

PROTECTED & SERVED?

A community survey of LGBTQ+ people and people living with HIV



Introduction

OUR VOICE IS OUR POWER: In 2022, Lambda Legal, in partnership with Black and Pink National, launched the *Protected and Served?* community survey. With this project, we aimed to learn more about the experiences of lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) people and people living with HIV with the criminal legal system, to assess these communities' levels of trust in government institutions, and to create a new resource for community members, advocates, policymakers, and researchers.

The 2022 *Protected and Served?* community survey includes, for the first time, responses from people who were detained in jails and prisons across the United States at the time they took the survey. This includes many Black and Pink members who participated. In addition to the online survey, a paper survey with modified questions was available for detained people to take, which also provided an opportunity for qualitative responses. Completed paper surveys were mailed back to the team, and the data were entered and included with the responses from the online survey.

Of the total 2,546 *Protected and Served?* survey participants, 421 (16.5%) were detained in jail or prison when they completed the survey. This means that roughly one in every six of the total survey participants were detained participants. This spotlight report focuses on who they are and their experiences in the courts and in detention.

We hope that hearing from our community members who are detained will support advocacy efforts to address discrimination, bias, harassment, and violence against LGBTQ+ people and people living with HIV who are in prisons, jails, immigration detention facilities, and juvenile detention facilities. The data presented here can equip community members and advocates with the knowledge necessary to help protect people's rights while detained and hold government entities accountable.

Protected and Served?
2022 series:

Executive Summary

Full Report

Glossary

Spotlight Report:
Detained
Participants

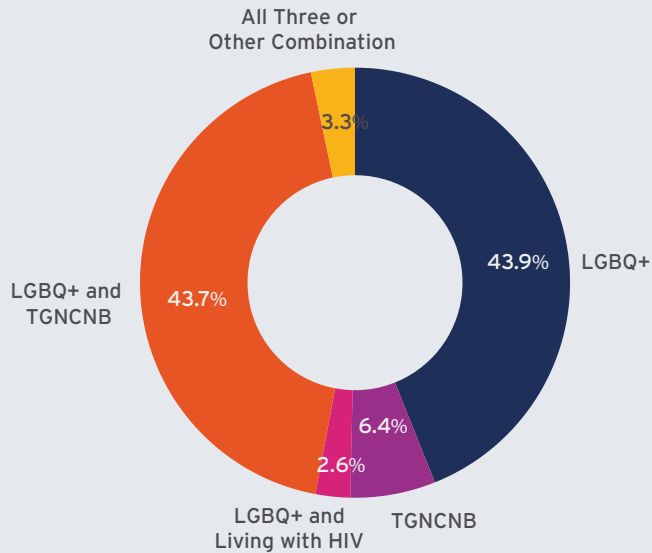
Fact Sheets

Available at
protectedandserved.org

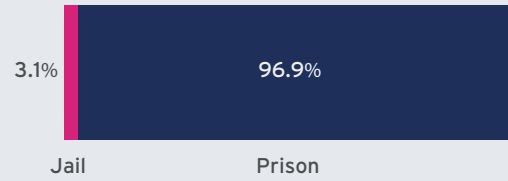
Who Are We?

421 Detained LGBTQ+ People and People Living with HIV Took This Survey.

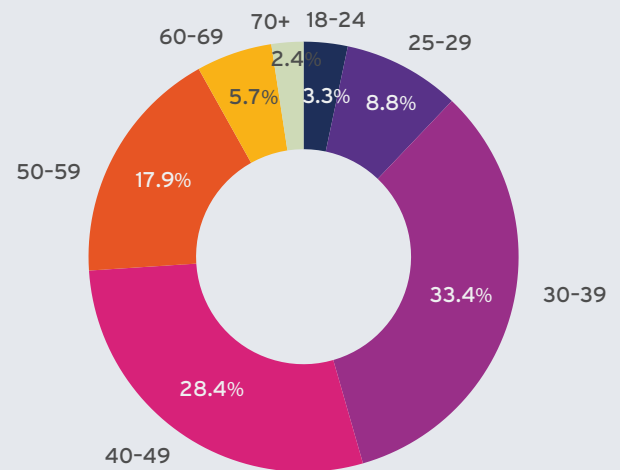
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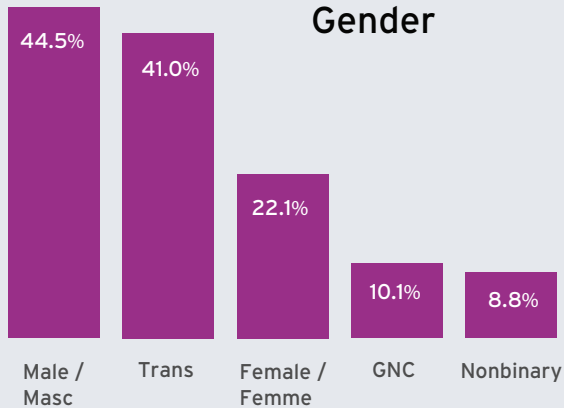
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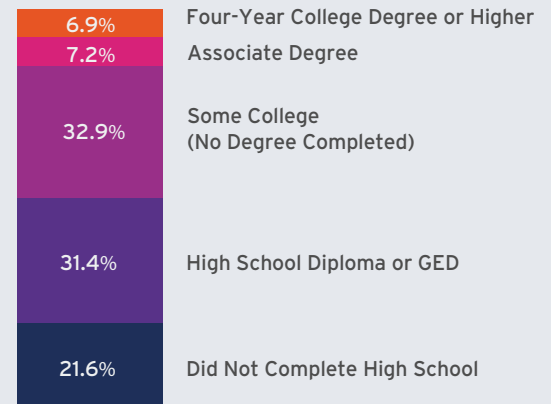
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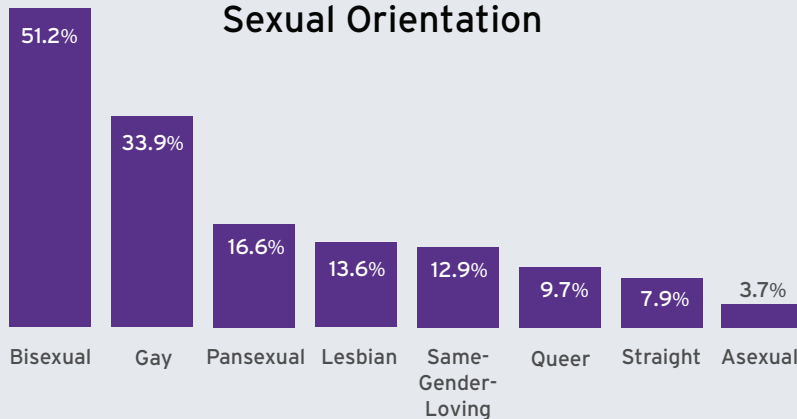
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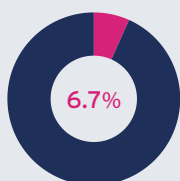
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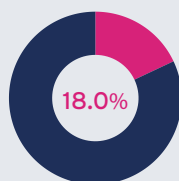
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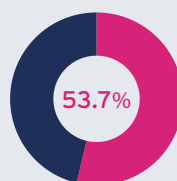
Living with HIV



