

April 23, 2019

Members of the Board of Correction
1 Centre Street
Room 2213
New York, NY 10007
Via email: boc@boc.nyc.gov

Re: **Special Hearing on PREA Standards Compliance**

Dear Members of the Board of Correction,

Lambda Legal welcomes the opportunity to submit written comments to the New York City Board of Correction (“Board” or “BOC”) for the meeting scheduled for April 23, 2019 devoted to New York City Department of Correction’s (“DOC”) compliance with the Board’s Standards to Eliminate Sexual Abuse and Sexual Harassment in Correctional Facilities (“PREA Standards”). The Special Hearing is an important opportunity for the Board to ask questions and demand answers from the DOC about compliance with the PREA Standards. In particular, we hope the Board addresses the needs of lesbian, gay, bisexual, and transgender (“LGBT”) people in custody including prevention of abuse by other incarcerated people and officials, investigation into complaints, due process, housing placement, and resources available to victims of sexual assault and violence.

Lambda Legal is the oldest and largest national organization dedicated to achieving full recognition of the civil rights of LGBT people and those living with HIV through impact litigation, education, and public policy work. For over forty years, we have worked to address sexual assault and violence against LGBT people in custody through comments to the National Prison Rape Elimination Act Commission, the Department of Justice, the Department of Homeland Security, and testimony to the United States Senate. Lambda Legal has appeared as counsel or amicus curiae in numerous federal and state court cases involving the rights of incarcerated LGBT people. For more information on LGBT people and the criminal justice system, I am including a copy of Lambda Legal’s *Protected and Served?* a national survey of thousands of lesbian, gay, bisexual, transgender, and gender-nonconforming people and people living with HIV, which focused on the communities’ experience with the criminal justice system and policing.

These comments provide information on how these issues impact LGBT people and the need for systems to take affirmative steps to comply with PREA Standards from a national perspective. LGBT people experience disproportionate rates of incarceration and higher rates of

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sexual violence when in custody. LGBT people are disproportionately incarcerated.¹ “According to the National Inmate Survey, in 2011- 2012, 7.9% of individuals in state and federal prisons identified as lesbian, gay, or bisexual, as did 7.1% of individuals in city and county jails[,] . . . approximately double the percentage of all American adults who identify as LGBT, according to Gallup (3.8%).”² According to data from the same survey, “The incarceration rate of self-identified lesbian, gay, or bisexual persons was . . . more than 3 times that of the US adult population.”³ LGBT people’s vulnerability to sexual abuse is well known within the correctional community, including the Department of Justice (“DOJ”), the National Institute of Corrections (“NIC”), and the American Jail Association. As the NIC has noted, while incarcerated, “men and women with non-heterosexual orientations, transgender individuals, and people with intersex conditions were highly vulnerable to sexual abuse.”⁴

Lambda Legal receives numerous reports from LGBT survivors of sexual abuse from throughout the country including those in jails, prisons, juvenile facilities, and immigration detention facilities. Institutional sexual violence disproportionately affects LGBT people. The federal government has documented the high rates of abuse against people in men’s corrections facilities who are or are perceived to be LGBT. The DOJ’s Bureau of Justice Statistics (“BJS”), charged with collecting, analyzing, and publishing data related to crime in the United States, produced the National Former Prisoner Survey, showing that 38.6% of gay male former prisoners and 33.7% of bisexual male former prisoners reported sexual victimization by another prisoner during incarceration as compared with only 3.5% of heterosexual former male prisoners.⁵ In addition to reports of abuse by other prisoners, gay and bisexual prisoners reported significantly higher rates of abuse by staff than did their heterosexual counterparts, with rates of staff abuse of 5.2% against heterosexual men, as contrasted with 17.5% and 11.8% of bisexual and gay men, respectively.⁶

¹ See Ctr. For Am. Progress & Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People*, iii-iv (2016), <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>.

² *Id.* at iii.

³ Ian H. Meyer, et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 *Am. J. Pub. Health* 234, 238 (2017).

⁴ Brenda V. Smith, et al., National Institute of Corrections, *Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*, (August 2013), <https://s3.amazonaws.com/static.nicic.gov/Library/027507.pdf>.

⁵ Allen J. Beck, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Sexual Victimization Reported by Former State Prisoners, 2008*, 16 (May 2012), <http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>.

⁶ *Id.*

BJS estimated that transgender prisoners held in United States prisons are about ten times more likely to have been sexually assaulted, as compared to the general prison population (at least 39% of transgender prisoners, as compared to 4% of the general prison population).⁷ In California, a study of state prisons designated for men found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons.⁸ And in New York according to data collected by the Sylvia Rivera Law Project in 2017, 91% of transgender and gender non-conforming people survived at least one form of physical assault in prison. Seventy-five percent, or three out of every four respondents, reported at least one instance of sexual violence by a corrections officer.

These data show that departments of correction must take affirmative steps to protect LGBT people who are in their custody. As a resource, the Board can look to other states and systems that have enacted legislation and policies addressing the housing and treatment of transgender people in order to comply with PREA and constitutional requirements. Last year, Connecticut enacted SB13, An Act Concerning Fair Treatment of Incarcerated Persons, and became the first state in the nation to establish a legal right to be housed in a prison that matches the gender with which one identifies. Also in 2018, Massachusetts implemented a statute (General Laws 127 § 32A) allowing for the affirmative placement of transgender people in corrections facilities consistent with their gender identity. The Vermont Department of Corrections has had a policy affirmatively allowing placement consistent with gender identity since 2015.⁹ Last month, California Senate Bill 132, the Transgender Recognition, Agency, and Dignity (RAD) Act, was introduced. If passed, the Transgender RAD Act will require the California Department of Corrections and Rehabilitation (CDCR) to classify and house transgender people in its custody based on their gender identity, unless the incarcerated transgender person's evaluation of their own safety is that another housing placement is safest.

Lambda Legal thanks the Board for this opportunity to offer information about LGBT people in custody, and urges continued outreach to LGBT communities as the Board continues its efforts to ensure compliance with the PREA Standards.

⁷ Allen J. Beck, Bureau of Justice Statistics, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 – Supplemental Tables* (Dec. 2014), http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf; see also Allen J. Beck, Bureau of Justice Statistics, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012*, 10 (2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁸ See Valerie Jenness, et al., *Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population* (Apr. 2009), <https://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf>.

⁹ Vt. Dep't of Corrections, Gender Identification, Care, and Custody (2015), <http://www.doc.state.vt.us/about/policies/rpd/for-comment/432-01-gender-identification-care-and-custody>.



Sincerely,

s/ Richard Saenz

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Protected and Served?

