

ONE SIZE FAILS ALL
REPORT SERIES

OUT OF SIGHT

LGBTQ Youth and Adults in Texas' Justice Systems



OCTOBER 2018



This is the third of four reports in TCJC’s One Size Fails All report series. This series explores the failures of Texas’ criminal justice system to adequately address the needs of vulnerable and marginalized populations, including teenagers and young adults, people with substance use and mental health issues, the LGBTQ community, and people without stable housing supports. Not only are these populations failed by the justice system, but Texas families and communities are harmed as more people are driven into incarceration, and taxpayers are left to foot the bill for unsuccessful policies and practices. We urge you to join us in calling for reforms that will create healthy, safe, thriving Texas communities.

The Texas Criminal Justice Coalition advances solutions and builds coalitions to reduce mass incarceration and foster safer Texas communities.

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ONE SIZE FAILS ALL REPORT SERIES

OUT OF SIGHT

LGBTQ Youth and Adults in Texas' Justice Systems

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Introduction

One-size-fits-all justice systems fail lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. Overall, LGBTQ youth and adults experience worse outcomes and are overrepresented in every part of the justice system. About 4% of Americans identify as LGBTQ, but 8% of individuals in state and federal prisons and 7% of individuals in city and county jails identify as lesbian, gay, or bisexual (LGB).¹ Only 0.6% of Americans identify as transgender,² yet 16% of transgender and gender nonconforming (GNC) respondents to a 2015 national survey reported that they had spent time in jail or prison.³ As of July 2018, 4,499 people in Texas prisons identified as lesbian, gay, bisexual, transgender, or intersex.⁴

Histories of trauma, stigmatization, rejection, and abuse can cause LGBTQ youth and adults to experience mental health conditions and substance use at higher rates than non-LGBTQ people. LGBTQ people are more likely to experience homelessness, unemployment, and poverty—all factors that are common in justice system involvement.

This report explores the many forces that drive LGBTQ youth and adults toward Texas' justice systems and recommends that the state implement more appropriate, individualized interventions to keep vulnerable LGBTQ people out of the justice system.

Glossary of commonly used terms⁵

The following terms are used throughout this report to describe sexual orientations and gender identities or expressions.

- **Lesbian, gay, and bisexual (LGB):** Lesbian and gay refer to a person's sexual orientation and describe people who are attracted to the same sex or gender. Bisexual also refers to a person's sexual orientation and describes people who can be attracted to more than one sex or gender.
- **Transgender:** Transgender is independent of sexual orientation and describes individuals whose sex assigned at birth is different from how they feel on the inside.
- **Gender identity and expression:** Gender identity is a person's deeply felt inner sense of being male, female, or along the spectrum between male and female. Gender expression refers to a person's characteristics and behaviors, such as appearance, dress, mannerisms, and speech patterns. Gender identity and expression are independent of sexual orientation.
- **Gender nonconforming (GNC):** Gender nonconforming describes a person who has, or is perceived to have, gender-related characteristics and behaviors that do not conform to traditional or societal expectations. Gender nonconforming identity and expression are independent of sexual orientation.
- **Cisgender:** Cisgender refers to people whose gender identity and expression are the same as their assigned or presumed sex at birth.
- **Intersex:** Intersex describes biological conditions in which a person is born with a reproductive or sexual anatomy not usually associated with the typical definitions of female or male.
- **Queer:** Queer is an umbrella term used by individuals to describe their sexual orientation and/or gender identity or expression, frequently with an understanding of their identity as being fluid.
- **People of color:** In some cases, the terms people/adults/youth of color are used to refer broadly to African American or Black, Latinx or Hispanic, Asian/Pacific Islander, Native American, and other non-white people in the U.S. The term is not meant to suggest a singular experience, and whenever possible race and ethnicity are specified in this report.
- **LGBTQ:** In general, the acronym LGBTQ is used throughout this report to refer to people who identify as lesbian, gay, bisexual, transgender or gender nonconforming, or queer. The acronym is not meant to suggest a singular experience among LGBTQ people. Forms of oppression act differently on every member of various LGBTQ communities.

LGBTQ Youth and Texas' Justice Systems

In Texas, an estimated 158,500 out of 7 million youth (2%) identify as LGBTQ, including 13,800 transgender youth.⁶ Compared to non-LGBTQ youth, LGBTQ youth experience higher rates of family rejection and estrangement, foster care system involvement, mental health conditions and substance use, housing instability and homelessness, and bullying and harassment at school.

LGBTQ youth, especially those who are transgender or GNC, Black, or Latinx, are more likely than non-LGBTQ youth to come into contact with law enforcement. Nationally, 13%–15% of youth who come into contact with the criminal justice system are LGBTQ, and roughly 300,000 LGBTQ youth are arrested and/or detained each year. LGBTQ youth of color are vastly overrepresented in the juvenile justice system where more than 60% are Black or Latinx.⁷

The following sections explore the myriad factors that push LGBTQ youth toward the justice system and cause discrepancies in rates of incarceration for LGBTQ youth.

Family Rejection and Estrangement

Due to social changes ushered in by the LGBTQ rights' movement, LGBTQ youth are coming out to family and friends at younger ages than in previous generations.⁸ Yet, parents and family members often struggle to accept their child's sexual orientation or gender identity. On average, one-third of parents reject their children after they come out as LGBTQ.⁹ Familial rejection can start an avalanche of issues for LGBTQ youth, which may push them toward the justice system.

When LGBTQ youth experience family rejection after coming out, they are eight times more likely to attempt suicide.¹⁰ Lack of family backing in getting LGBTQ children access to mental health care and other support increases the likelihood that youth will come into contact with the justice system during a mental health crisis.

