

RECOMMENDATIONS:

- The Department of Education (ED) should require all districts to adopt enumerated anti-bullying policies that specifically include sexual orientation and gender identity as protected classes, and promote greater understanding and safety for all students without relying on punitive disciplinary measures that exclude students who engage in harassment.
- ED's Office of Civil Rights (OCR) should expand its data collection efforts to better understand the experience of LGBT youth in schools. This includes adding a question to the Civil Rights Data Collection (CRDC) measure to quantify incidences of bullying, and should also include efforts to collect data on the impact of school discipline policies on LGBT youth.¹³⁹
- OCR should also further its research on the impact of implicit bias and the discriminatory application of school policies such as dress codes and codes of conduct on LGBT youth, and issue guidelines for teachers and administrators on fostering supportive environments that provide resources and reduce disparities for LGBT youth as a follow-up to the guidance on racial disparities in school discipline policies issued in January 2014.
- ED should create and disseminate materials to facilitate increased school programming on LGBT issues and HIV-related issues, featuring representations of LGBT and HIV-positive people, including LGBT and HIV-positive people of color and Indigenous peoples.

SCHOOL DISCIPLINE REFORM

The education and juvenile justice systems have become inextricably linked through increasingly harsh school sanctions and zero-tolerance policies that rely heavily on law enforcement to manage school discipline issues. These policies have a disproportionate impact on LGBT youth, particularly LGBT students of color, LGBT youth with disabilities, and LGBT Native American youth, often pushing them out of schools and into the juvenile justice system.¹⁴⁰

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.¹⁴⁴

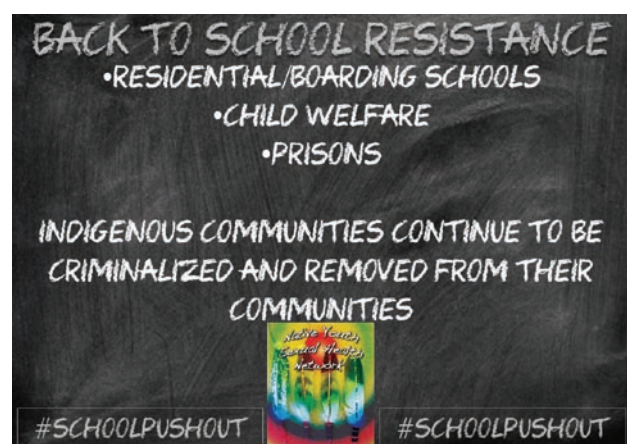
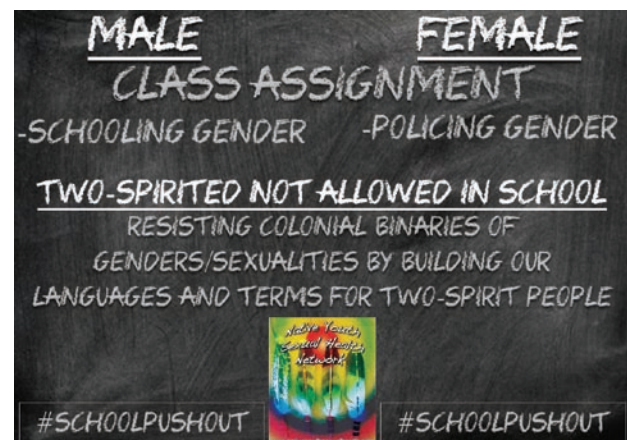
LGB and gender non-conforming youth, especially gender non-conforming girls, are three times more likely to experience harsh disciplinary treatment and wind up in this “school-to-prison pipeline” than their non-LGB counterparts.¹⁴¹ These differences in punishment cannot be explained by greater engagement in illegal or transgressive behaviors by LGBT youth, but rather by the reality that LGBT youth are punished more harshly when engaging in the same behavior as their peers.

There is little evidence that zero tolerance policies or policing tactics succeed in making schools safe or in reducing student misconduct. Yet we do know that the presence of police in schools significantly contributes to the high levels of suspensions, expulsions, and arrests for all youth—and LGBT youth in particular—which denies youth critical classroom time and perpetuates poor educational outcomes.¹⁴² In addition, multiple studies show that suspensions and expulsions increase the likelihood that youth will become involved with the juvenile justice system.