The executive summary of Lambda Legal's national survey that explores discrimination by police, courts, prisons and school security against lesbian, gay, bisexual, transgender (LGBT) people and people living with HIV in the United States.

For the complete report, data and recommendations, visit www.lambdalegal.org/protected-and-served

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INTRODUCTION

“I was arrested and charged with prostitution at a local casino. While the case was subsequently dismissed without going to court, during my arrest, I was physically and verbally assaulted by the arresting officers and others. I was put in handcuffs so tight that my wrists swelled up and turned purple. My face was shoved into a wall while I was handcuffed. The officers threatened, mocked and demeaned me for being transsexual.”

—Natalie, Las Vegas, NV

LGBT people and people living with HIV still face serious discrimination and abuse of power directed against them—often by the very government institutions that are supposed to protect them and ensure their civil rights.

In 2012, Lambda Legal—a national organization committed to achieving full recognition of the civil rights of LGBT people and those living with HIV through impact litigation, education and public policy work—conducted a national study to explore government misconduct by the police, courts, prisons and school security against LGBT people as well as people living with HIV in the United States. A total of 2,376 people completed the individual survey (for more details, see *How the Survey Was Conducted*, page 5).

Our study, like others, has found that LGBT people and people living with HIV experience significant discrimination at the hands of government entities. Police and other government entities, through their actions and inactions, continue to treat LGBT people and people living with HIV as second-class individuals and criminals. Compounded by factors such as race and income, this discrimination can take many forms, such as harassment and violence by police or prison guards, discriminatory statements by court personnel, hostility by school security and disproportionate discipline by school administrators.


Many government and law enforcement entities still operate under policies, practices and attitudes that have historically characterized

LGBT people—and in some cases, people living with HIV—as criminals. Currently, over 30 states have laws that criminalize the sex lives of people living with HIV.

Even when the laws have changed, longstanding practices can contribute to the continuing criminalization of LGBT people and people living with HIV, such as:

- the targeting of gay men in bar arrests or sex stings;
- the profiling of LGBT people by the police for stops and searches; and
- the use of condom possession as evidence of sex work, which disproportionately impacts transgender women.

In addition, operating systems and processes have not been reformed to ensure that the rights of LGBT people and people living with HIV are respected and that they are treated with dignity.



Numerous studies have shown that transgender people face disproportionate and pervasive discrimination.

Transphobia and lack of understanding and respect on the part of police, court staff and other civil servants can result in a host of abuses, including misnaming and misgendering (which can place transgender people in physical danger), harassment, abuse and violence. Rates of violent crime against members of the LGBT community, especially against transgender people, remain alarmingly high, and police response to this violence is too often inadequate.



The prevalence of such mistreatment can

- make segments of our communities distrustful of law enforcement and criminal justice institutions;
- disadvantage students by forcing them to drop out of school leaving them undereducated, or unfairly involving them in the juvenile justice system (a phenomenon known as the "school-to-prison pipeline"); and
- further brand portions of the community as criminals simply because of who they are.

These forms of government misconduct compromise the health, safety, psychological well-being and overall sense of belonging in society of LGBT people and people living with HIV and, as a result, weaken our democracy and our society.

Lambda Legal has a proud history of standing up when law enforcement officials target LGBT people and people living with HIV for abuse. Lambda Legal has challenged criminal laws directed at or disproportionately applied against members of our community, and has sought recourse when legal authorities violate the rights of LGBT people and people living with HIV. It is Lambda Legal's hope that the findings in this survey will support other research, advocacy, litigation and policy efforts to improve the treatment of LGBT people and people living with HIV by police departments, courts, prison systems, schools, and other government agencies.

HOW THE SURVEY WAS CONDUCTED

In 2012, Lambda Legal launched a national Government Misconduct

campaign to assess the current issues and legal needs of LGBT people and people living with HIV regarding police accountability and government misconduct—in order to help shape Lambda Legal's future agenda for litigation, education and policy work and support other research, advocacy, litigation and policy efforts.

With the help of Strength in Numbers Consulting Group, Lambda Legal held initial focus groups and interviews with people from over 35 organizations to identify the most pressing areas of concern with regard to government misconduct against LGBT people and people living with HIV. Among the national and local organizations were LGBT rights groups, university programs, anti-violence initiatives, youth organizations, HIV/AIDS advocacy and service organizations. The participants

in these discussions were leaders, staff members and volunteers.

From this information, Lambda Legal staff narrowed the list of possible government misconduct issues to those based on the needs expressed and connection to Lambda Legal's mission and scope of work. A first survey was created focusing on the interactions of LGBT people and people with HIV with police, courts, prisons and school security and school discipline. A second survey was created for organizational representatives to report the needs of the communities they represent along with issues they currently work on and the areas they believe should be high priorities for national LGBT organizations.

Both surveys were then posted on the Lambda Legal website in English and Spanish (remaining there for five months) and promoted to Lambda

Legal members and supporters via email and social media. Over 50 partner organizations also promoted the surveys. The organizational survey was completed by 35 organizations. The data in this report focuses on responses from the individual survey.



In total, we collected **3,095** individual survey responses.
Of those, **2,376** met these criteria for inclusion in the final survey sample:

- they identified as one or more of: LGB, questioning, queer, SGL, other sexual orientation, transgender, two-spirit, genderqueer, gender-nonconforming, other gender identity, HIV-positive;
- they reported their age as 18 years old or older;
- they live in United States or its territories; and
- they completed at least 1/3 of key demographic questions.

Respondents were also given the opportunity to share their own accounts of their experiences with government misconduct. A subsequent “Share Your Story” project was launched in 2013; some of those stories are incorporated into this report.

TOP FINDINGS

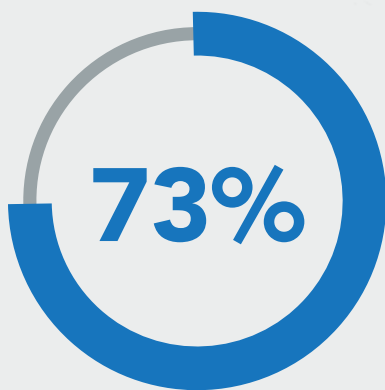
Lambda Legal’s survey found a wide range of complaints and reports of disrespect, bias and discrimination from LGBT people and people living with HIV in the areas explored by the survey. Among the most noteworthy findings:

POLICE SEARCHES, HARASSMENT AND ASSAULT

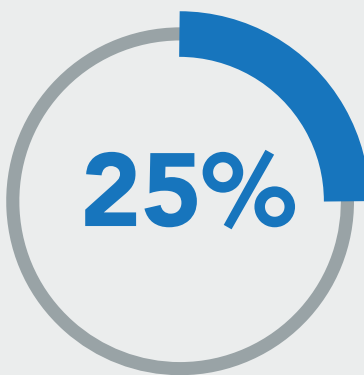
“I was called a faggot and beaten up by police officers right here in the nation’s capital, then charged with assaulting them and forced to plead guilty to being under the influence of my HIV meds.”