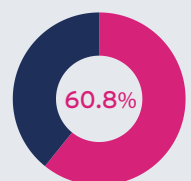
Previously Homeless



People of Color



Living with Disability



Findings

Who Are the Detained Participants?

Of the 421 people in detention who took the survey, 96.9% were in prison and 3.1% were in jail. Responses came from people detained in prison and jail systems across the country.

The majority (55.3%) of detained participants were transgender, gender nonconforming, and/or nonbinary (TGNCNB). Over four in ten (41.0%) were transgender, more than twice the percentage of non-detained *Protected and Served?* participants (17.3%). Among detained participants who were transgender, 38.9% identified as transfeminine, 5.4% identified as transmasculine, and 55.7% selected either both feminine and masculine or neither feminine nor masculine. Among all detained participants (whether cis or trans), 44.5% were male or masculine, 22.1% were female or feminine, and 17.0% were gender nonconforming or nonbinary.

In terms of sexual orientation, over half (51.2%) of detained participants were bisexual, double the rate among non-detained participants. About one-third (33.9%) were gay, 16.6% were pansexual, 13.6% were lesbian, and 12.9% were same-gender-loving.

Detained participants were over three times as likely to have a disability as non-detained participants. In fact, the majority (60.8%) of detained participants were living with a disability. Very few detained participants were living with HIV (6.7%). While the federal Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 define people living with HIV and/or gender dysphoria as having a disability, the survey did not ask participants to specify what medical and/or mental health condition they were living with other than HIV status.

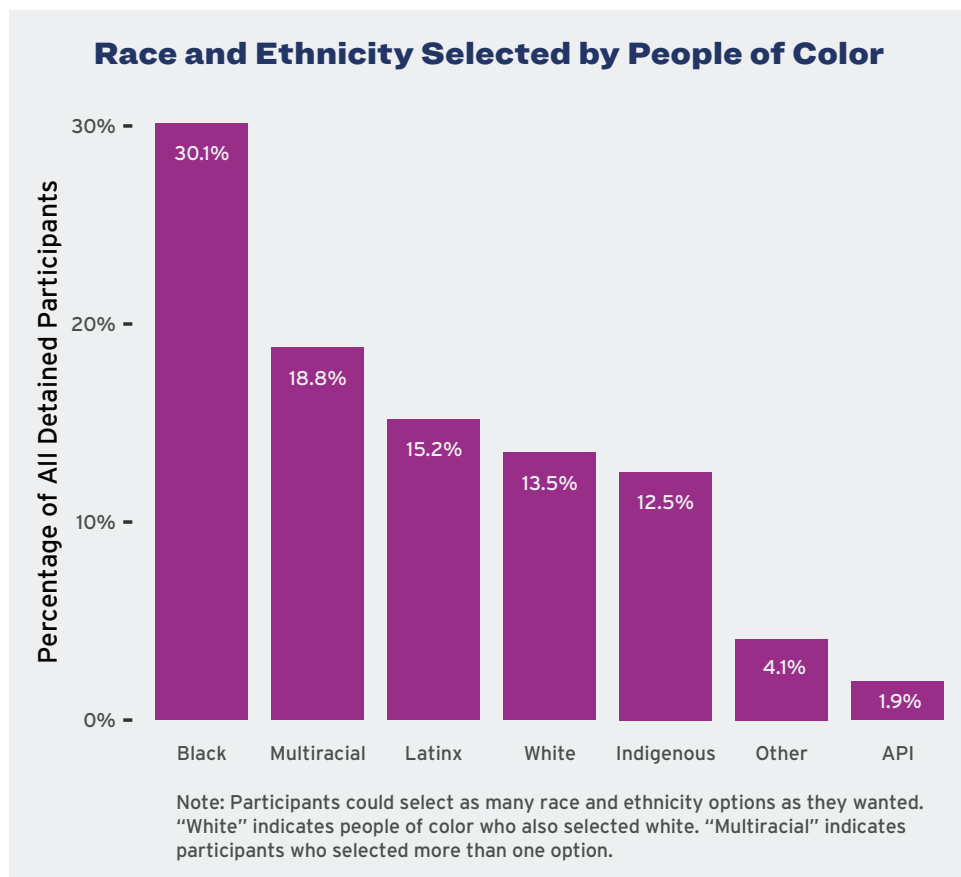
LGBTQ+ people are disproportionately detained. The incarceration rate of lesbian, gay, and bisexual people is approximately three times higher than the already high general U.S. incarceration rate (Meyer et al., 2017). While discriminatory practices in reporting and documentation make it difficult to accurately determine the number of detained TGNCNB people, one study showed that more than one out of five (21%) transgender women of all ethnicities are incarcerated during their lifetimes (Grant et al., 2011).

