agrees that solitary confinement is not sustainable, but rather than move her into the general population of a girls' facility where she would feel safer, officials are utilizing an exceptional and rarely used procedure to move her out of the juvenile system into the adult men's prison system. She now may spend the next five years in isolation in an adult men's facility.

Though PREA has offered some protections for LGBT people in custody, we have also seen widespread misuse of PREA's mandate by corrections officials. In Idaho, for example, PREA

LGBT people, who are likely to serve much of their sentence in isolation, are also more likely to serve the maximum time (or longer) of non-life sentences.

has been used to restrict the gender expression of people in custody under the guise of ending sexual assault: "To foster an environment safe from sexual misconduct, offenders are prohibited from dressing or displaying the appearance of the opposite gender."¹⁷ A few years ago, I represented a transgender woman in a New York men's prison who was disciplined after reporting a sexual assault perpetrated against her. The officials argued that her gender non-conformity was evidence that she had consented to the rape. Meanwhile, all corrections agencies continue to prohibit consensual sexual contact or touching of any kind. Consensual contact is often punished as harshly as rape. As I was writing this, the West Virginia Supreme Court upheld a disciplinary infraction against a prisoner for kissing another prisoner on the cheek. He served 60 days in solitary. Unfortunately, PREA is becoming another mechanism of punishment used by corrections officials, often especially targeting LGBT prisoners.

For all the people that advocates hear from, there are countless others who are unable to access outside support and still others who have died without ever telling their stories. While there continue to be important victories for LGBT people in prison, and the resilience and resistance of those behind bars transcends even the most egregious injustices, much work remains.

CHASE STRANGIO

Staff Attorney, American Civil Liberties Union

IN THEIR OWN VOICES

I spent three and a half years in federal prison on a drug charge. As a black trans woman, I experienced sexual violence while in prison.

I was put in blatantly dangerous housing situations where officials knew I would be taken advantage of. When I went to tell the prison staff that the guy that I was in the cell with had several times fondled my breast when I tried to sleep,

I was told that if I reported the assault the only

place he could house me was in the SHU, which is isolation. I knew that being housed in the SHU would prevent me from participating in the drug program that was allowing me to qualify for early release and

I would not be able to attend school programs that I was involved in. I chose to keep quiet about what was happening to me so that I could be part of the program and be released from prison 18 months early.

No one should have to make the choice between enduring a longer prison sentence or being sexually assaulted. It was one of those things that I felt caused me so much pain and helplessness—a hard decision to make but I learned to shut my mouth and do the best I could just to stay strong. I was even afraid to talk about it via mail or phone where I was housed because they listened to your phone calls closely.

Janetta Johnson, Program Coordinator, Transgender, Gender Variant, and Intersex Justice Project

Black and Pink has received numerous letters from prisoners detailing ways PREA has been used to harm them as LGBT prisoners. We have seen particularly harmful patterns in Texas, Florida, and Pennsylvania. Jim, a prisoner in Texas reported that prison guards would write up disciplinary tickets against him for holding hands with his lover in the mess hall. Jim reported that the disciplinary hearing was filled with homophobic jokes and threats of being placed in solitary confinement if the prisoners were found touching again. Hope, a transgender woman prisoner in a men's prison in Massachusetts reported receiving a disciplinary ticket for a PREA violation after she was attacked by another prisoner. The attacker lied and told the guards that Hope had offered him oral sex. As a result, she was punished even though she was the person attacked, and she is now facing being moved to a maximum security prison because of the violation. We have heard numerous stories from prisoners that guards will yell out "PREA" when they see prisoners gathered together closely, creating a culture of fear around the rules created by PREA. We have received many letters about the harm PREA is causing and not a single example of PREA being used to help someone feel safer after an assault.

“As a black trans woman, I experienced sexual violence while in prison. I was put in blatantly dangerous housing situations where officials knew I would be taken advantage of.”