—Andrew, Washington, DC

Of all survey respondents:



reported face-to-face contact with police in the past five years



reported at least one type of police misconduct

harassment such as verbal assault, being accused of an offense they did not commit, sexual harassment or physical assault.

- 10% of respondents with recent police contact reported being physically searched by police or asked to empty their pockets, purse or backpack.
- 14% of (or approximately one in eight) respondents with police contact in the past five years reported being verbally assaulted—shouted at, taunted, called names—by a police officer.
- One out of every five respondents (21%) with police contact in the past five years reported that police had a hostile attitude toward them.
- Respondents were also subjected to sexual harassment (3%) and physical assault (2%)—including being hit or attacked with a weapon.

In our survey, almost three-quarters of respondents (73%) reported having face-to-face contact with the police in the past five years. An alarming percentage of them reported negative, hostile and violent interactions. One quarter of respondents with police contact reported at least one type of misconduct or

An overwhelming majority of those who made a complaint about police misconduct (71%) said that the police failed to fully address that complaint.

INADEQUATE POLICE RESPONSE

When respondents as crime victims sought out police, many felt police did not fully respond.

- 62% of respondents who had been victims of personal assault reported experiencing at least one incident in which police failed to fully address their complaints about personal assault.
- 41% of respondents who had been victims of intimate partner violence (IPV) reported experiencing at least one incident in which police failed to fully address their complaints about IPV.
- More than one-third (39%) of respondents who were victims of sexual assault reported that the police did not fully address their complaints about sexual assault.

BIAS IN COURT

“When I went to the court to file my divorce, the clerk tried to require proof of my transgender spouse’s birth, forcing me to out her as a trans person. When I said this, the MA state employee began telling me I needed to submit proof of birth to make sure I wasn’t lying. This happened in front of a whole packed lobby full of people.”

—Linda

This survey is one of only a few that has explored the bias and discrimination LGBT people and people living with HIV experience in the court system.

Consistent with the data about police interactions, it points to some of the ways the promise of fair and impartial proceedings is tainted by homophobia, transphobia and HIV bias. For the 43% of *Protected and Served?* survey respondents who had been involved in the court system in the previous five years, negative experiences included:

- Hearing a judge, attorney or other court employee make negative comments about a person’s sexual orientation, gender identity or gender expression (19%).
- Feeling their own sexual orientation or gender identity was raised by an attorney or judge when it was not relevant (16%).
- Having their HIV status raised when it was irrelevant (15%).

The survey results pointed all too frequently to a trend of discriminatory behavior across government agencies toward all LGBT people and people living with HIV. However, as with all forms of discrimination, respondents with multiple marginalized identities—such as being a lesbian living with HIV, a gay man with a disability or a low-income transgender person of color—were more likely to report misconduct and abuse by police, courts, prisons, and school security and staff. This section looks at ways respondents who identified as people of color, transgender or gender-nonconforming (TGNC), low-income, living with HIV and as having a disability experienced disproportionate rates of misconduct and discrimination.

MISTREATMENT BY JAIL AND PRISON STAFF

LGBT people and people living with HIV are particularly vulnerable and are often targeted when incarcerated.

This survey highlights the fact that in a climate that is already unsafe, prison guards and other staff often contribute to and exacerbate the danger by committing acts of violence against LGBT and HIV-positive people in their custody and by failing to protect them from dangerous or potentially dangerous situations. Five percent of all survey respondents had been incarcerated in jail or prison in the previous five years. Among them:

7% reported being sexually assaulted by jail or prison staff.

12% reported being physically assaulted by jail or prison staff.

27% reported being sexually harassed by jail or prison staff.

57% reported being verbally assaulted or harassed by jail or prison staff.

60% of those who identified as transgender or gender-nonconforming (TGNC) reported being placed in a single-sex prison or section of jail or prison that did not match their gender identity.

Nearly one-third (**30%**) of respondents who experienced harassment or assault by jail or prison staff reported their negative experiences to another jail or prison staff member, official or monitoring board.

Only **9%** of those who reported misconduct felt their complaints were fully addressed.

MISTREATMENT BY SCHOOL SECURITY AND DISCIPLINE IN MIDDLE AND HIGH SCHOOL

“Throughout middle and high school I was bullied and teased for the way I talked, walked, wore my clothes, etc. One day I was in middle school English class when I got into an altercation with another classmate. He yelled out to me, ‘You and your mom are faggots.’ My reaction was so quick. Before I knew it, I slapped him across the face. Both of us were taken to the vice principal’s office, and our parents were called in. We explained our sides of the story, and he admitted to using a gay slur. But in the end, he received one day of in-school suspension and mandatory anger management, whereas I received a week of out-of-school suspension and mandatory anger management. I was so upset that no one supported the fact that I was being teased and ridiculed in front of twenty other students.”

—Patrick, Arlington, VA

It has been well documented that high numbers of lesbian, gay, bisexual and questioning (LGBTQ) middle and high school students experience bullying and harassment. As security and police presence has become more commonplace in middle and high schools, this survey looked at the effects of school security and discipline on LGBTQ students.

Our survey shows that LGBTQ students are often additionally harassed and victimized by the security officers and administrators who are supposed to provide protection and support. Respondents between the ages of 18 and 24 were asked about their experiences in middle and high school. Of those, 68% reported having security personnel or police in their middle or high schools.

Among 18- to 24-year-old survey respondents who had security personnel in their middle or high schools:

9% reported being verbally assaulted by school security or police.

14% reported that school security were hostile toward them.

23% said they had heard school security or police use anti-LGBTQ language.

In addition, 18- to 24-year-old survey respondents reported high rates of discipline, including detention and suspension.

- Over half (57%) of reported being sent to detention in middle and/or high school.
- 20% reported being suspended.
- 19% reported that they felt they were treated harshly by school officials because of their LGBTQ identity.