LGBTQ+ people of color are doubly impacted by the U.S. carceral system, as people of color, and especially Black people, are incarcerated at substantially higher rates than white people across the country (Vera Institute of Justice, 2023). Detained *Protected and Served?* participants were more likely to be Black, Indigenous, or multiracial than non-detained participants. Slightly over half (53.7%) of detained survey participants were people of color. Participants

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could select as many race and ethnicity options as they wanted; one-third selected Black, one-seventh Latinx, and one-eighth Indigenous. Nearly 60% selected white, either alone or in combination with other race and ethnicity options. About one-fifth of detained participants were biracial or multiracial. The racial breakdowns were similar among TGNCNB and cisgender participants; the most notable differences were that TGNCNB participants were three times as likely to be Indigenous (17.2% vs. 5.7% of cis participants) and nearly three times as likely to be multiracial (25.3% vs. 9.2%).

Over 60% of detained participants were between the ages of 30 and 49. One-eighth were younger and one-quarter were older. In general, detained participants had lower levels of educational attainment than non-detained participants. Detained participants nonetheless represented a wide range of educational experiences. Among those 25 and older, 21.6% had not completed high school, 31.4% had a high school degree or GED, 32.9% had begun college but had not completed a two- or four-year degree, and 14.1% had completed an associate degree or higher. In other words, about half had more education than a high school diploma and half had a high school diploma or less.

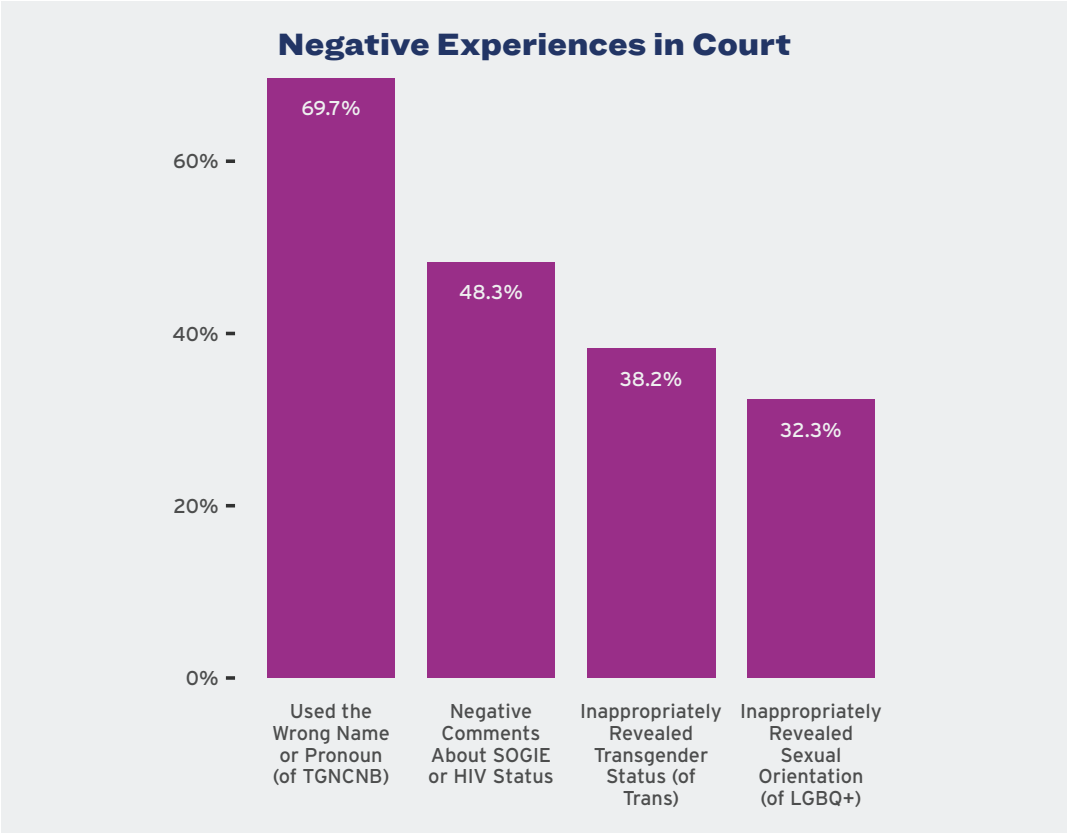


Experiences in Criminal Court

The paper survey asked detained participants if they had appeared as a defendant in criminal court in the past five years. Those who had were asked further questions about their experiences in court. Under half (42.4%) of detained participants had been in criminal court in the previous five years. Some participants noted that they had not been in court in that timeframe because they had been incarcerated for more than five years.

