

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.

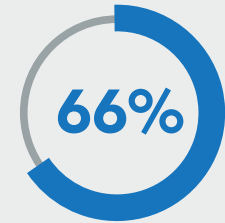
Respondents who reported their LGBT identity was raised as an issue in court when it was not relevant.



Cisgender



Transgender



Transgender Women

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.

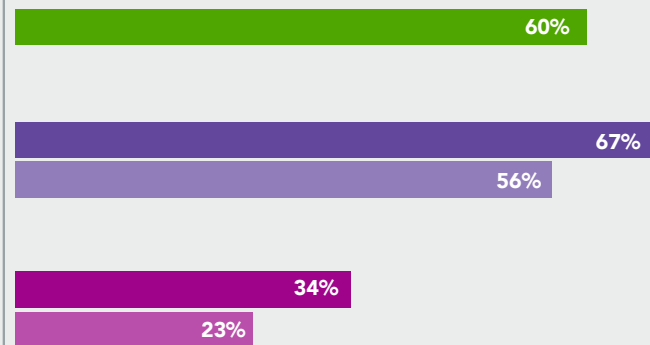
TGNC respondents, especially those who identified as women and people of color, were more likely to have spent time in prison, were nearly always placed in sections that did not match their gender identity and more often reported assault and abuse by prison staff.

- 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.

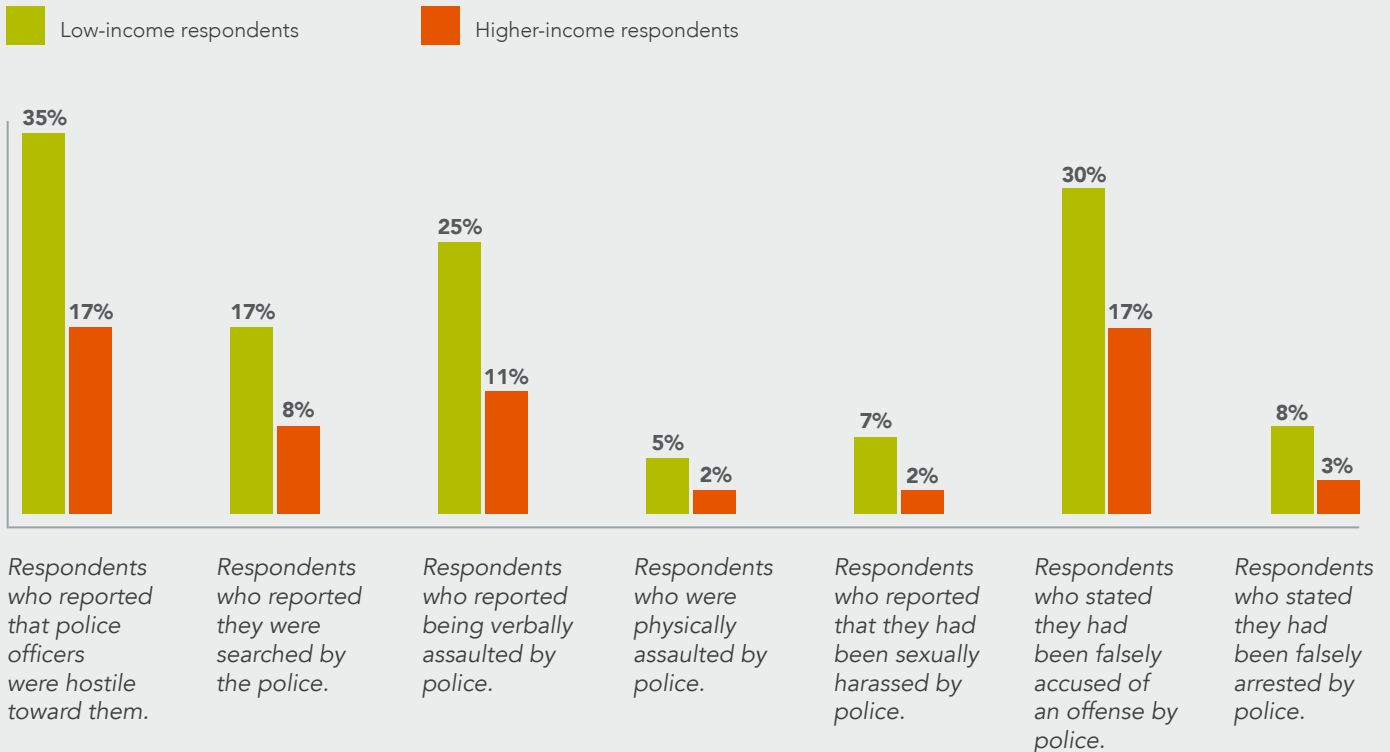


Transgender respondents more often reported that they were disciplined in middle or high school:

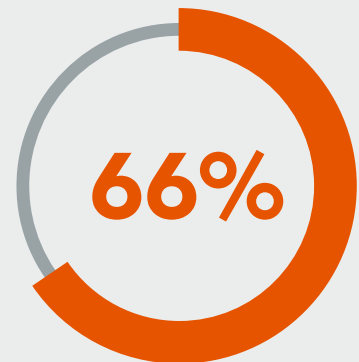
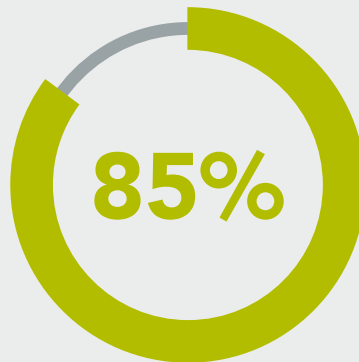
- 67% of transgender respondents, compared to 56% of cisgender respondents, reported spending time in detention during middle or high school.
- Transgender respondents were more than twice as likely to report being suspended in school. 37% of transgender, compared to 17% of cisgender respondents, were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

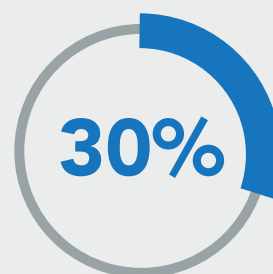
Respondents with disabilities who were victims of crimes were more likely to report that police did not fully address their complaints:

- 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.



CONTACT LAMBDA LEGAL

NATIONAL HEADQUARTERS

120 Wall Street
19th Floor
New York, NY 10005-3919
tel 212-809-8585
fax 212-809-0055

WESTERN REGIONAL OFFICE

4221 Wilshire Boulevard
Suite 280
Los Angeles, CA 90010-3512
tel 213-382-7600
fax 213-351-6050

MIDWEST REGIONAL OFFICE

105 W. Adams
26th Floor
Chicago, IL 60603-6208
tel 312-663-4413
fax 312-663-4307

SOUTHERN REGIONAL OFFICE

730 Peachtree Street, NE
Suite 1070
Atlanta, GA 30308-1210
tel 404-897-1880
fax 404-897-1884

SOUTH CENTRAL REGIONAL OFFICE

3500 Oak Lawn Avenue
Suite 500
Dallas, TX 75219-6722
tel 214-219-8585
fax 214-219-4455

lambdalegal.org

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.

Copyright ©2015 Lambda Legal