ED issued landmark guidance on school discipline reform in January 2014 aimed at reducing the racial disparities in suspensions, expulsions, and arrests, which will go a long way towards improving outcomes for all youth. The disparities in discipline for LGBT youth were not addressed, however, because of the limited data on the experiences of this population, which further illuminates the need for additional data collection as noted above.

RECOMMENDATIONS:

- ED should eliminate funding of law enforcement officers in schools and promote alternatives including counseling, peer-to-peer accountability mechanisms, and family supports through federal funding.
- DOJ should provide guidance to state and local legislators and law enforcement on truancy policies to stop penalizing youth for being out of school, loosen day-time curfew restrictions, and eliminate police enforcement of truancy laws through police sweeps and arrests of youth for minor offenses.
- ED should require the adoption of positive behavioral interventions as alternatives to punitive school discipline policies, including in the context of efforts to address bullying in schools, as a condition of federal funding to Local Education Agencies (LEA).
- ED should also promote restorative justice practices, and issue guidance on reentry to reconnect youth with schools rather than pipelining them into alternative programs. The administration should also promote and support passage of the Positive Behavior for Safe and Effective Schools Act (PBSESA),¹⁴⁵ the Ending Corporal Punishment in Schools Act,¹⁴⁶ and the Restorative Justice in Schools Act.¹⁴⁷
- ED should also issue guidance to LEA, law enforcement agencies, and state legislators urging elimination of vague and subjective status offenses such as “willful defiance” and “ungovernability” which are susceptible to biased application by school resource officers.
- ED and DOJ should include LGBT youth and Two Spirit youth in all research and recommendations on dismantling the school-to-prison pipeline, including any future work of the Supportive School Discipline Initiative.



IMAGES: NATIVE YOUTH SEXUAL HEALTH NETWORK

JUVENILE JUSTICE

Studies show that LGBT youth, and particularly LGBT youth of color and Native LGBT youth, often have their gender identities and expressions and sexualities policed, face punitive responses to typical adolescent behavior, receive inappropriate detention sentencing, and are otherwise unnecessarily criminalized by judges, prosecutors, defense attorneys, probation officers, and other legal professionals who lack understanding of the experiences of LGBT youth.¹⁴⁸ For example, LGBT youth are often removed from their homes by law enforcement for “willful defiance” or “incorrigibility”—charges made in many cases by disapproving parents or caregivers that criminalize them for simply being LGBT against their parents’ wishes.

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

LGBT youth are also most vulnerable to arrest and detainment under truancy laws and other status offenses that essentially criminalize homelessness and poverty. Given that LGBT youth are more likely to have strained relationships with caregivers and wind up homeless and living on the street, they are likely to be arrested in police street sweeps and for unpaid fines.

LGBT youth who end up in the juvenile justice system also face harsher sentences overall, and are at greater risk of being prosecuted for consensual sexual activity than their non-LGBT peers, regardless as to whether they have committed a sex-related crime.¹⁴⁹ Such a conviction could have lifelong consequences for these youth who would be required to register as sex offenders in 29 states.¹⁵⁰ LGBT youth are also often mischaracterized as sex offenders regardless of the crime and are ordered by the courts to undergo sex offender risk assessments and treatment programs.

Of note, as with the adult criminal justice system, jurisdictional complexities and inadequacies have adverse impacts on the operation of the juvenile justice system in Indian country. The federal court system—

which currently exercises jurisdiction over Indian reservations—has no juvenile division, specialized juvenile court judges, or juvenile probation system. The Federal Bureau of Prisons (BOP) has no juvenile detention, diversion, or rehabilitation facilities. In the event that Indian country youth are funneled into state juvenile justice systems, there is generally no requirement that a child’s Tribe be contacted. As a result, the unique circumstances and outcomes of Native youth are often overlooked and difficult to track, and they effectively “go missing” from the Tribe.¹⁵¹