Community Members gather at the Sylvia Rivera Law Project to write postcards to prisoners. IMAGE: SYLVIA RIVERA LAW PROJECT

Rev. Jason Lydon, Black and Pink

4

IMMIGRATION



Community United Against Violence (CUAV) member at a march against S-Comm deportation policy, San Francisco, 2013. IMAGE: CUAV

My client, Julio, came to the U.S. from Mexico under stressful and difficult circumstances when he was 21. He was marginally housed when he arrived and had homophobic experiences at shelters that made it harder for him to access social services. His life was chaotic, between trying to find both housing and a job in a new country. He missed the one-year deadline for applying for asylum because he was unaware of it. Three years after arriving in the U.S., he found himself in an immigration detention center following a fight with his boyfriend. The fight resulted in a malicious mischief charge and an arrest by local police. The criminal charges didn't stick so he should have been released, except that, because of the Secure Communities (S-Comm) program, he was turned over to Immigration and Customs Enforcement (ICE). I met him when he was in detention, awaiting deportation. He was very ill, and was not getting the medical care he needed. When he learned that he might be detained for months and even years while his case was pending, he lost hope and signed off on his own deportation. I lost touch with him after his deportation. I worry about whether he is still alive.

Immigration laws and policies in the U.S. present a difficult and sometimes impossible maze for most immigrants. For LGBTQ people and people living with HIV, this maze can prove deadly. The past seven years have seen an unprecedented build-up in immigration enforcement efforts, justified as a pre-requisite to comprehensive immigration

reform. The results have been disastrous for immigrant communities, including LGBTQ immigrants and immigrants living with HIV.

The enforcement build-up includes increased partnerships between ICE and local law enforcement, best exemplified by the S-Comm program. S-Comm has been forcibly implemented across the country despite state and local efforts to opt out of the program. Under S-Comm, fingerprints of individuals booked into jails are automatically checked against Department of Homeland Security (DHS) immigration databases. If there is a "hit" in an immigration database, ICE is automatically notified, even if the person has not been convicted of any criminal act. ICE then places an "immigration hold" on the person, and they are transferred from local custody into ICE custody, where they face detention and deportation.

S-Comm and the 12 other "ICE ACCESS" programs transform any contact with local law enforcement into a direct conduit to immigration detention. LGBTQ people are especially likely to be swept up into the criminal legal system because they are targets of police profiling and because they are disproportionately economically marginalized due to discrimination in employment and social services. LGBTQ immigrants face heightened levels of police and other violence in the U.S., all the while fearing deportation to countries they may have fled due to the same types of harm.

Once in immigration detention, LGBTQ and HIV-positive immigrants face denial of basic health care, solitary confinement, and sexual and physical violence. Immigrants can spend months and even years in detention fighting their deportation. With no right to appointed counsel in immigration proceedings, LGBTQ and HIV-positive immigrants often must engage in one of the most important fights of their lives alone, in an adversarial court setting against trained ICE prosecutors.

LGBTQ immigrants seeking lawful status in the U.S., whether detained or not, face an uphill struggle. Those seeking asylum, a common form of relief sought by LGBTQ immigrants, can be thwarted by the requirement that asylum be sought within a year of arriving in the U.S. For LGBTQ immigrants first arriving in the U.S., one year can prove to be insufficient time to gain even basic stability—; shelter, food, and employment can remain out of reach.

LGBTQ people seeking forms of family-based immigration relief can find themselves with few options, since many LGBTQ people face rejection from their birth family and are involved in family formations that do not fit the requirements immigration authorities impose. The recent changes in recognition of same-sex marriage by the federal government provide potential immigration benefits only for the relatively small number of LGBTQ immigrants who are partnered with U.S. citizens.

Employment-based immigration is a virtual impossibility for the vast majority of immigrants, and is especially out of reach for LGBTQ people who face employment discrimination. Even if they are able to overcome the obstacles to stable employment they face by virtue of their status as LGBTQ, their health status, and their lack of lawful immigration status, LGBTQ and HIV-positive immigrants can use employment as a conduit to lawful immigration status in only the rarest of cases.

“ Once in immigration detention, LGBTQ and HIV-positive immigrants face denial of basic health care, solitary confinement, and sexual and physical violence ... With no right to appointed counsel in immigration proceedings, LGBTQ and HIV-positive immigrants often must engage in one of the most important fights of their lives alone, in an adversarial court setting against trained ICE prosecutors.”

With comprehensive immigration reform efforts stalled, and deportations reaching record numbers, many LGBTQ and HIV-positive immigrants live in a constant state of fear and anxiety. By centering the experiences of LGBTQ and HIV-positive immigrants in crafting and revising current policies, however, some clear avenues for change emerge. For most, lawful status and the protections it provides are not currently an option. Thus, the question that must guide policy changes is how to reduce the harms associated with lack of lawful immigration status for LGBTQ and HIV-positive immigrants.