Detained participants had experienced many instances of inappropriate behavior by court employees (i.e., a judge, public defender, prosecutor, court clerk, court security, or any other court employee). **Nearly half (48.3%) heard a court employee make negative comments about their sexual orientation,**

gender identity or expression (SOGIE), or HIV status. One white nonbinary detained participant shared, *“A prosecutor told the court that due to me being transgender—I also identify as bigender—I was considered a ‘risk to the community’ because me being a trans man/woman ‘freaks people out.’”* A white bisexual male participant explained, *“I was threatened by a prosecutor to testify against the person who shot me 8 times or else he would charge me with crimes I did not commit. When I refused to testify he said ‘faggot.’”*



The survey also asked detained participants whether a court employee had used the wrong name or pronoun to refer to them or had inappropriately revealed their sexual orientation or transgender status in court. Nearly one-third (32.3%) of LGBTQ+ detained participants who had been in court shared that a court employee had inappropriately revealed their sexual orientation, and over one-third (38.2%) of transgender detained participants who had been in court had their transgender status inappropriately revealed. More than two-thirds (69.7%) of TGNCNB participants who had been in court indicated that a court employee referred to them using the wrong name or pronoun.

Transgender people of color were far more likely than their white counterparts to have their transgender status revealed inappropriately in court, 42.9% compared to 28.0%. In terms of misgendering, however, TGNCNB people of color and white TGNCNB participants had the wrong name or pronoun used for them in court at similar rates.

There were also racial differences in the rates at which detained participants heard a court employee make negative comments about their sexual orientation,

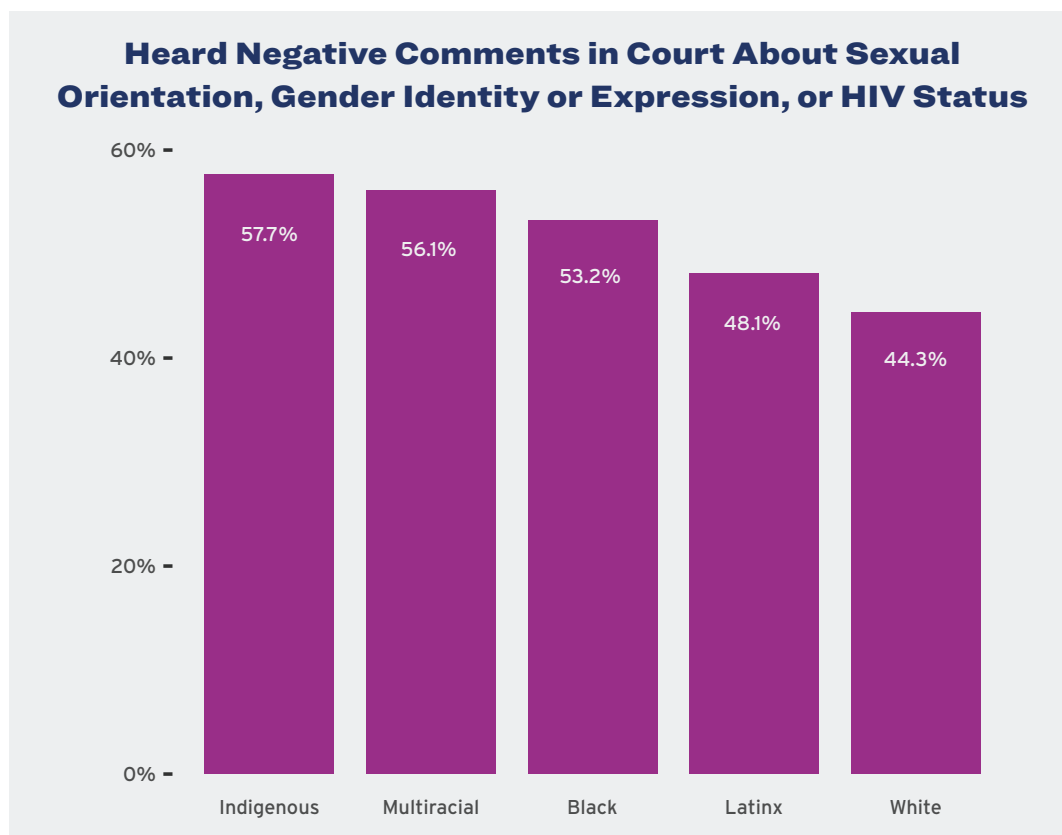
“A prosecutor told the court that due to me being transgender—I also identify as bigender—I was considered a ‘risk to the community’ because me being a trans man/woman ‘freaks people out.’”

— a white nonbinary participant

“The court security was very cruel to me because I am a transgender woman. They didn’t give me my lunch like everyone else. They called me sir, Mr., & faggot!”

— a Black and Indigenous trans participant

gender identity or expression, or HIV status. Over half of Indigenous, multiracial, and Black participants who had been in court heard these comments. One Black and Indigenous trans participant shared, *“The court security was very cruel to me because I am a transgender woman. They didn’t give me my lunch like everyone else. They called me sir, Mr., & faggot!”*



Multiple participants also shared experiences of hearing negative comments from their own legal defense or discussed the inadequacies of their experience with a public defender. For example, one Black bisexual female participant shared, *“I told [my lawyer] I was gay and he told me that he don’t like Black people and gay people and he did not put in a Bail reduction motion like I asked him. He would not do his job at all.”*

A bisexual Mexican participant shared, *“My public defender somehow knew I was bisexual and to me he [did not] seem to really want to defend me or take a real interest in my case because of my sexuality.”*

And a Black trans participant explained, *“I spoke with my public defender 1 time and that was 10 minutes before the court proceedings. I never had the chance to tell my side of the story. He made me go along with everything and did not offer advice or offer me a choice in the matter. I felt I was forced to accept what happened.”*

“I told [my lawyer] I was gay and he told me that he don’t like Black people and gay people and he did not put in a Bail reduction motion like I asked him. He would not do his job at all.”

— a Black bisexual female participant

“I spoke with my public defender 1 time and that was 10 minutes before the court proceedings. I never had the chance to tell my side of the story. He made me go along with everything and did not offer advice or offer me a choice in the matter. I felt I was forced to accept what happened.”

