

LGBTQ CRIMINAL JUSTICE REFORM

**REAL STEPS LGBTQ ADVOCATES CAN TAKE TO
REDUCE INCARCERATION**



This is a guide to understanding the external factors affecting the disproportionate rate of incarceration of LGBTQ people. This guide includes ways advocates can work to reduce incarceration and keep LGBTQ people out of jails and prisons.

For a basic overview of the issues facing transgender and all LGBTQ prisoners and their legal rights, see

TRANSGENDER PEOPLE BEHIND BARS: A guide to understanding the issues facing transgender prisoners and their legal rights.

For detailed information on what policies jails and prisons should adopt, see

POLICIES TO INCREASE SAFETY AND RESPECT FOR TRANSGENDER PRISONERS: A guide for agencies and advocates.

If you are an external advocate (not currently on staff at a correctional facility) trying to work to improve jail or prison conditions, see

ENDING ABUSE OF TRANSGENDER PRISONERS: A guide for advocates on winning policy change.

For assistance in policy development and review, please contact Racial and Economic Justice Policy Advocate, Mateo De La Torre, at mdelatorre@transequality.org or 202-804-6045, or NCTE@transequality.org or 202-642-4542.

For all press inquiries related to this document or NCTE's work regarding prison policy and its impacts on transgender people, please contact Media Relations Manager Gillian Branstetter at Press@Transequality.org.

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INCARCERATION IS INHERENTLY TRAUMATIC, DEHUMANIZING, AND harmful. It imposes tremendous costs on individuals, their loved ones, and our communities, not to mention wasting billions of dollars that could be better spent. The United States incarcerates people at a higher rate than nearly every other nation in the world—reforming prison and jail conditions is **not** enough.

Fortunately, there is much that LGBTQ advocates can do to combat the crisis of mass incarceration that disproportionately affects poor LGBTQ people and LGBTQ people of color. While working to combat discrimination and violence and increase opportunities for LGBTQ people ultimately helps reduce incarceration, it is important to also address the driving factors within the criminal justice system itself. Despite President Trump’s administration promoting a harsh mass incarceration agenda, there is growing concern among people across the political spectrum that far too many people in the United States are being imprisoned for no good reason. Political figures from both sides of the aisle have called for making changes in local, state, and federal laws, as well as for implementing court programs and prosecution policies that support diversion and rehabilitation instead of incarceration. Thanks to these changes, prison populations in many states have begun to decline for the first time in decades.

There may already be efforts underway in your state or city to combat mass incarceration, and ensuring LGBTQ voices are included in those efforts can help win additional visibility and political support. These issues belong on the agendas of statewide LGBTQ organizations and local community groups alike. As with reforming prison and jail conditions, the list of potential allies for combating incarceration is long and includes racial justice groups such as Black Lives Matter, ACLU affiliates and other civil rights organizations, public defenders and legal service groups, disability justice advocates, social service providers, churches and other faith groups, anti-violence groups, and even groups focused on balancing state budgets.

The following, in no particular order, are just some of the ways advocates can work to keep LGBTQ people out of jails and prisons.

Press police departments to stop profiling and discriminatory policing and to adopt policies ensuring transparency and accountability. Ignorance, bias, and profiling by law enforcement are among major factors in bringing LGBTQ people into contact with the justice system. In addition to working on policies and practices for those who are already in custody, advocates should push for effective and enforceable bans on discriminatory policing practices based on race, sexual orientation, gender identity, and other factors; policies and practices that ensure safety and respect for individuals’ gender identities during police interactions and in police custody; and increased transparency and accountability for police misconduct.

Combat the school-to-prison pipeline for LGBTQ youth. LGBTQ students, especially LGBTQ students of color, often face disproportionate discipline in school and can end up forced out of school and into the juvenile justice system. LGBTQ advocates are increasingly speaking up against the expanded use of police in schools and the use of expulsion, criminal charges, and other zero-tolerance disciplinary policies that can disproportionately harm LGBTQ youth. Many state and local lawmakers and school districts are seeking to replace zero-tolerance with more humane and sensible approaches. LGBTQ advocates should be at the table to ensure the stories and concerns of LGBTQ youth are heard.

Address probation and parole for LGBTQ people. Probation is a period of court-ordered supervision given instead of incarceration or for a period of time post-incarceration. Parole is a conditional early release from prison, allowing someone to finish their sentence under conditions similar to probation. Many states have focused on expanding the use of probation and parole to reduce incarceration and decrease time behind bars, as well as to save money. Supporting these efforts in your state is critical. Advocates should also work to ensure fair treatment for people on probation or parole. People on probation or parole must check in with officers and obey other conditions set by a court, but many LGBTQ people face discriminatory or unfair conditions, hostility from officers when checking in, or other forms of bias that increase their risk of being re-incarcerated. LGBTQ advocates can help by working with probation and parole departments and courts to help increase their understanding of and ability to support LGBTQ people, pressing for limits on officer discretion, advocating against fees imposed on probationers and parolees, and working to increase access to advocacy and legal help in these processes.