ANGÉLICA CHÁZARO

Immigration Attorney and Professor, University of Washington School of Law

5 CRIMINALIZATION OF YOUTH

AT TIMES I WALK AROUND
AS A LOADED GUN
A CHILD SEEKING APPROVAL
VALUE AND VALIDATION
FOR SIMPLE FEELINGS

DID I NOT BREATHE?
LIVE UNDER THEIR
ROOF? EAT AND FEED
OVER THEIR TABLES!

AT TIMES THIS VOICE
BECOMING GAGGED
INSIDE WARPED DIMENSIONS
IN WHICH GOD REMAINS

SILENT, FACELESS, AND READY
READY TO PUNISH
READY TO KILL
ONE FOR BEING SELF
ONE FOR BEING BORN



Artwork by Yeniel Hernandez, FL, incarcerated Black and Pink member

There is an emerging literature on the overrepresentation of lesbian, gay, bisexual (LGB) and gender non-conforming (GNC) youth in the juvenile justice system. The numbers, as reported in this section, have helped establish the urgency of meeting the needs of youth following a pathway from family conflict and rejection to homelessness, arrests for survival crimes, and incarceration. At the same time, the numbers obscure the complexities of young people's full stories.

Over the past two years, my staff and I have conducted interviews with 145 straight, LGB, and GNC youth in San Jose, Oakland, New York, Chicago, and New Orleans. Each story brings its own twist. For example, Mark is now a nineteen-year-old gay, white, homeless youth in Chicago. He is from a rural community and lost his mother when he was six. His aunt adopted him but never treated him the same as her own children, leaving him home during vacations and punishing him more severely because she suspected him of being gay. He accumulated a series of drug possession charges in high school and was on probation for three years. After completing high school, he moved to Chicago. However, he is unable to hold a job because he is bi-polar. He doesn't consistently take his medication because it makes him feel cut-off from his emotions. Instead, he self-medicates with marijuana and is chronically homeless, entering a lottery for shelter beds every night that forces him onto the streets when a bed isn't available. Mark

leads a precarious life that leaves him vulnerable to violence and criminal justice involvement.

Other youth that remain at home face challenges that undermine their well-being in more hidden ways. Cazzie is a young black sixteen-year-old living near New Orleans. Like many youth in her area, she is haunted by memories of Hurricane Katrina and losing her grandmother during the months that followed due to health problems that the family attributes to the stress of being displaced. Cazzie has been called a tomboy since she was a little girl and teased by her mother for wearing sweatshirts and playing sports. Conflicts around her gender presentation started escalating when she was in the eighth grade. At that time, Cazzie started a relationship with a boyfriend who was in a gang. She started dealing drugs and driving around town with her new friends. One of the boys was shot and killed on a night when she wasn't out with them. Cazzie was soon after caught on her school campus with pills that she was selling to her friends. She was expelled from school and ultimately transferred to an alternative school that is remedial and fails to challenge her academically. She is currently fighting to get back into her general education high school, but she is vulnerable to the capricious decision making of a principal who is resisting her readmission. Amidst this battle, Cazzie is thankful because her home environment has improved. Cazzie has less conflict with her mother because she has decided to wear more

feminine clothes. But she is clearly stifling her gender expression to maintain peace, a choice that may lead to escalating family tension in the future.

As the federal government pursues policy changes to improve the lives of LGB and GNC youth, remember the large number of youth impacted by families, schools, and the juvenile justice system. But don't forget that these numbers aggregate struggles, both public and private, that real youth live with each day.

ANGELA IRVINE, PH.D.

Director of Research—Oakland, National Council on Crime and Delinquency

“ There is an emerging literature on the overrepresentation of lesbian, gay, bisexual (LGB) and gender non-conforming (GNC) youth in the juvenile justice system ... At the same time, the numbers obscure the complexities of young people’s full stories.”

IN THEIR OWN VOICES

My mom [told the judge I was gay]. She told him I wouldn't go to school and I got kicked out. [But the problem was] I was getting harassed at school. My PO lied and said it wasn't as bad [at school] as it was.

*Andrew, a 17-year-old Latino gay male youth*¹⁸

One defender remarked that he had seen cases in which LGBT youth were bullied for long periods of time, and the school police responded by asking the bullied youth accusatory questions like, “Why were they calling you a faggot? Why would they think that?” This same defender said that school officials accused another one of her clients of being “so provocative that the kids couldn't help but pick on him” because he wore nail polish.