RECOMMENDATIONS

- The Administration should support and promote reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP A) to include key items essential to LGBT youth:
 - Deinstitutionalize status offenses, including removal of the valid court order (VCO) and Interstate Compact exceptions.
 - Update Disproportionate Minority Contact mandate to require states to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system, which will also benefit LGBT youth in the system who are predominately youth of color and Native.
 - Expand training, technical assistance, and research and evaluation to include LGBT and Two Spirit youth.
 - Mandate that juvenile justice facilities ensure that all policies, practices, and programs recognize the unique needs of LGBT and Two Spirit youth.
- DOJ should issue guidance to states with respect to age of consent laws. These laws expose adolescents to sanctions for engaging in consensual sexual behavior with other adolescents.
- DOJ should support and promote amendment of the Sex Offender Registration and Notification Act (SORNA) to exclude youth who are convicted of sex-based offenses from mandatory sex offender registration.
- DOJ should issue guidance on parole regulations that discourages the use discriminatory “special parole regulations” which restrict gender identity or sexual expression, such as restrictions on clothing.
- DOJ should provide guidance to states and localities regarding training and resources for juvenile professionals (including judges, defense attorneys, prosecutors, probation officers, and detention staff) regarding the unique societal, familial, and developmental challenges confronting LGBT youth and the relevance of these issues to court proceedings.
- DOJ should issue guidance to states on improvement of juvenile court procedures to streamline case processing, reduce length of stay in custody, expand the availability of non-secure program slots, and ensure that interventions with youth are timely and appropriate.

[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.¹⁵⁷

- DOJ should mandate automatic and free expungement of juvenile criminal records once youth turn 21.
- DOJ should provide federal guidance to states and localities regarding the development of alternatives to youth incarceration including prevention and diversion,¹⁵² and elimination of excessive sentencing which effectively replicates sentences of juvenile life without parole struck down by the Supreme Court.
- DOJ should issue guidance with respect to the impacts of criminal gang injunctions, including the impacts of youth profiling and racial profiling, and constitutional challenges to curfew laws.¹⁵³
- The Administration should support and promote passage of the Youth PROMISE Act.¹⁵⁴
- DOJ should issue guidance to states encouraging judicial discretion to consider a young person's unique circumstances, such as age, maturity, role in the charged offense, and dependency on any adult involved in the offense.
- DOJ should issue guidance to states with respect to addressing "placement delay" where youth remain incarcerated despite a court order directing alternate placement. This is particularly important to LGBT youth in light of family rejection and the dearth of programs that are appropriate or welcoming to LGBT and gender non-conforming youth.
- DOJ should issue federal guidance to states encouraging them to change Medicaid procedures that pose a barrier to health care access for youth coming out of custody.¹⁵⁵
- Federal resources for Tribal juvenile justice should be consolidated in a single Federal agency within the DOJ, allocated to Tribes in block funding rather than unpredictable and burdensome grant programs, and provided at a level of parity with non-Indian systems. Tribes should be able to redirect funds currently devoted to detaining juveniles to more demonstrably beneficial programs, such as trauma-informed treatment and greater coordination between Tribal child welfare and juvenile justice agencies. Additionally, regardless of whether they are in federal, state, or Tribal juvenile justice systems, Native youth brought before juvenile authorities for behavior that took place in Tribal communities should be provided with trauma-informed screening and care within a reasonable distance from the juvenile's home which may entail close collaboration among juvenile justice agencies, Tribal child welfare, and behavioral health agencies. A legal preference should be established in state and federal juvenile justice systems for community-based treatment of Indian country juveniles rather than detention in distant locations.
- The Administration should initiate, support, and promote amendment of the Indian Child Welfare Act (ICWA) to provide that when a state court initiates any delinquency proceeding involving an Indian child for acts that took place on the reservation, all of the notice, intervention, and transfer provisions of ICWA will apply. For all other Indian children involved in state delinquency proceedings, ICWA should be amended to require notice to the Tribe and a right to intervene.¹⁵⁶

LGBT youth are often removed from their homes by law enforcement for "willful defiance" or "incorrigibility"—charges made in many cases by disapproving parents or caregivers that criminalize them for simply being LGBT against their parents' wishes.

DETENTION CENTERS & REENTRY

Common misconceptions and homophobic and transphobic assumptions about sexual orientation and gender identity and expression underlie the discriminatory application of policies and punitive treatment faced by LGBT youth in the juvenile justice system.¹⁵⁸ Once in detention, LGBT youth often experience discriminatory and often harmful treatment, emotional, physical and sexual abuse, lack of access to sexual health care, and limited access to educational resources.¹⁵⁹

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.

Tyler, 22¹⁶¹

“ I knew in my heart that the only reason I didn’t have a roommate was because I’m gay.”