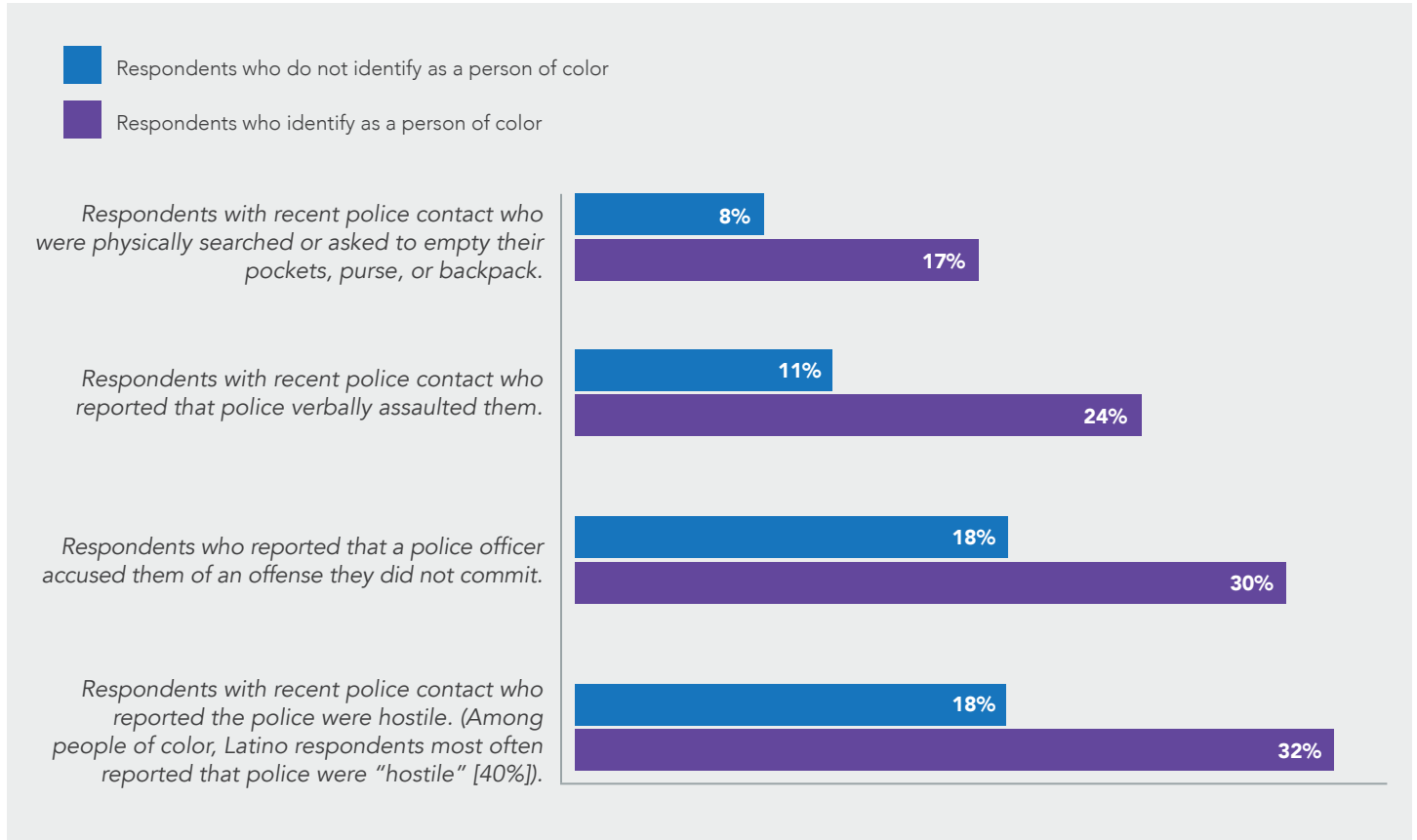
DISPROPORTIONATE RATES OF MISCONDUCT REPORTED BY MARGINALIZED GROUPS

The survey results pointed all too frequently to a trend of discriminatory behavior across government agencies toward all LGBT people and people living with HIV. However, as with all forms of discrimination, respondents with multiple marginalized identities—such as being a lesbian living with HIV, a gay man with a disability or a low-income transgender person of color—were more likely to report misconduct and abuse by police, courts, prisons, and school security and staff. This section looks at ways respondents who identified as people of color, transgender or gender-nonconforming (TGNC), low-income, living with HIV and as having a disability experienced disproportionate rates of misconduct and discrimination.