*Hidden Injustice*¹⁹

My client, Marissa, was arrested for prostitution when she was 15. She was trying to raise money to buy feminizing hormones so she could express her gender. She was put into a youth prison, where she faced terrible treatment. She was the only girl in a boys' facility and was harassed by staff and other youth. She had a supportive mother who tried to help advocate for her to have access to hormones while she was in state custody, but, even with legal support from our agency and parental consent, the health care was denied. Marissa was consistently “written up” by facility staff for expressing feminine gender—wearing her hair long, growing her nails, asking people to call her Marissa—so her stay in the system kept being extended because she had a record of “misbehavior.” She spent two and a half key years of her teenage development locked up—missing school and family life and being subjected to daily traumas of harassment and denial of her identity, all stemming from a search for gender affirming health care.

Dean Spade, Former Staff Attorney, Sylvia Rivera Law Project



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012
 IMAGE: S. NARASIMHAN

[A]n attorney from the South represented a male-to-female (MTF) transgender youth who was detained in a boys' facility. The youth's "treatment plan" stated that she was to receive "help with gender confusion and appropriate gender identity," which included staff prohibiting her from growing her hair out or having any feminine accessories. The same attorney reported that another client—a gender non-conforming lesbian—had a similar treatment plan "even though she fully accept[ed] that she [wa]s a female, fe[lt] that she [wa]s a female, and seemed to have no confusion about her gender." In another case, a mental health evaluator encouraged the court and facility staff to help a transgender youth, who had been diagnosed with GID, to understand that it was not appropriate to "act like a girl" while incarcerated in a boy's facility.

*Hidden Injustice*²⁰

It was horrible because I was the only one in detention that had my own room and everyone was wondering, "Why doesn't he have a roommate?" Of course, if you're smart you try to keep to yourself and not talk about why you are in there. But that is kind of a dangerous situation because then the rumors start. I remember being accused of all kinds of things that were not even close to the reasons I was in there. But I knew in my heart that the only reason I didn't have a roommate was because I'm gay. And it was their way of probably trying to protect me in some way. I think even more so they were making a statement that it's not okay to be gay.

" I knew in my heart that the only reason I didn't have a roommate was because I'm gay."

*Tyler, 22*²¹

[My probation officer] used to think I was lower than everybody just because I was a lesbian ... I want [probation officers] to understand we are the same, we are not different from anybody else.

Yvonne, a 15-year-old Latina lesbian²²

IMAGE: NATIVE YOUTH SEXUAL HEALTH NETWORK



6 CRIMINALIZATION OF HIV

HIV: no longer
a death sentence,
today it is a
prison sentence

IMAGE: CAMILO GODOY

His name was Paul. I slid into the chair next to him in my examination room to console him as he cried. I had taken care of him for several years as he struggled to cope with his HIV infection. Paul had been diagnosed a decade earlier when he first developed *Pneumocystis pneumonia*. He was a musician and had contracted HIV through unprotected sex. I learned early that Paul hated taking pills. The sight of them made him retch; and it would take him hours to get down the four pills that made up his HIV treatment regimen. He would take them for months at a time but then would come to tell me he needed a break. After a bit, he would restart medications, once he could manage to think about swallowing pills again. And so it went.

And then, suddenly there he was, crying in my office. He had been indicted on charges brought by a partner of several months of having sex

“ HIV remains with us and will do so as long as those who are infected are not diagnosed and treated. And too often the discussion of preventing new infections is polarized, looking for blame and condemnation.”

without disclosing his HIV status the night he was discharged sick and wasted from the hospital after a treatment interruption. Similar accusations, by the same partner brought in another county, had been dismissed. But that night they had stayed in a hotel in a different county and these charges stuck. Although Paul insisted he had disclosed and although the partner was tested for HIV and continued to test negative, the District Attorney in that county moved the case forward.

Shortly thereafter, while seeing patients in my office, I was interrupted with a subpoena requiring me to testify in criminal court regarding Paul’s HIV status and his care. Surely, I thought naively, our conversations were protected by patient-client privilege statutes. Wasn’t my office supposed to be the safe place where patients could talk frankly to me about their fears and joys, about their personal lives and sexual practices, their bodies and their symptoms? I called the attorneys at the health care system where I work only to be told that in cases involving HIV there were no protections. I would have to testify.