Examine diversion programs and specialty courts. Diversion programs involve the prosecutors dropping or not filing criminal charges against someone in exchange for an agreement that the person will participate in a treatment program or other support services. Specialty courts are focused on a specific population, such as those charged with low-level drug, DUI, or sex work offenses; people with mental health conditions or other disabilities; people who are experiencing homelessness; or veterans, and emphasize treatment and services through ongoing court supervision instead of incarceration. Thousands of these programs exist throughout the country, and there are important differences between programs. These programs have the potential to reduce imprisonment, but also have been subject to various criticisms, including that many programs rely on mandated treatment and other services that don't meet individuals' real needs and even cause harm; lead to more arrests and even incentivize service providers to assist in increasing arrests; employ sanctions for noncooperation that can be even harsher than traditional sentences; and are an inadequate substitute for changing criminal laws themselves. LGBTQ advocates should examine any existing programs in the community, consult affected community members and allied organizations, and determine whether to support changes in existing programs—such as moving from post-booking to pre-booking diversion—advocate for new programs, or work with agencies implementing the programs to better equip them to work with LGBTQ people (including adopting trans-inclusive policies for gender-specific programs).

Combat prison expansion and privatization. Combating the building or expansion of jails and prisons is another way to fight mass incarceration—prison beds that are built tend to get and stay filled. LGBTQ advocates should oppose new or expanded facilities not because they should be built somewhere else, but because they are unnecessary, wasteful, and harmful to all communities.

In the 1990s, many states and localities built significantly more juvenile facilities than were needed then or now. LGBTQ advocates should work with juvenile justice groups who are actively trying to shut down these unnecessary, run down, or very large juvenile facilities in their localities. Activists are also fighting against awarding contracts for private, for-profit prisons and jails, which have track records of abuse and inhumane conditions, and are more difficult to monitor effectively and hold accountable for rights violations. Some states, such as Illinois and New York, ban the use of for-profit prisons, and similar proposals have been introduced in several other states. Even without an explicit ban, some states like New Hampshire have rejected all proposals for private prison contracts.

Move away from criminalization-focused approaches to sex work. The enforcement of criminal penalties for sex work tends to target communities of color and LGBTQ people. In 2018, Congress passed the misguided Stop Enabling Sex Trafficking Act (SESTA) which effectively shut down online spaces where sex workers could operate more safely. Lack of these online spaces pushes people to do street-based sex work, which typically comes with increased negative interactions with the criminal justice system.

Some cities have proposed laws to expand the grounds for arresting people suspected of participating in sex work in certain areas, or to make it a crime to even set foot in whole neighborhoods if you have a past conviction related to sex work. Community activists have fought to stop passage or limit implementation of these policies in several cities, as well as to prohibit police confiscation of condoms and use of condoms as evidence of sex work. Similarly, some cities are working on ways to offer support to minors who engage in sex work outside of the juvenile justice system. And in many jurisdictions, LGBTQ and progressive advocates are pushing for legislation that eliminates criminal penalties for consensual adult sex work. For example, in 2017 NCTE joined LGBTQ, harm reduction, and anti-trafficking advocates and many others in the District of Columbia in helping to introduce landmark legislation that, if passed, would eliminate criminal penalties for consensual adult sex work.

Challenge local laws that criminalize poverty. As a population that faces disproportionate poverty and homelessness, LGBTQ people are harmed by ordinances that criminalize sitting, eating, storing personal belongings, or begging in public places, as well as selective enforcement of loitering and other general laws against homeless people. Poor communities are also threatened by “gang injunction” laws that give authorities wide discretion to criminalize ordinary day-to-day activities (such as walking down the street or riding in a car) based on one’s association with alleged gang members. LGBTQ advocates can work with other local groups to oppose these and other measures that effectively criminalize poverty.

Lobby your state representatives for criminal justice reforms. Many states, from Louisiana and Florida to Alaska and California, are moving to reform their criminal justice systems. These efforts cross partisan lines, and LGBTQ advocates can be key coalition partners. Perhaps the most critical changes are reforms that **eliminate or reduce mandatory minimum sentences and limit or eliminate the use of money bail, which leads to low-income people being incarcerated solely because they are unable to pay bail.** Other changes to consider supporting in your state might include proposals to:

- Repeal laws that criminalize conduct based on HIV status
- Repeal laws that stigmatize and target people who have been convicted of sex offenses
- Keep minors out of adult jails and prisons
- Allow intermediate sanctions for parole violations instead of sending people back to prison
- Restore or expand “good time” credits that can shorten sentences
- Require reasonable telephone rates for prisoners to stay connected to loved ones
- Restore voting rights to formerly incarcerated people
- Decriminalize marijuana possession

Support community re-entry programs. Re-entry programs help individuals being released from incarceration reintegrate by connecting them with housing, training, support services, and employment. These programs are dramatically underfunded and often times lack LGBTQ competency. There must be appropriate funding for these programs if they are to succeed in

providing individuals with the tools they need to avoid being re-incarcerated. LGBTQ advocates can also work with these programs to help them become more equipped to serve LGBTQ people (including adopting trans-inclusive policies for gender-specific programs). Groups that provide legal services for the LGBTQ community can also consider adding services such as helping people expunge or seal their criminal record.