— a Black trans participant

Experiences in Detention

Responses from detained participants indicated that abuse by detention staff was an incredibly common experience. The survey asked participants about their experiences with seven types of staff misconduct in the past five years: verbal assault, physical assault, sexual harassment, sexual assault, other sexual contact, being referred to by the wrong name or pronoun, and being accused of an offense they did not commit. Only 5.7% of detained participants had not experienced any of these types of abuse in detention in the past five years. Over two-thirds had experienced three or more of these types of abuse. **Abuse in detention is the norm, not the exception.**

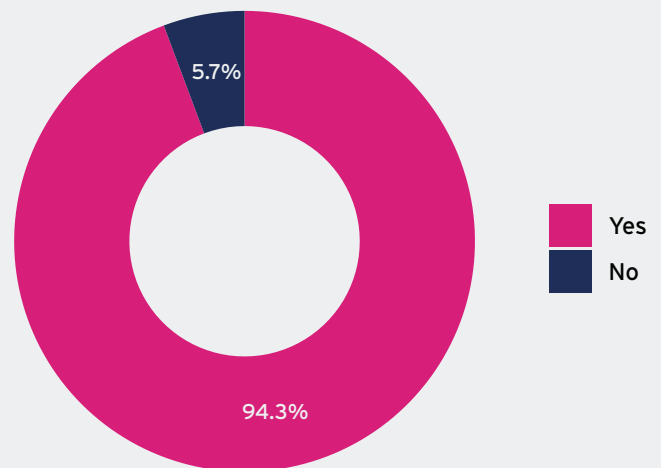
Of the seven types of staff misconduct asked about, verbal assault was the most common (87.3% of detained participants had experienced this), followed by accusing the participant of an offense they did not commit (77.2%) and using the wrong name or pronoun (63.0%). Over half of detained participants (54.1%) had been sexually harassed by detention staff in the previous five years, and over one-sixth (17.0%) had been sexually assaulted. Accusing the participant of an offense they did not commit could refer to their original conviction or something that happened while detained; the question was open to interpretation by the participant.

Participants shared many anecdotes about their experiences with staff misconduct. A lesbian transfeminine participant recounted, *“The majority of the male officers literally refuse to acknowledge my gender pronouns. They openly refer to me as a man in the female population. They harrass me out of the bathroom the entire time. They LIE to the other inmates calling me a rapist and verbally threaten to murder me, put their knees on my neck. I’ve never committed any sex offenses, they say it anyway.”*

An Indigenous transfeminine participant explained, *“They really hate LGBTQ inmates, especially the real feminine ones like me. They talk down on us but when we’re by ourselves with these officers they want to try to sexually assault us or rape us.”* A white bisexual and lesbian male participant said, *“At the previous prison I was housed at a few years ago, one C.O. [correctional officer], one [Disciplinary Board] Sergeant, and one Mental Health Clinician were all very [prejudiced] against me, and accused me of things I did not do. I was given a ‘write up’ for it, but beat it at the hearing, after which the C.O. retaliated with regular (not random) room searches and a bad attitude toward me, even though I did nothing wrong.”*

ABUSE IN DETENTION IS THE NORM, NOT THE EXCEPTION

Experienced Any Type of Staff Misconduct in Detention

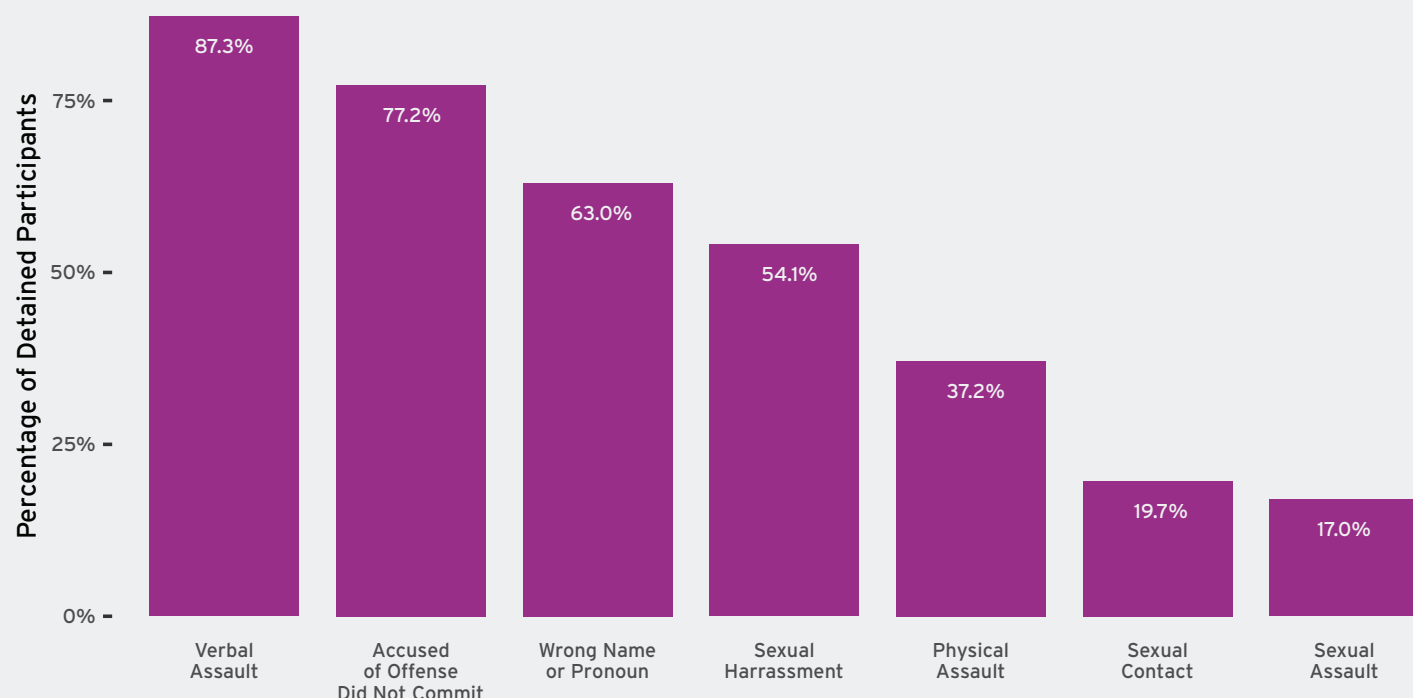


“They really hate LGBTQ inmates, especially the real feminine ones like me. They talk down on us but when we’re by ourselves with these officers they want to try to sexually assault us or rape us.”