I have practiced HIV medicine for more than 15 years. I have learned much about caring for patients with a chronic stigmatizing and potentially fatal infectious disease—one that takes a lifetime commitment to medications in a world where the mention of the word HIV brings

judgment and instantly changes interactions; one that conjures up images of victims and perpetrators.

In 15 years I have seen medical advances happen at an historic rate. Today, the life expectancy of a newly diagnosed patient with HIV is nearly indistinguishable from his uninfected neighbor. The risk of transmission of disease from a patient taking effective medical therapy is close to zero. Yet we continue to diagnose patients late, when disease is very advanced, after years of unrecognized and untreated infection. Despite many scientific breakthroughs and now a long list of highly effective medications, HIV remains with us and will do so as long as those who are infected are not diagnosed and treated. And too often the discussion of preventing new infections is polarized, looking for blame and condemnation.

Within the walls of my office, I have watched the young and old, men and women struggle after their diagnosis. There are stages of denial, blame, shame and, for some, acceptance. We talk about living with disease, staying in care, disclosure to partners, friends, parents and children. I strive to make my office a safe place, filled with trust and honesty. I believe strongly that such an environment can encourage patients to remain in care, remain on medications, remain hopeful and know there is always a place where they will be treated with compassion.

But the safety of my office was shattered and physician-patient privilege was lost by the intrusion of these criminalization charges against Paul. His name was released to the media. Friends found out about his HIV status and the criminal charges, increasing his shame. He was depressed, withdrawn, and in disbelief but felt hopeful as there was nothing to support the claim against him and the case boiled down to his ex-partner's word against his.

“Criminalization laws do nothing to advance individual or public health, but rather enhance stigma, embrace blame, discourage testing and have the potential to corrupt the physician-patient relationship ...”

The trial date came. I arrived at the courthouse and after the requisite wait, was ushered into the courtroom. I testified about his HIV infection, risks of transmission, definition of AIDS, and details of our visits. Finally I was free to go. I drove the forty-five minutes back to the hospital feeling a sense of betrayal I haven't felt in my professional life.

When I arrived in the hospital parking garage, the district attorney called me. Paul had been found guilty. The prosecutor congratulated me on my testimony and told me I should be proud that I had put a “scumbag” behind bars that day. I felt nauseated.

Although this was my first criminalization experience, it was not to be my last. Nearly thirty percent of my colleagues confirm that they too have had criminal prosecutions invade their patient relationships.

There are more effective means to combat this epidemic. Criminalization laws do nothing to advance individual or public health, but rather enhance stigma, embrace blame, discourage testing and have the potential to corrupt the physician-patient relationship which I believe can be a powerful tool in the armamentarium to address the epidemic.

DR. WENDY ARMSTRONG



March Against HIV Criminalization, Washington, D.C. IMAGE: QUEEROCRACY

IN THEIR OWN VOICES

On September 18, 2006 I was jailed and eventually sentenced to a ten-year state prison term for aggravated assault on a police officer with a deadly weapon or dangerous instrument. According to the county Supreme Court the deadly weapon was my “HIV infected saliva”. After a six year fight through the court system the charge was vacated by the New York State Court of Appeals, and I was released.

After my arrest I lost many things I had worked hard for: I lost my business, my home, and most importantly my reputation. I have had to start my life all over, and finding employment has been impossible with the nature of the alleged crime. This has followed me right up to today: I have found myself having to explain my criminal history over and over again, from applying for housing to registering for classes at my local college.

I remain on parole until this coming September, this has created an even bigger burden finding employment - I am not allowed to leave my small county without my parole officer's permission, I cannot drive, and I am under a 9:00 pm curfew.

I lost my private insurance while incarcerated. This has forced me to rely on Medicare and Medicaid - finding physicians now that can care for my health needs and obtain the medications I need is a continuing battle.

All these things are a consequence of being charged with an HIV related crime. At 43 years old I never imagined how different my life would be because of my arrest and incarceration. I also never realized the stigma attached to those with HIV and especially those who also have a criminal record. From then until now I should have been able to focus on my health and career, not battling a system that incarcerates those who live with a chronic illness, and remain uninformed about the nature and transmission of the HIV virus.

David Plunkett

“I also never realized the stigma attached to those with HIV and especially those who also have a criminal record.”