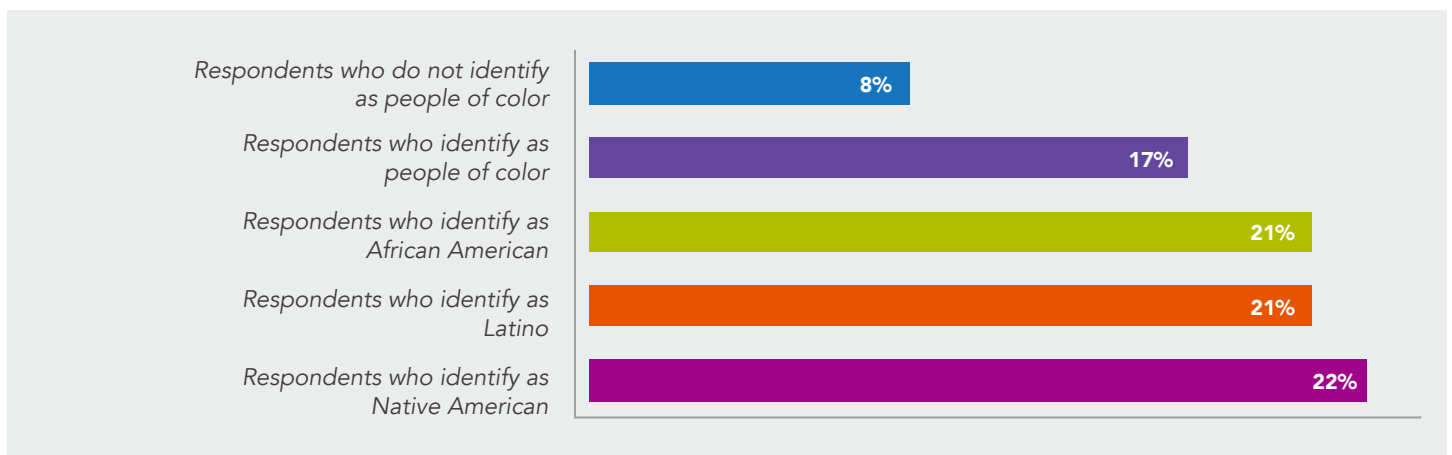


DISPARITIES BASED ON RACE AND ETHNICITY

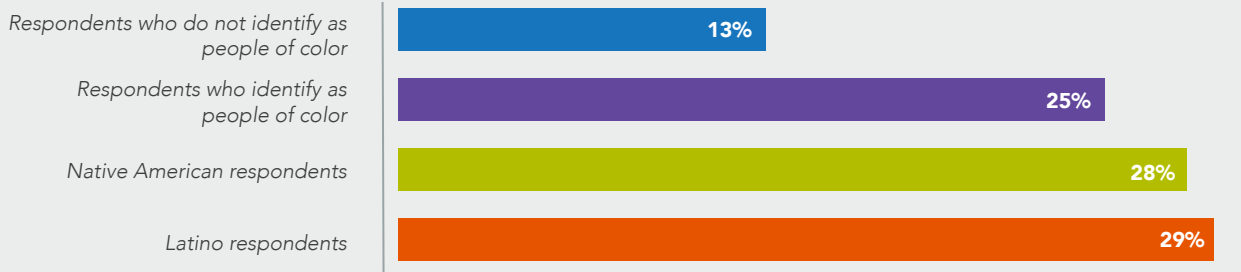
In many instances, respondents of color were much more likely to report negative and discriminatory interactions with the police compared to respondents who did not identify as people of color. When describing their most recent face-to-face contact with police:



Among certain respondents of color, the rates of physical search were higher than for people of color overall:



Respondents of color were much more likely to report that their LGBTQ identity was raised in court when it was not at issue:



Survey respondents of color experienced disproportionate rates of incarceration and were much more often placed in single-sex housing that did not match their gender identity.

- 9% of respondents of color, compared to 4% of respondents who did not identify as people of color, reported that they had spent time in jail or prison over the previous five years.
- Among certain respondents of color, the rates of incarceration were higher than for people of color overall, including Latinos (10%), African Americans (12%) and Native Americans (13%).
- Respondents of color who had spent time in jail or prison were nearly twice as likely to report being placed in a single-sex jail or section that did not match their gender identity (36%) compared to their counterparts who did not identify as people of color (19%).



Respondents of color, particularly Latino respondents, were much more likely to attend schools with a security presence. Latino respondents in particular were disproportionately subjected to negative and discriminatory treatment from school security.

Of the 18- to 24-year-old respondents who answered our questions about middle and high school, 79% of respondents of color had security in their schools, compared to 63% of respondents who did not identify as people of color. 77% of African American respondents and 91% of Latino respondents reporting the presence of school security and police.

Respondents with school security who reported hearing school security use anti-LGBTQ language such as "fag" or "dyke."



DISPARITIES BASED ON GENDER IDENTITY OR GENDER EXPRESSION

Transgender and gender-nonconforming (TGNC) respondents disproportionately reported a range of negative and discriminatory interactions with the police, including searches, harassment and assault. TGNC respondents of color were often even more likely to report police misconduct.

DEFINITIONS

TGNC: Transgender refers to people whose gender identity, one's inner sense of being male, female, or something else, differs from their assigned or presumed sex at birth; **Gender-nonconforming** people don't meet society's expectations of gender roles.

Cisgender: Refers to people whose gender identity is the same as their assigned or presumed sex at birth.

Physical searches by police:

Transgender respondents were twice as likely as cisgender (non-transgender) respondents to report being searched by police. 18% of transgender compared to 9% of cisgender respondents were physically searched or asked to empty pockets or bags by police in their most recent interaction with police.

25% of TGNC respondents of color and 36% of TGNC women of color reported being searched by police.

Hostile attitudes from police:

32% of TGNC respondents and 39% of TGNC people of color who had recent face-to-face contact with police reported that police were hostile, compared to 19% of respondents who were not TGNC.

An overwhelming majority of transgender women (72%) reported hostile police attitudes.

False accusations by police:

36% of transgender respondents reported that a police officer accused them of an offense they did not commit, compared to 18% of cisgender respondents.



Assault and harassment by police:

22% of transgender respondents, 27% of TGNC people of color and 36% of TGNC women reported being verbally assaulted by police, compared to 13% of cisgender respondents.

4% of transgender and 7% of TGNC people of color respondents reported being physically assaulted by police, compared to 2% of cisgender respondents.

TGNC respondents were more than twice as likely to report sexual harassment by police. 8% of transgender, compared to 3% of cisgender respondents reported being sexually harassed by police and 10% of TGNC respondents of color and 16% of TGNC women of color respondents claimed they were sexually harassed by police.

Consistent with the deadly trend of violence against transgender people across the country, TGNC respondents were more likely to report that they had been victims of violent crimes in the previous five years.

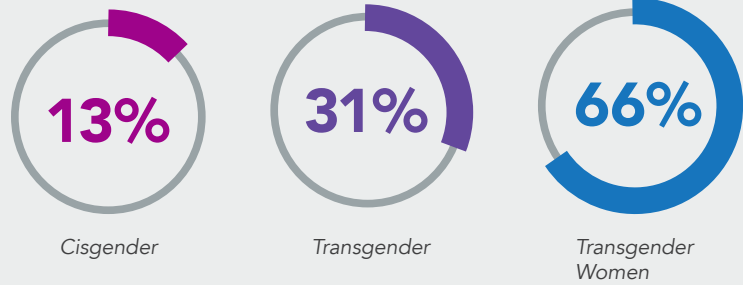
- 21% of TGNC respondents reported having experienced personal assault in the past five years, compared to 11% of non-TGNC respondents.
- 18% reported having experienced intimate partner violence, compared to 11% of non-TGNC respondents.
- TGNC respondents told us they had experienced sexual assault at nearly three times the rate of non-TGNC respondents: 16% versus 6%.

Transgender survey respondents who sought out police when they were the victims of crimes disproportionately reported that police did not adequately respond.

- 55% of transgender respondents, compared to 36% of cisgender respondents, said they experienced at least one incident in which police failed to fully address their complaints about intimate partner violence.
- 52% of transgender respondents, compared to 33% of cisgender respondents, felt police did not fully address a complaint about sexual assault.
- 61% of transgender respondents, compared to 47% of cisgender respondents, said police had not fully responded to a complaint about property crime.

Transgender respondents were at least twice as likely—and transgender women at least four times more likely—to report misconduct in the courthouse than their cisgender counterparts.

Respondents who reported their LGBT identity was raised as an issue in court when it was not relevant.



4% of transgender respondents and 13% of transgender women respondents stated that their HIV status was raised in court when it was not relevant, compared to 2% of cisgender respondents.

29% of transgender respondents and 31% of transgender women reported that their LGBT identity was disclosed *against their will* during a court proceeding, compared to 8% of cisgender respondents.