— an Indigenous transfeminine participant

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Types of Staff Misconduct Experienced in Detention



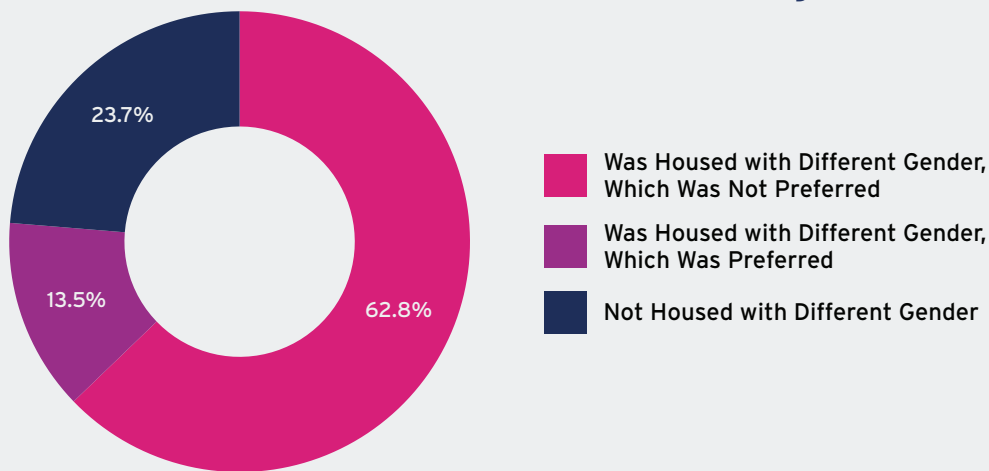
In addition to staff misconduct, detained participants reported other harmful experiences, including periods of losing access to their medication. **Nearly two-thirds (64.6%) of those who took medication experienced a two-week or longer interruption in the past five years.** Alarminglly, participants with a disability were more likely to have had an interruption in their medication (73.1% vs. 53.9% of those without a disability). Large differences were not identified by race or gender.

The qualitative responses provided more context around missing medications. Participants specifically discussed missing hormone replacement therapy, antiretrovirals for HIV treatment, heart medications, and psychotropic medications. The reasons participants were unable to access their medications while in detention ranged from homophobia and transphobia (at both the state and institutional level) to logistical and administrative barriers. For example, one Black transfeminine participant said, *“My gender dysphoria diagnosis was denied and my previous prescription for hormones was denied and now is being slow walked because our doctor is only in three days a month.”*

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— a Black transfeminine participant

TGNCNB Participants Housed in Facility that Did Not Match Gender Identity



An issue of concern for many TGNCNB people in jail and prison is being housed in a single-sex facility that does not align with their gender identity. **Over three-quarters (76.3%) of TGNCNB detained participants had been housed in a facility that did not match their gender identity in the past five years. For over four-fifths of these participants, this was not their preference.** This was especially the case among transfeminine participants; 92.1% had been housed in a facility that did not match their gender, and over 85% of those who experienced this did not prefer it. One white transfeminine participant shared about this experience, *“I’ve been stripsearched in front of entire barracks, have been told that because I’m in a male unit that I will be seen as male, and have had my bras confiscated and script for it canceled. Also I’ve had 3 attempts on my life since 2016.”*

Complaints, Grievances, and Reporting

Overall, detained participants expressed significant frustration at their lack of power to address the abuses and misconduct they experienced. While every facility is required to have defined grievance processes, these administrative processes can take months to unfold, leaving the detained person with little to no relief as they wait for a response. Under the federal Prison Litigation Reform Act (PLRA), in order to go to federal court for a case concerning your conditions of confinement in prison, such as access to medical care or safety, you must first exhaust all remedies (i.e., take every step outlined in the facility’s administrative process). Retaliation from the staff—including physical violence and harassment, as well as filing false disciplinary actions against the detained person—was so common that many detained participants did not see reporting misconduct as a viable or safe option.

As one Latinx gay male participant explained, *“There is a blue wall of conduct. They do whatever they want. It is justified because they wear badges which makes them brothers at arms. If I speak to someone or report it to a higher up I*

“Staff constantly tell transgenders to ‘get over yourself. You’re a man in a males facility.’ —including administration staff and we are transwomen being held at an all males facility with no options for housing with our identified gender. Multiple grievance and PREA complaints have been filed. No responses are made or we are told they are looking into it and nothing is ever done for the situations.”

— an Indigenous transfeminine participant

will be dealt with. Nonchalantly and retaliations will be covered up with all sorts of threats and lies on either misbehavior reports denied access to the yard/gym. Commissary or anything else. Which has been done to me numerous of times up to this very moment I have to 'take the punches' or they just get worst. If I complain, they talk amongst each other and pretend to do their jobs but they're actually bidding time to set me up in any manner, and I can't do anything about it, especially when fabricated misbehavior reports are written to justify their punishments."