David Plunkett

SEX OFFENDER REGISTRATION: SNAPSHOT OF POTENTIAL HARMS

Sex offender registries list the names, addresses and photographs of people convicted of certain offenses on public websites. Research shows that sex offender registration is ineffective at protecting public safety, and imposes obstacles to employment, housing, and overall re-entry into society.²³ Sex offender laws and prosecutions can affect a wide range of people, especially LGBT people.²⁴ Prosecutions for solicitation, having sex in public, being underage and having sex with another underage person, indecent exposure, streaking, or formerly enforced sodomy laws,²⁵ for example, can lead to placement on a sex offender registry.²⁶ PLWH are at additional risk because of the existence of HIV-specific criminal laws that target otherwise-legal conduct when engaged in by people with HIV; nearly a third of these laws include sex offender registration in the penalties imposed on those convicted under them.²⁷

Employment

Sex offender registration status makes it difficult to find or keep a job, and may result in the loss of professional licenses. Community notification requirements limit employment opportunities for roughly half of registered sex offenders (RSO).²⁸

Housing

Registered individuals face significant limitations in access to housing, particularly public housing options. Most states prevent people who are registered sex offenders from living near schools, day care centers, parks or bus stops.²⁹ In many cities, these restrictions apply to anywhere from 93% to 99% of residential housing.³⁰ Decreased housing availability increases likelihood for homelessness.

Education

A registered individual may face restrictions to participating in his or her children’s education and activities, including school functions.

Immigration

Criminal convictions and sex offender registration may adversely affect eligibility for immigration protection and relief, and individuals may be subjected to deportation or removal.

Family Relationships

Most people who are registered sex offenders are not permitted unsupervised contact with minors, including relatives. Notification and supervision procedures cause family and intimates of people who are registered sex offenders intense shame as well as family, housing, and employment disruption.³¹

7 DRIVERS OF INCARCERATION



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012
IMAGE: A. RITCHIE

The criminalization of LGBT people has been a consistent part of our experience within the U.S. since before the 1969 Stonewall Rebellion. The realization that sexual and gender outsiders must navigate daily interactions with police violence led leaders from the Stonewall era, such as Marsha P Johnson and Sylvia Rivera, to form organizations like Street Transvestites Action Revolutionaries (STAR) and the Gay Liberation Front to build resistance to the police violence, discrimination, homelessness, and poverty that permeated their communities.

This focus on police and prisons as some of the most significant dangers facing LGBT people was reflected across early gay liberation organizations. New York City's first gay pride march in 1970 ended at the Women's House of Detention to bring focus upon the high rates of incarceration of people of color, poor people, immigrants, and people who are involved in sex work and other criminalized economies.

LGBT people, especially people of color, face persistent and severe discrimination in employment, housing, health care and education leading to disproportionate poverty and increased engagement in sex and drug work in order to survive. Because trans and gender non-conforming people of color are already commonly profiled by the police, these factors lead to greater entry into the criminal justice system, where LGBT people suffer additional harms, including harassment, violence, and denial of health care.

At the same time, LGBT people, especially transgender people, continue to be turned away outright from essential services like homeless shelters, drug treatment or mental health services, while others experience harassment or violence in these settings. Those who seek legal and social services often encounter ignorance or discrimination at the door. When LGBT people are released from prison, they face these same conditions with the additional stigma of a criminal conviction, and often find themselves cycling back through poverty and into jails and prisons.

After decades of erosion of social safety net and poverty alleviation programs and drastic expansion of criminal and immigration enforcement systems, many people are looking for a new path that will address the economic inequality and mass imprisonment that characterize the current moment. LGBT communities are very invested in that inquiry, because our lives have been so severely impacted by these trends. Today we stand on the shoulders of those who bravely fought back against police violence at Stonewall in 1969, still daring to dream of a world in which none of us face rejection, discrimination, or violence for being ourselves.

REINA GOSSETT AND THE SYLVIA RIVERA LAW PROJECT

IN THEIR OWN VOICES

Kay, a transgender woman in New York City, was sentenced to eight months at a men’s drug treatment facility, as an alternative to a three-year sentence for drug possession charges. At first, the facility told her she could not be admitted at all because she was trans. After advocacy, they agreed to admit her, but told her that in order to enter she would be forced to shave her head. When she was released, she lived in a women’s shelter in Harlem but experienced harassment there because she was trans. Then she was placed in the Bronx Addiction Center where an employee harassed her almost every day about her gender. Because each drug treatment program she has tried has been a place where she has faced harassment and denial of her gender identity, she has not been able to get to the root causes of her addiction issues via effective treatment. The last time I heard from her, she was in Rikers.