Incarcerated youth in general are often denied access to quality education, which disrupts their learning and creates significant barriers to attaining a high school diploma. Upon release, they are often pushed into alternative school settings or continuation schools which serve more as day-time parole centers rather than institutions of learning. These schools are often run by departments of juvenile justice rather than departments of education. Importantly, there are no standards for educational attainment within juvenile justice systems, and youth reentering their communities still fail to earn high school equivalency degrees.

Further, incarceration of Native youth in the juvenile justice system often removes them geographically great distances away from their communities, support systems, and families. For all Native youth, including youth who are Two Spirit and LGBT, this distance can prohibit access to traditional ceremonies that may allow for youth to heal from the traumatic effects of violence, harassment, and isolation experienced in custody.

RECOMMENDATIONS

- DOJ and ED should promote better reentry programs to reconnect youth with schools rather than transitioning them to alternative education centers or continuation schools.
- Alternative education and continuation schools should be regulated by ED, rather than local juvenile justice systems. These schools should be required to adhere to ED’s minimum curriculum standards and meet basic graduation and/or GED requirements.
- DOJ should issue guidance on how to ensure that all youth in custody have access to quality education that is inclusive of information and resources on sexual orientation and gender identity and LGBT histories, including histories of LGBT people of color and Native LGBT people.

[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 lesbian¹⁶²

- DOJ should mandate adoption of anti-discrimination policies prohibiting harassment based on actual or perceived sexual orientation or gender identity by staff and juveniles at all juvenile detention centers and prisons with effective grievance procedures, as a condition of receipt of federal funding.
- HHS should mandate, as a condition of federal funding, that states ensure that LGBT youth are not required to, forced to, or incentivized to participate in counseling, therapy, programming or religious activities that condemn LGBT people or enforce heterosexuality or normative gender expressions while in state custody.
- DOJ should issues guidance on incorporation of LGBT-inclusive sexual health care, including condom access and education and access to gender affirming treatment, including hormone treatment, into basic medical services provided to all young people in state detention and juvenile facilities.¹⁶⁰
- Juvenile justice facilities and law enforcement officers should not hold LGBT youth in isolation, even if it is intended as a means of protection. This type of isolation is a form of segregation and has the potential to cause extensive psychological damage.



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

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

From the beginning of the HIV epidemic, prevailing public misperceptions about the routes, risks and consequences of HIV transmission have reflected homophobia, transphobia, and the stigma associated with drug use, resulting in wildly inaccurate risk assessments that have remained largely unaddressed in 30 years of public health responses to the disease. In turn, stigma and fear have fueled mistreatment of people living with HIV (PLWH). One of the more troubling, persistent issues for PLWH has been the prospect of criminal prosecution for acts of consensual sex and for conduct, such as spitting or biting, which pose no measurable risk of HIV transmission.



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

The use of the criminal legal system to stop or slow HIV transmission is both ineffective and devastating to those targeted, and to public health as a whole. Criminalization results in imprisonment and public humiliation from sensationalized and demonizing media coverage, and routinely leads to loss of housing, employment opportunities, and negative health outcomes.

Nearly three dozen states and U.S. territories have laws that criminalize the conduct of PLWH without requiring any evidence of an intent to do harm, including HIV transmission.¹⁶³ In the ten states that add mandatory sex offender classification and registration to those convicted under these laws, defendants suffer additional, irreparable damage to most aspects of their lives:

their ability to work, to choose where they live, even to continue relationships with their own children and other minor relatives.¹⁶⁴ There is no evidence that criminalization has any positive impact on disclosure or risk-taking behavior.¹⁶⁵ In fact, research suggests that HIV criminalization may in some cases delay HIV testing and, in turn, entry into care.¹⁶⁶

ADDRESSING WIDESPREAD IGNORANCE ABOUT THE ROUTES, RISKS AND CONSEQUENCES OF HIV

Although more than 30 years have passed since physicians reported the first cases of HIV in the U.S., HIV-related stigma continues to be prevalent and well-documented.¹⁶⁷ “A consequence of HIV-related stigma and discrimination is a negative effect on both HIV prevention efforts as well as care for individuals living with HIV.”¹⁶⁸ Studies show that many people do not get tested because of stigma and their fear of discrimination.¹⁶⁹ Widespread ignorance about HIV and how it is transmitted is “often translate[s] into biased and discriminatory actions,”¹⁷⁰ including by law enforcement.