A white nonbinary participant had similar experiences: *"The staff can write bogus cases, verbally abuse you, and lie about you threatening them. Yes, they get away with it. We do this and we get cases and/or locked up or both."*

While there are several measures in place that are meant to protect detained LGBTQ+ people and people living with HIV—including the U.S. and state constitutions, federal laws such as the Prison Rape Elimination Act (PREA), and other federal and state laws—the *Protected and Served?* survey responses included many accounts of how these systems failed to address discrimination and abuse. Many participants indicated that their complaints did not go anywhere or were dismissed and evidence was destroyed or ignored. An Indigenous transfeminine participant shared, *"Staff constantly tell transgenders to 'get over yourself. You're a man in a males facility.' –including administration staff and we are transwomen being held at an all males facility with no options for housing with our identified gender. Multiple grievance and PREA complaints have been filed. No responses are made or we are told they are looking into it and nothing is ever done for the situations."*

A white trans participant described how a staff member sabotaged the complaint process: *"I filed a PREA complaint on [date] & refiled it [two days later]. The first officer destroyed all the physical evidence, after she told me 'Don't put my name in that!' My complaint was deemed unsubstantiated because she destroyed the DNA evidence."*

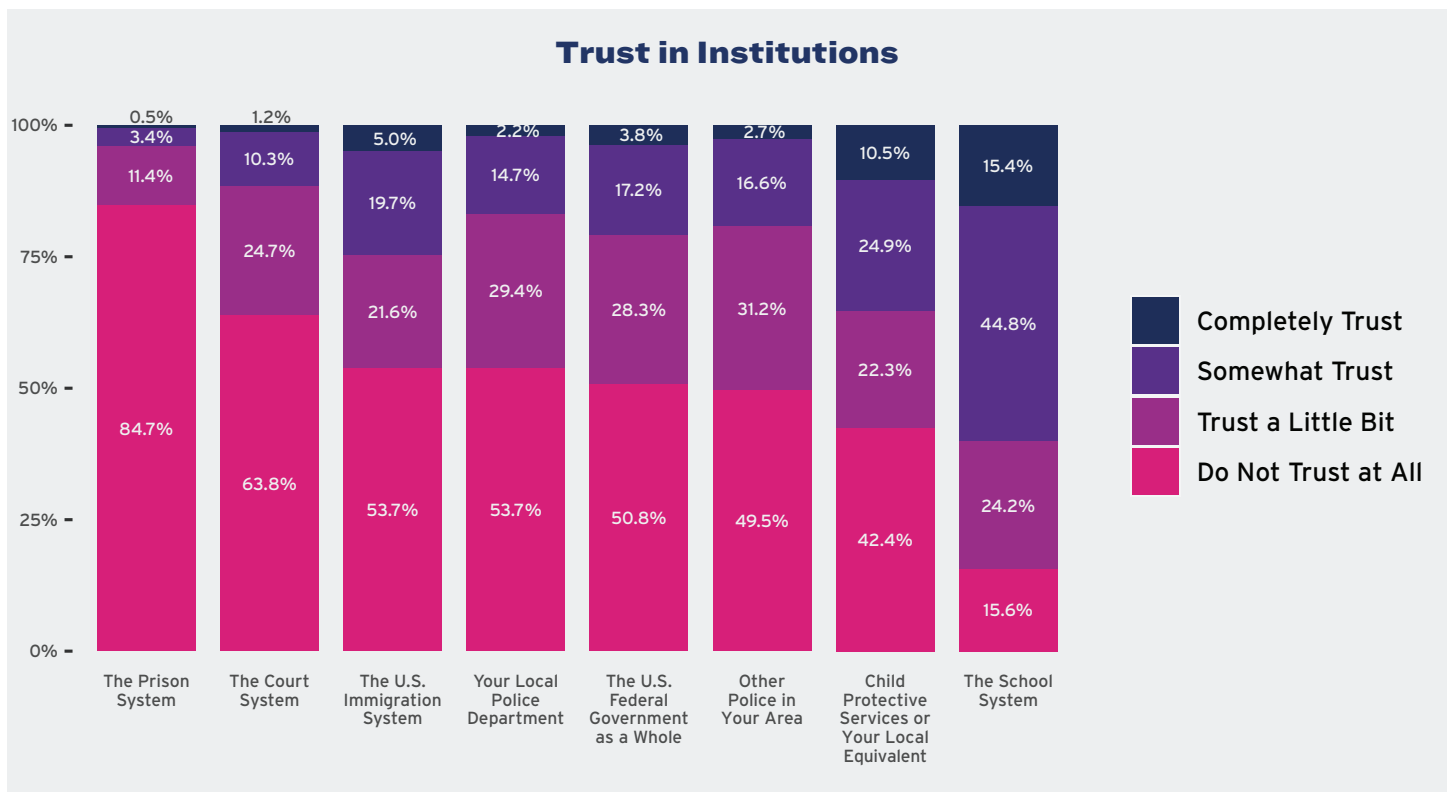
Despite many frustrations with PREA, some participants did view it as offering them a modicum of recourse and power in a system that disempowers and dehumanizes them. One white trans participant shared, *"The ambivalence with which transgender folk are treated [here] is heartbreaking. There is no general concern, let alone active concern, for our PREA protections & [state law] Protections in regards to showering, proper housing, harassment by other inmates, unwanted sexual advances (reported) and verbal harassment by officers of all ranks. If possible, I would very much like to participate in the next PREA audit."*

"I filed a PREA complaint on [date] & refiled it [two days later]. The first officer destroyed all the physical evidence, after she told me 'Don't put my name in that!' My complaint was deemed unsubstantiated because she destroyed the DNA evidence."