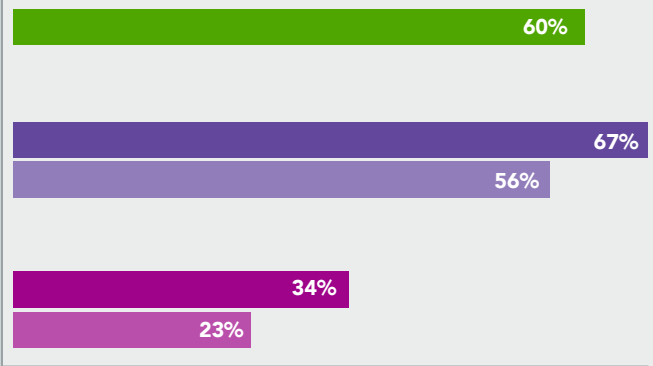
TGNC respondents, especially those who identified as women and people of color, were more likely to have spent time in prison, were nearly always placed in sections that did not match their gender identity and more often reported assault and abuse by prison staff.

- TGNC respondents were more than twice as likely to report having been incarcerated in jail or prison (10%) compared to those who did not identify as TGNC (4%).
- TGNC women (12%) were even more likely to have been to jail or prison.
- TGNC respondents of color were four times more likely to report spending time in jail or prison (20%) than cisgender respondents who did not identify as people of color (5%), while TGNC women of color respondents were more likely to have spend time in jail or prison (27%).

A majority of TGNC respondents reported having been placed in a single-sex jail or prison or a single-sex section that did not match their gender identity.

67% of TGNC respondents who had been in jail or prison stated that they had been verbally assaulted by prison staff, compared to 56% of non-TGNC respondents who had been in jail or prison.

34% of TGNC respondents who had been in jail or prison stated they had been sexually harassed by staff compared to 23% of non-TGNC respondents who had been in jail or prison.

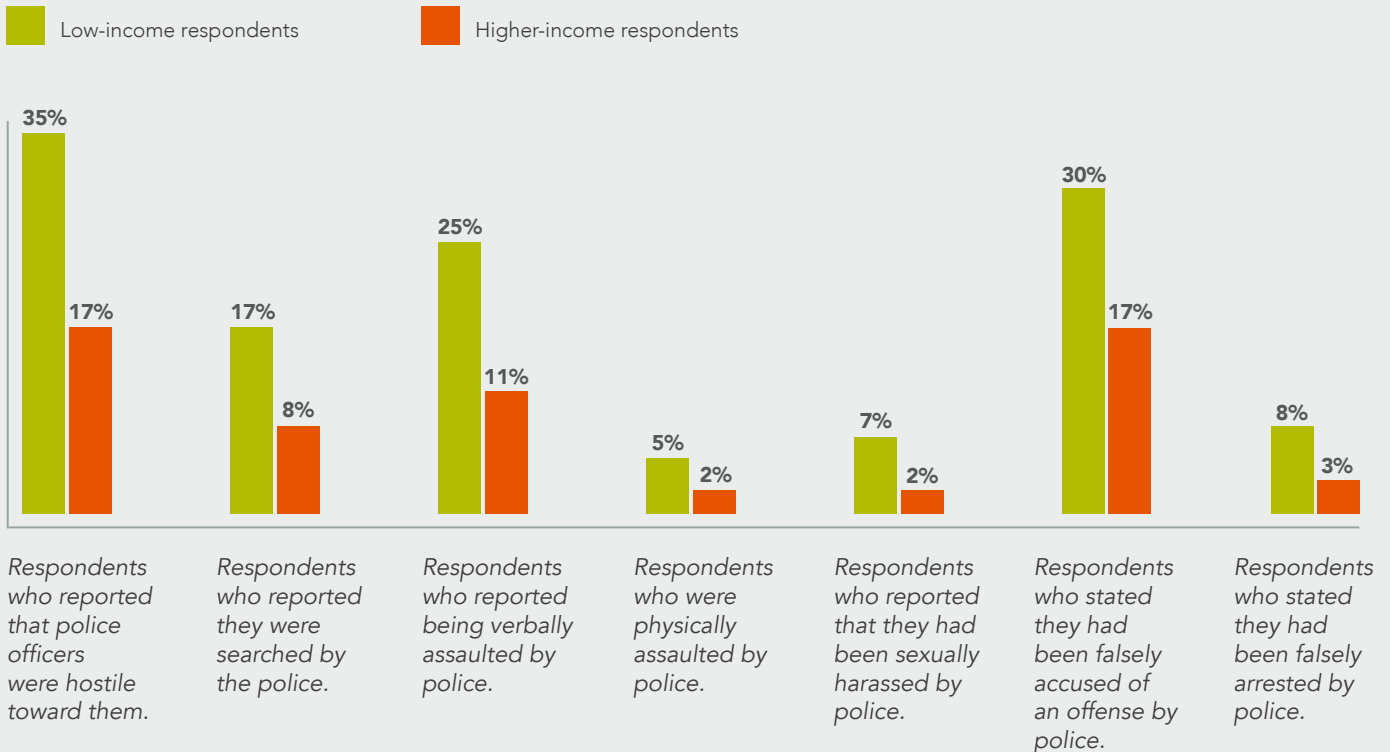


Transgender respondents more often reported that they were disciplined in middle or high school:

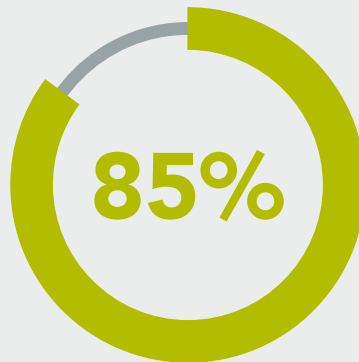
- 67% of transgender respondents, compared to 56% of cisgender respondents, reported spending time in detention during middle or high school.
- Transgender respondents were more than twice as likely to report being suspended in school. 37% of transgender, compared to 17% of cisgender respondents, were suspended in middle or high school.

DISPARITIES BASED ON INCOME

Low-income survey respondents (annual income of \$20,000 or less) were also much more likely to experience some forms of discrimination and mistreatment from police, in courts and in prison. In nearly every instance surveyed, low-income respondents experienced negative and discriminatory treatment from police at least twice as often as respondents with higher incomes.



When filing complaints about misconduct to police authorities, low-income people were also more likely to feel their complaints were not fully addressed.



Low-income respondents were also at a significant disadvantage in court and were often twice as likely to be improperly exposed as LGBT or living with HIV by attorneys, judges or other court employees.

