

A ROADMAP FOR CHANGE:

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

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

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

CeCe McDonald while incarcerated. *Courtesy of Leslie Feinberg*

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

Community United Against Violence (CUAV) members, staff and board at May Day march. *Courtesy of CUAV*

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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 MCDONALD*

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 McDonald while incarcerated
IMAGE: LESLIE FEINBERG

* 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.

1 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)* people and people living with HIV (PLWH)** 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

* 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.

** 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 many jurisdictions use possession of condoms as evidence supporting arrests for prostitution-related

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. 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.

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 this policy brief, 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.

Even where it exists, legal equality has not yet translated into lived equality for LGBT people, especially poor people and people of color.

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.

This document outlines 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 this brief 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

This 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 this roadmap towards reducing the criminalization of LGBT people and PLWH.

Specifically, this publication 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

This brief is 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 this 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.

This brief reflects 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. It represents 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 this brief 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 addition to experiencing many of the same profiling and discriminatory policing practices as other members of communities of color, American Indian and Alaska Native peoples,⁹ homeless and low-income communities and immigrants, LGBT youth and adults often experience gender and sexuality-specific forms of racial profiling and poverty-based policing which require specific policy reforms.¹⁰

In a recent national survey of LGBT people, a quarter of respondents who had recently had in-person contact with police reported at least one type of misconduct or harassment, including profiling, false arrests, verbal or physical assault, or sexual harassment or assault. LGBT respondents of color and low-income respondents and transgender respondents were much more likely to report an experience of at least one type of misconduct or harassment.¹¹ Between 20-40% of respondents reported verbal harassment or hostile attitudes, with higher percentages of reports among LGBT people of color, transgender and gender non-conforming people, low-income people and LGBT people under 30 years old.¹² LGBT people of color were five times more likely to be asked about their immigration status by law enforcement than white survey respondents.¹³

Across the country, non-heterosexual youth are more likely to be stopped by the police and to experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior.¹⁴ In New York City, LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in the preceding six months.¹⁵

Another national survey found that 22% of transgender people who interacted with police reported harassment, 6% reported physical assault, and 2% were sexually assaulted by officers.¹⁶ In light of these statistics, it is not surprising that almost half of survey respondents were uncomfortable seeking police assistance.¹⁷

Indeed, experiences of police harassment and abuse often extend to circumstances under which LGBT youth and adults are seeking protection from violence. Nearly half of LGBT survivors of violence who sought help from police report misconduct.¹⁸ Over the past decade, law enforcement agents have consistently been among the top three categories of perpetrators of homophobic or transphobic violence against LGBT people reported to anti-violence organizations.¹⁹

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!