— a white trans participant

Institutional Trust

All *Protected and Served?* survey participants, whether detained or not, were asked about their levels of trust in various government institutions. Unsurprisingly given the abusive and harmful experiences of many LGBTQ+ people and people living with HIV in detention, detained participants had very low levels of trust in government institutions. Over four-fifths (84.7%) shared that they do not trust the prison system at all, and 63.8% do not trust the court system at all. Black detained participants had exceptionally low trust in the prison system; 92.7% said they do not trust it at all. They also had disproportionately low levels of trust in their local police department: 64.2% of Black detained participants indicated they do not trust local police at all, compared to 48.6% of non-Black detained participants.



Conclusion and Recommendations

The experiences of government misconduct expressed by participants detained at the time of this survey are disturbing and grotesque. Participants bravely shared accounts of abuse, medical negligence, discrimination, and blatant disregard for their humanity in prisons and jails. As a community, LGBTQ+ people and people living with HIV deserve—and have the right—to be free from discrimination and violence when interacting with the criminal legal system, including while detained. This survey and the responses from people on the inside illustrate how the failure to uphold the rights of LGBTQ+ people and people living with HIV can lead to the erosion of civil liberties and widespread government mistrust.

The following recommendations are immediate calls to action for those who want to address the negative experiences shared by LGBTQ+ people and people living with HIV who were detained at the time of this survey. For a complete list of recommendations, please refer to [the full report](#).

FOR COMMUNITY MEMBERS

KNOW YOUR RIGHTS Every person deserves to know and have the ability to exercise their rights. This is one of the greatest tools community members have to fight back against injustice and mistreatment. Various advocacy, legal, and civil rights organizations have “Know Your Rights” tool kits. For resources from Black and Pink National, please visit www.blackandpink.org, and for resources from Lambda Legal, please visit www.lambdalegal.org.

EXPLORE TRANSFORMATIVE JUSTICE PRACTICES Mia Mingus, with the support of other community leaders including Ejeris Dixon, Mariame Kaba, Andi Gentile, and Javiera Torres, defines transformative justice (TJ) as “a political framework and approach for responding to violence, harm and abuse. At its most basic, it seeks to respond to violence without creating more violence and/or engaging in harm reduction to lessen the violence. TJ can be thought of as a way of ‘making things right,’ getting in ‘right relation,’ or creating justice together. Transformative justice responses and interventions 1) do not rely on the state (e.g. police, prisons, the criminal legal system, I.C.E., foster care system (though some TJ responses do rely on or incorporate social services like counseling); 2) do not reinforce or perpetuate violence such as oppressive norms or vigilantism; and most importantly, 3) actively cultivate the things we know prevent violence such as healing, accountability, resilience, and safety for all involved” (Mingus, 2019). For more information visit www.transformharm.org.

FOR ADVOCATES AND POLICYMAKERS

CONGRESS SHOULD ELIMINATE BARRIERS TO ENFORCING CONSTITUTIONAL RIGHTS AND FEDERAL RIGHTS The Prison Litigation Reform Act (PLRA) makes it harder for people to seek legal recourse for harms experienced while in prison. The Act requires people to first exhaust often-complex grievance processes in administrative systems that are often fraught with delays before they can go to court. This often means that they will have to continue to endure harm as they wait for this process to unfold. Congress should make changes to the PLRA that will permit people in prison to bring their claims to court sooner.

In addition, the Prison Rape Elimination Act (PREA), despite its robust protections, does not provide a private right of action to survivors of assault. This means that systems that fail to protect or fail to act

FOR ADVOCATES AND POLICYMAKERS, CONTINUED

when someone has been sexually assaulted or raped often are not held accountable under the law that was enacted to end such abuse. Congress should amend the PREA to give survivors of abuse a private cause of action against prisons and jails, as well as officials.

FOR PEOPLE WORKING IN THE CRIMINAL LEGAL SYSTEM

ELIMINATE DISCRIMINATORY BEHAVIOR AND LANGUAGE IN THE CRIMINAL LEGAL SYSTEM It is necessary to adopt and enforce laws and policies that explicitly prohibit discrimination based on actual or perceived sexual orientation, gender identity, gender expression, and HIV status in prisons, jails, immigration detention centers, juvenile facilities, and courtrooms. The establishment of rules of professional responsibility and conduct for all professions and facilities within the criminal legal system is also crucial.

More than 20 states do not have fully inclusive non-discrimination laws that protect all LGBTQ+ people. Of those that do, a number of states do not explicitly include the court system, prisons, and jails as places of public accommodation or government office to which the non-discrimination law applies. Policymakers should amend laws to include these institutions.

PROTECT THE RIGHTS AND SAFETY OF DETAINED LGBTQ+ PEOPLE AND PEOPLE LIVING WITH HIV Prisons, jails, immigration detention facilities, and juvenile facilities should at a minimum follow PREA standards regarding searches and housing, taking into account a person's gender identity and safety. Systems must not permit the use of searches as punishment or for discriminatory purposes. Systems should also prohibit the use of solitary confinement or "protective custody," conditions that are the same as solitary confinement, as routine or standard protective placement for LGBTQ+ people or people living with HIV. Procedures that provide for differential treatment or enhanced disciplinary measures because of a person's HIV status should be repealed.

As the survey responses show, many participants missed medication in detention. Systems should ensure that everyone in their custody has access to medical and mental health care and treatment without delays or interruptions. For many TGNCNB people, treatment may include hormone therapy and/or surgical interventions. Furthermore, TGNCNB people should not be prohibited from obtaining commissary items because of their gender identity.

Finally, when systems fail to uphold standards and comply with the law, detained people should be able to enforce their rights through reporting, investigations, and accessing the courts. People in detention must be able to safely report violence and abuse without fear of retaliation and/or harassment.

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Suggested Citations

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