- 28% of LGBT respondents said that their LGBT identity was raised when it was not relevant during a court proceeding in the past five years while 13% of higher-income respondents had this experience.
- 5% of low-income respondents stated their HIV status was raised when it was not relevant, compared to 2% of higher-income respondents.
- 20% of low-income respondents said their LGBT identity was disclosed against their will, compared to 8% of higher-income respondents.
- 4% of low-income respondents reported their HIV status was disclosed against their will, while only 1% of higher-income respondents reported this experience.

There were also disparities in the way low-income respondents were treated while incarcerated.

- Low-income respondents were much more likely to report being sexually harassed by prison staff (38%), compared to those with higher incomes (17%), and were more likely to report being disciplined by prison staff for an offense they did not commit (33%), compared to other respondents (20%).
- Low-income respondents were also twice as likely to report that they had been placed in a jail, prison or section that did not match their gender identity, with 38% reporting this type of discrimination compared to 18% of higher-income respondents.

DISPARITIES BASED ON HIV STATUS

The *Protected and Served?* data points to ways respondents living with HIV disproportionately experience misconduct and discrimination in the criminal justice system, particularly by police and in jails and prisons. Respondents living with HIV were more likely to experience police neglect when they were victims of violence, and they were much more likely to be searched, harassed or assaulted by police than other respondents.

- 73% of respondents living with HIV who sought out the police because they were victims of personal assault felt the police did not adequately respond, compared to 59% of other respondents.
- 54% of respondents living with HIV felt police did not fully respond when they were victims of intimate partner violence, compared to 36% of other respondents.
- Respondents living with HIV were nearly twice as likely to say they had been searched during a recent encounter with the police (16%), compared to 9% of respondents not living with HIV.
- 21% of respondents living with HIV were verbally assaulted by police, compared to 13% of those not living with HIV; 6% were physically assaulted, compared to 2% of those not living with HIV; and 5% were sexually harassed by police, compared to 3% of those not living with HIV.

Respondents living with HIV were nearly three times more likely to report having spent time in jail or prison in the previous five years. Once incarcerated, they more often were harassed and assaulted by prison staff.

- 11% of respondents living with HIV had recently been in jail or prison, compared to 4% of those not living with HIV.
- 71% of respondents living with HIV were verbally assaulted by prison staff, compared to 51% of other respondents; 18% stated they were physically assaulted by prison staff, compared to 11% of other respondents; and 39% (compared to 24%) were sexually harassed by prison staff.

DISPARITIES BASED ON ABILITY

Our survey asked if respondents have a physical, mental or learning disability. Disability was self-defined, and for some respondents that definition may include living with HIV. Respondents who identified as having a disability experienced significant disparities in terms of police interactions, mistreatment in court, school discipline and mistreatment in jail or prison.

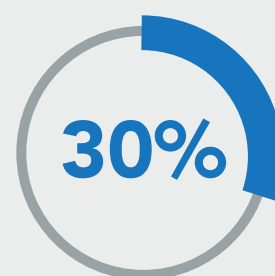
Respondents with disabilities who were victims of crimes were more likely to report that police did not fully address their complaints:

- 54% of those with disabilities compared to 48% of those without disabilities felt police neglected their complaints of property crime;
- 74% compared to 56% of those without disabilities felt police neglected their complaints of personal assault.
- 49% compared to 34% felt police did not fully respond to complaints about intimate partner violence;
- 46% of those with disabilities felt police did not fully respond when they were victims of sexual assault, compared to 31% of respondents without disabilities.

Respondents who thought police were hostile in their recent interactions.



Respondents
without
disabilities



Respondents
with
disabilities



Respondents with disabilities were often twice as likely to report they had been harassed and assaulted by police:

- 17% said they had been searched by police compared to 18% of respondents without disabilities.
- 24% said they were verbally assaulted by police compared to 12% of other respondents.
- 6% said they were sexually harassed by police compared to 3% of other respondents.

Respondents with disabilities who had been in a court proceeding during the previous five years were twice as likely to have their LGBT identity or HIV status improperly exposed in court.

- A quarter of respondents with disabilities said their LGBT identity was raised in court when it was not relevant, compared to 13% for those without disabilities.
- 17% of respondents with disabilities said their LGBT identity was disclosed against their will in court, compared to 9% of those without disabilities.
- 4% of respondents with disabilities said their HIV status was raised as an issue in court when it was not relevant, compared to 2% of their counterparts without disabilities.
- 3% of respondents with disabilities had their HIV status disclosed against their will in court, compared to 1% of those who did not have disabilities.



Respondents who answered our questions about their middle and high school experience and also identified as having a disability experienced significantly higher instances of suspensions and felt they were treated harshly by school staff because they were lesbian, gay, bisexual, transgender or questioning (LGBTQ).

- 27% of respondents with disabilities were suspended from school, compared to 18% of those without disabilities.
- 24% of respondents with disabilities felt they were treated harshly by teachers, administrators, schools security and or school police because they of their LGBTQ identity, compared to 19% of other respondents.

Respondents with disabilities were somewhat more likely to have been in jail or prison and significantly more likely to report having been assaulted or harassed in jail or prison.

- 30% of respondents with disabilities say they have been incarcerated, compared to 24% of respondents without disabilities.
- Two-thirds (67%) of those with disabilities were verbally assaulted by prison staff, compared to half (51%) of respondents who were not disabled.
- 21% of those with disabilities were physically assaulted by staff in jail or prison, compared to 9% of non-disabled respondents.
- 38% of respondents with disabilities were sexually harassed by prison staff, compared to 21% of respondents without disabilities.
- 55% of respondents with disabilities said they were accused of an offense they did not commit while in jail or prison, compared to 35% of those without disabilities.
- 42% of respondents with disabilities said they were disciplined for an offense they did not commit, compared to 19% of those without disabilities.



SUMMARY OF RECOMMENDATIONS

The issue of government misconduct directed against LGBT people and people living with HIV is complex, and there is no single solution. Many factors in addition to sexual orientation, gender identity and HIV status affect an LGBT or HIV-positive person's experience with courts, schools and interactions with police and prison officials. Because homophobia, transphobia, racism and other forms of discrimination are still entrenched in our culture, multiple long-term approaches are needed to ensure that everyone is treated fairly under the law.

In this report, we recommend strategies to safeguard against discrimination and misconduct, as well as to foster institutional change. With increased focus nationwide on police misconduct, we consider these recommendations dynamic and evolving. We welcome feedback on these approaches, which include changes affecting policies, advocacy and education.