Alisha Williams, Staff Attorney, Sylvia Rivera Law Project

I am a homeless transgender woman, and I have faced ongoing harassment from staff at women’s shelters when I have tried to stay there. Recently, a group of women threatened to cut off my penis while I was sleeping at a shelter. At another shelter, a woman flipped over a table at me and threw apples at me while yelling anti-trans epithets. The other women are never punished or kicked out for these incidents—I am always the one transferred to a new and equally unsupportive shelter. Recently, I went into a store to buy some tea and was harassed by the store owner and his son who eventually chased me down the street with a bat and broke my nose. Some people nearby came to break it up, but when the cops arrived they arrested me as well as the men who were attacking me.

“I am a homeless transgender woman, and I have faced ongoing harassment from staff at women’s shelters...”

Krystle L



IMAGE: MICKEY DEHN

Talia is a 37-year-old transgender woman who has been an SRLP client since 2002. She was incarcerated for 15 years, and experienced severe sexual violence in prison. She's a veteran and gets Veterans Administration (VA) health care. She experiences significant discrimination in accessing VA services because she is trans. She has been in and out of the shelter system and has had multiple suicide attempts. She is intensely traumatized because of her experience in prison. She is stuck in a cycle of trying to access shelters, having suicide attempts, being placed in men's psychiatric wards, being released to the streets, being profiled by police, and then often ending up back in jail. None of the services available to her are trans aware, and she is not getting help addressing her underlying experiences of trauma.

Pooja Gehi, Staff Attorney, Sylvia Rivera Law Project

I have represented many clients in cases where their food stamp or Medicaid benefits are being cut because they are accused of breaking the rules of the program. I have heard the same story many times. Usually a client finds me after they have been to a meeting with an investigator, in which they were bullied and intimidated into signing something. Sometimes they are threatened with jail if they don't sign or are vaguely told something worse will happen if they don't sign. Sometimes they are individuals who do not understand English who were not provided with an interpreter. Almost always they don't know what they've signed. Most often, it turns out they have unknowingly signed a pre-written statement that they have intentionally lied or concealed information in order to receive benefits for which they knew they weren't eligible. The result is that they receive a penalty of at least one year without benefits and now while living in poverty must pay back the benefits they allegedly fraudulently received. When it is about Medicaid benefits, they are forced to pay back thousands or tens of thousands of dollars in medical costs.



Trans Day of Action, organized annually by the Audre Lorde Project, New York City, June 2012 IMAGE: S. NARASIMHAN

I had a client who had applied for food stamps when she left her job because of a high-risk pregnancy. She was a single mother eligible for food stamps with her only source of income being disability benefits through her job. Her child was born with a rare lymphatic disease, which was a stressful and overwhelming experience. Eventually, my client returned to work, continued to parent her children and handle the demands of a raising a special needs baby. While managing all of this, she failed to inform the state agency that she had returned to work and her income had changed. She continued to receive food stamps through the end of the year. When she didn't recertify for the benefits, her benefits stopped. Less than a year later, she was arrested for food stamp fraud, facing jail time and losing her children. In my experience, the working poor and people with sporadic work are the subject of these questionable investigations. Because LGBT people are disproportionately poor and experience disproportionate under- and unemployment, these issues are of particular concern for LGBT people.

Belkys Garcia, Staff Attorney, Legal Aid Society

Marcia, a 35-year-old black trans woman, was in Rikers when I met her, and has been a client of the Sylvia Rivera Law Project for several years. She currently lives in shelter system and sometimes on the streets because she has not been able to get effective treatment for her alcoholism. There are no trans-welcoming and competent treatment programs. Marcia gets profiled a lot and gets arrested for being on the street, for being who she is. Each time she is arrested and goes to Rikers, she gets raped there. When she has gotten sent to rehab she has always either been rejected because she is trans, or gotten kicked out after incidents of harassment and attack directed at her because she is trans. She got kicked out of shelter recently because she was attacked by the other residents. She lives under so much stress and has experienced so much ongoing trauma that her substance abuse and mental health issues worsen rather than being addressed.

Pooja Gehi, Staff Attorney, Sylvia Rivera Law Project



IMAGE: KEVIN CALICKI

“ Today we stand on the shoulders of those who bravely fought back against police violence at Stonewall in 1969, still daring to dream of a world in which none of us face rejection, discrimination, or violence for being ourselves.”

Reina Gossett and the Sylvia Rivera Law Project

ENDNOTES

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