PRESIDENT OBAMA ON MASS INCARCERATION

“Over the last few decades, we’ve...locked up more and more nonviolent drug offenders than ever before, for longer than ever before. And that is the real reason our prison population is so high. In far too many cases, the punishment simply does not fit the crime. If you’re a low-level drug dealer, or you violate your parole, you owe some debt to society. You have to be held accountable and make amends. But you don’t owe 20 years. You don’t owe a life sentence. That’s disproportionate to the price that should be paid.... What is that doing to our communities? What’s that doing to those children? Our nation is being robbed of men and women who could be workers and taxpayers, could be more actively involved in their children’s lives, could be role models, could be community leaders, and right now they’re locked up for a non-violence offense.” —July 14, 2015

Lobby your state and local representatives to ban discrimination based on past convictions.

When employers, housing providers, and other entities automatically turn away those with past convictions, they make successful reentry impossible and guarantee that more people will be re-incarcerated. Twenty-nine states and over 150 cities and counties have passed laws governing public and/or private employment that guarantee workers who were previously incarcerated the chance to have their qualifications considered and to explain their convictions, and in 2015, the federal government adopted this policy in the hiring process across most federal agencies (with exceptions for law enforcement related agencies). Some employers are voluntarily pledging to “Ban the Box” (referring to the box on job applications that asks about arrests or convictions) and some communities have extended “Ban the Box” protections to housing. LGBTQ organizations should also make a commitment to ensure equal opportunity for applicants with criminal records in their own hiring. Find more information about the “Ban the Box” campaign at <http://www.nelp.org/campaign/ensuring-fair-chance-to-work> and <http://www.prisonerswithchildren.org/our-projects/all-of-us-or-none/ban-the-box-campaign>.

Lobby Congress for federal sentencing reform. Today there remains remarkable bipartisan support in Congress for federal sentencing reform. Push for legislation that would reduce mandatory minimum sentences, invest in reentry, and take other steps to reduce mass incarceration. Bring a group of constituents to visit the local office for their member of Congress and ask for their support for sentencing reform bills.

RESOURCES

The following resources may be useful starting places for LGBTQ advocates who are looking to get involved in some of the types of efforts described above. For more resources, please see Appendix B of *ENDING ABUSE OF TRANSGENDER PRISONERS: A guide for advocates on winning policy change in jails and prisons* ([url](#)).

- The **ACLU Criminal Law Reform Project** provides reports, social media tools, and other resources on a wide variety of related topics. Your state ACLU chapter may have state specific resources. Visit aclu.org.
- The **Advancement Project** provides resources for activists on voting rights restoration and ending the school-to-prison pipeline. AdvancementProject.org.
- **Families Against Mandatory Minimums** has smart, accessible resources on sentencing reform, available at FAMM.org.
- **BreakOUT!** works to end the criminalization of LGBTQ youth in New Orleans through organizing, leadership development, healing justice, and policy advocacy. YouthBreakOut.org.
- **Californians for Safety and Justice** is an example of a state-based campaign to replace prisons with common sense solutions. SafeandJust.org.
- **CURB (Californians United for a Responsible Budget)** provides resources on opposing jail expansion. CurbPrisonSpending.org.
- **Communities United for Police Reform (CPR)** is a campaign (prominently including LGBTQ advocates) to end discriminatory policing in New York City through policy advocacy, litigation, education, and community mobilization. ChangetheNYPD.org.
- **Critical Resistance** is a national organization aimed at ending the prison-industrial complex. It currently has chapters in Los Angeles, New York, Portland, and Oakland. CriticalResistance.org.
- The **Drug Policy Alliance** is the nation's leading organization promoting drug policies grounded in science, compassion, health, and human rights. DrugPolicy.org.
- **FIERCE** is a membership-based organization building the leadership and power of LGBTQ youth of color in New York City. FIERCE's campaigns include combating police abuse and the criminalization of LGBTQ youth of color and homeless youth. www.fiercenyc.org.
- **Native Youth Sexual Health Network (NYSHN)** is an organization by and for Indigenous youth whose advocacy and organizing work includes tackling issues of police misconduct, incarceration, school push-out, and sex work and sex trade as they affect youth and adults, including Two-Spirit and LGBTQ people. NativeYouthSexualHealth.com.
- The **Justice Policy Institute** (JusticePolicy.org), the **Sentencing Project** (SentencingProject.org).

org), and the **Vera Institute** Center on Sentencing and Corrections (Vera.org) provide extensive in-depth research and analysis on criminal justice reform issues.

- **Right on Crime** provides resources that, while not always aligning with LGBTQ and progressive advocate perspectives, can help persuade conservative lawmakers to back reforms. RightonCrime.com.

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About the National Center for Transgender Equality

The National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. In the nation's capital and throughout the country, NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

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