HIV stigma and its relation to misconceptions about HIV transmission have been repeatedly documented.¹⁷¹ These extensive misperceptions about the most basic facts of the routes and relative risks of HIV transmission are entrenched and persistent. A 2008 survey also found that “levels of knowledge about HIV transmission have not improved since 1987.”¹⁷² Ignorance about HIV must be aggressively addressed as the public health crisis it is, and as part of the federal government’s strategy on HIV/AIDS.

RECOMMENDATIONS

- The Surgeon General should create a public awareness campaign including detailed information that both explains the specific routes, relative risks, and modern-day consequence of HIV and STI infection, and dispels myths and ignorance contributing to criminalization of people with HIV.¹⁷³ The campaign should reflect the substantial input of medical and research experts on current HIV risk/transmission data in the context of everyday risks and events, and consultation with people affected by HIV and their advocates.
- The Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) should mandate development and support of accurate, age-appropriate and LGBT-inclusive HIV and STI literacy programs for students and staff of all federally supported school systems as a condition of federal funding.
- HHS, the Health Resources and Services Administration (HRSA), and other responsible federal agencies should require proof of written policies and standards for the provision of sexual health care and HIV-inclusive sexual health literacy programs for police lock-ups, juvenile, corrections and detention facilities receiving federal funds. Staff education should include training on avoiding discriminatory enforcement of regulations against PLWH and on maintaining confidentiality about prisoners' HIV statuses.
- CDC must develop and distribute more direct and explicit public service announcements on the routes, risks and consequences of all sexually transmitted diseases, including HIV, dispelling myths that fuel HIV criminalization, via mainstream and new media.

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

- CDC’s and other related websites (e.g., AIDS.gov) should prominently include information on the actual routes, likely relative risks, and consequences of HIV and other STI transmission that reflect real-life risk reduction choices (e.g., oral sex as a very low-to-no-risk alternative; the impact of drug therapies on the already low transmission risk of HIV).

ADDRESSING GOVERNMENT-SUPPORTED STIGMA AND DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM

Most U.S. states and territories and the U.S. military have HIV-specific criminal laws that target consensual sex and other conduct involving theoretical contact with any bodily fluid (e.g., via spitting, biting, vomiting or sex) of people diagnosed with HIV and increase the classification and/or penalties for offenses such as solicitation for prostitution if the defendant has HIV.¹⁷⁴ “Exposure” prosecutions for spitting and biting are almost entirely initiated against prisoners or arrestees following an altercation with corrections staff or police. The most common prosecutions of HIV-specific criminal law hinge liability on the failure of an HIV-positive person to demonstrate disclosure of his or her HIV status to a sexual partner prior to sexual intimacy. Actual transmission or even evidence that the contact posed a significant risk of transmission is not required for convictions. Although unprotected sex between persons who do not know their HIV status is the cause of most new HIV infections,¹⁷⁵ these laws penalize only those who get tested and consequently know their HIV status, thus creating a potential deterrent to testing.¹⁷⁶

RECOMMENDATIONS

- CDC and the Department of Justice (DOJ) should fund and support trainings and information sharing about HIV transmission risks and myths to criminal justice personnel, state health departments, and the general public.
- CDC and DOJ should release the long-promised joint publication on the current state of HIV criminal law in the U.S., including recommendations for how states should evaluate and modernize current laws and prosecution policies relating to HIV.
- The Department of Defense (DOD) should discontinue use of a service member’s HIV diagnosis as the basis for prosecution, enhanced penalties, or discharge from military service.
- CDC should create incentive mechanisms, such as research and prevention project grants, that will encourage states to modernize existing laws criminalizing HIV.¹⁷⁷

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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.¹⁷⁸ Sex offender laws and prosecutions can affect a wide range of people, especially LGBT people.¹⁷⁹ Prosecutions for solicitation, having sex in public, being underage and having sex with another underage person, indecent exposure, streaking, or formerly enforced sodomy laws,¹⁸⁰ for example, can lead to placement on a sex offender registry.¹⁸¹ 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.¹⁸²

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).¹⁸³

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.¹⁸⁴ In many cities, these restrictions apply to anywhere from 93% to 99% of residential housing.¹⁸⁵ 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.¹⁸⁶

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