All government agencies included in the *Protected and Served?* survey, including police departments, courts, prisons and schools, should adopt comprehensive nondiscrimination policies that do the following:

- prohibit bias and discrimination based on sexual orientation, gender identity and expression and HIV status.
- ensure that culturally competent services and treatment are provided to LGBT and HIV-positive detainees. Police, court, jail/prison and school staff should undergo significant cultural competency trainings about sexual orientation, gender identity and expression and HIV status so they will be able to treat all members of the LGBT community and people living with HIV in a respectful, nondiscriminatory manner.
- provide a transparent and accessible oversight process for reporting and redressing discrimination complaints, combined with clear and enforced disciplinary procedures.
- include employment policies to improve the hiring and retention of LGBT and HIV-positive employees as well as contribute to a more LGBT- and HIV-supportive environment.

POLICE

Police departments should:

- adopt or amend policies, patrol guides, union contracts and accountability mechanisms to mandate nondiscrimination and respectful treatment, and to prohibit profiling based on race, gender, national origin, ethnicity, actual or perceived sexual orientation, gender identity and expression, HIV status, disability, religion, immigration status, age and housing status.
- include explicit procedures for the respectful treatment of transgender people.
- hire and promote qualified police officers and leaders who demonstrate the necessary interpersonal skills to interact professionally, regardless of any person's background and with a proven track record of working effectively and collaboratively with diverse communities.
- institute "early warning systems" to flag and retrain/discipline/reassign officers who engage in insensitive or abusive behavior.
- implement mandatory cultural competency training about LGBT and HIV issues, with community input, for all employees.
- adopt a community-based complaint mechanism about police misconduct and discrimination, with options for anonymous reporting, and severely punish any retaliation by officers or commanders.
- capture, track and report regularly on complaints alleging racial and other profiling or bias with regard to sexual orientation, gender identity or expression or HIV status.
- work with LGBT community advocates to maintain training and to ensure implementation of policies.
- implement effective policies and practices to utilize body-worn cameras and in-car cameras as a tool for monitoring, evaluating and investigating police behavior and practices, while ensuring the privacy of community members.
- incorporate assessments of implicit bias, and institute training and measures to address this type of bias with regard to race, gender, national origin, ethnicity, actual or perceived sexual orientation, gender identity or expression, HIV status, disability, religion, immigration status, age and housing status.

COURTS

Lawmakers, judicial governing bodies, and/or legal associations should adopt the following rules, policies and practices to help protect LGBT people and people living with HIV participating or otherwise involved in judicial proceedings:

- adopt measures to safeguard the privacy of people who are LGBT or living with HIV.
- incorporate in judicial canons and attorneys' rules of professional responsibility prohibitions on language and conduct by any court participants manifesting bias or discrimination based on sexual orientation, gender identity or expression, and HIV status.
- Institute clear and accessible procedures for complaints about bias by judges, lawyers, court officials and court staff.
- conduct studies, with community input, of courts' treatment of individuals based on sexual orientation, gender identity or expression or HIV status.
- encourage diversity, including in sexual orientation and gender identity or expression, in the appointment and election of judges.
- support and/or enact laws that explicitly prohibit discrimination in jury selection on the basis of sexual orientation, gender identity or expression, and HIV status.
- interpret discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity, and adopt policies and procedures that implement this understanding.

In addition, attorneys and judges should:

- promptly respond to jokes or disrespectful comments about an individual's actual or perceived sexual orientation, gender identity or expression or HIV status.
- address transgender and gender-nonconforming (TGNC) individuals according to their preferred pronouns ("he" and "him," or "she" and "her").
- oppose the introduction of evidence of actual or perceived sexual orientation, sexual conduct, gender identity or expression or HIV status unless these characteristics are relevant to an issue in the proceeding.
- conduct voir dire (screening of potential jurors) that respects people's right to confidentiality regarding their sexual orientation, gender identity or expression and HIV status, and that avoids involuntary outing.
- ensure that jurors are not discriminated against on the basis of sexual orientation, gender identity or expression or HIV status.

Judges should:

- when instructing jurors that biases are to play no role in their decisions, explicitly include bias, prejudice and other preconceived notions about sexual orientation, gender identity or expression and HIV status.

Attorneys should:

- when appropriate, ask questions during voir dire to expose juror biases and prejudices based on sexual orientation, gender identity or expression and HIV status, and seek to remove biased jurors for cause.
- challenge peremptory strikes (removals of jurors without explanation) that appear to be based on sexual orientation, gender identity or expression, or HIV status.

JAILS/PRISONS

Correctional departments, jails and prisons should:

- ensure that transgender people receive an individualized assessment for housing placement in accordance with the federal Prison Rape Elimination Act (PREA), taking into account the person's gender identity and safety.
- adopt and fully implement policies, including PREA, to protect LGBT people from sexual abuse and other violence while incarcerated.
- prohibit the use of solitary confinement as routine or standard protective placement for people who are LGBT or people living with HIV.
- eliminate policies and procedures that provide for differential treatment or enhanced disciplinary measures based solely on an inmate's HIV-positive status.
- follow PREA standards regarding searches, and train staff in conducting professional and respectful searches, particularly as they affect transgender individuals.
- ensure that transgender people and people with HIV have access to all medically necessary health care. For transgender people, that may include hormone therapy and surgeries. For people living with HIV, that means uninterrupted access to the medication and the range of care they need.
- implement transparent and effective complaint review processes.
- require correctional staff to undergo cultural competency trainings about sexual orientation, gender identity and expression and HIV.

SCHOOLS



Schools should:

- limit interventions that push students out of school—such as expulsions, disciplinary transfers, out-of-school suspensions, referrals to law enforcement, and school-based arrests—to conduct that poses a serious, prospective safety threat to students and staff.
- refrain from imposing discipline as a means of policing gender. Schools should not interfere with students' access to restrooms in accordance with their gender identity, or with students' dressing and grooming according to their gender identity.
- create anti-bullying policies that specifically include sexual orientation and gender identity and expression and make these policies easily accessible in student handbooks and online.
- implement comprehensive curricula supporting diversity and respect for all.
- train administrators, educators, school safety officers and other staff to address anti-LGBTQ bullying and harassment. Trainings should include information about how to interrupt and to report bullying and harassment by students, staff and security personnel.
- support LGBTQ-affirming clubs like gay-straight alliances, and promote safe spaces for LGBTQ youth in schools.
- consider alternative programs when appropriate, including peer mediation, conflict resolution, guidance counseling, peer juries and courts, mentoring, restorative justice practices and parental and community involvement initiatives.
- at the district level, ensure that significant control and accountability for school security remains with the school or school district so teachers and administrators can interrupt and report harassment and bullying by security.
- at the district level, comply with or create a public reporting system for school discipline data including expulsions, in- and out-of-school suspensions, school-based arrests and referrals to law enforcement.



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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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