Homeless, Unsheltered, and Displaced LGBTQ Youth

Family rejection increases the likelihood that LGBTQ youth will experience homelessness or housing instability. Given that LGBTQ youth are coming out at younger ages, youth who are forced out of their homes by disapproving family members have fewer resources and options to support themselves than LGBTQ adults.¹¹

In Travis County, 26% of homeless youth are LGBTQ;¹² in Harris County, 20%–40% of the homeless population identify as LGBTQ.¹³ Stand Up for Kids, a national organization that focuses on youth homelessness, estimates that LGBTQ homeless youth make up nearly half of the roughly 1,000 homeless youth in San Antonio.¹⁴

These numbers likely underestimate the actual number of LGBTQ youth who are experiencing homelessness, housing instability, and displacement. Most surveys

count youth as homeless only if they are living on the street. Displacement and housing instability, however, include housing situations such as staying with friends, living with relatives, squatting, sleeping in a vehicle, or staying in a shelter.¹⁵

As a result of the prevalence of homelessness among this population, LGBTQ youth are substantially more likely to become involved with the juvenile or adult criminal justice systems. In one Texas county, nearly two-thirds (64%) of LGBTQ homeless youth have reportedly been in detention, jail, or prison in their lifetime.¹⁶ Due to recent federal mandates, organizations that receive federal funding from U.S. Department of Health and Human Services can decide whom they will and will not serve according to religious beliefs, which could prevent LGBTQ youth from staying at certain shelters.¹⁷ Inside shelters, LGBTQ youth often experience discrimination, harassment, and abuse from service providers and peers.¹⁸

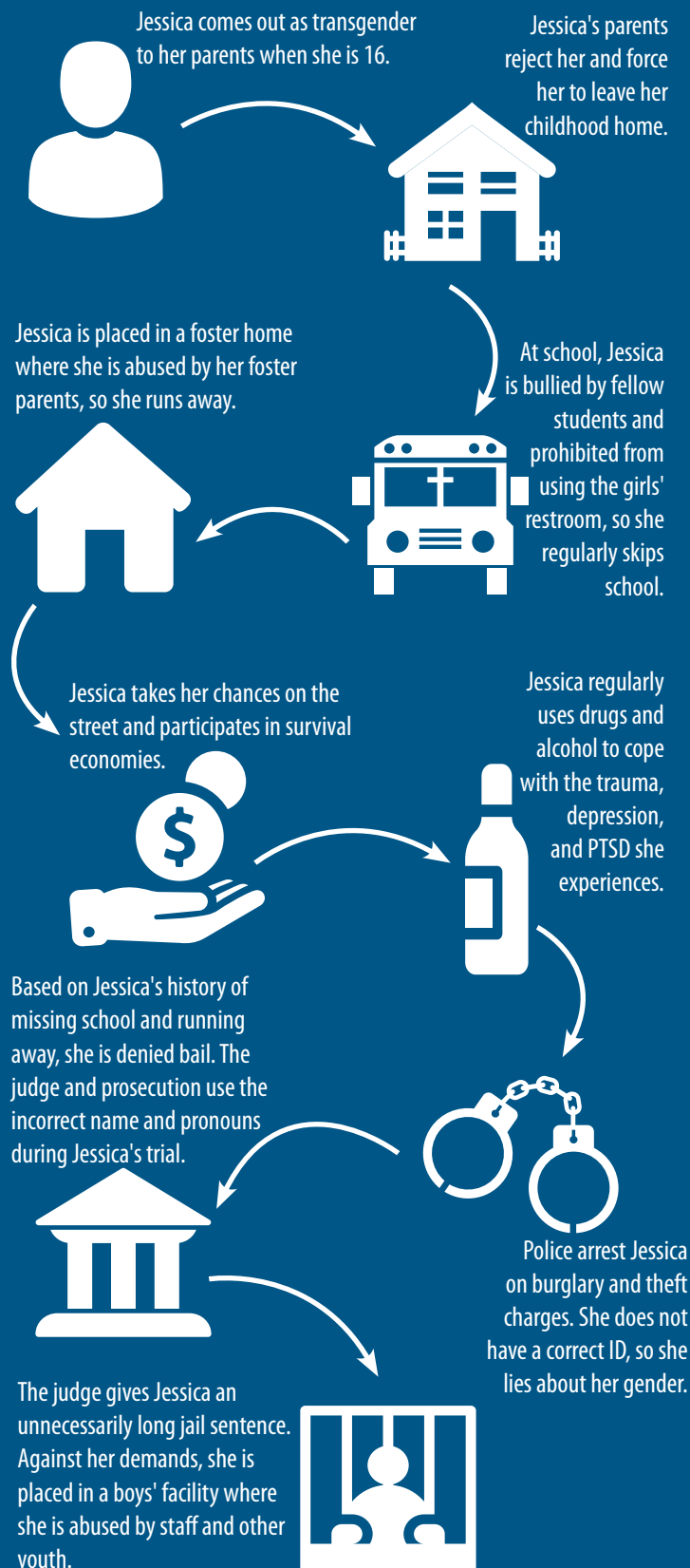
Homelessness also exposes LGBTQ youth to interactions with law enforcement. Law enforcement officers tend to stop and arrest LGBTQ youth, especially transgender and GNC youth of color, at disproportionate rates.¹⁹ Law enforcement officers also typically stop and arrest unsheltered LGBTQ youth on charges connected to survival rather than malicious intent.²⁰ In 2016, the majority of the 49,957 arrests of juveniles in Texas were for charges that can be associated with homelessness and survival, such as burglary/ breaking or entering, larceny/theft, vandalism, drug possession, disorderly conduct, curfew and loitering law violations, and runaway violations.²¹

Also, problematic, judges often consider a youth's history of running away from home and stints of homelessness when determining pretrial flight risk.²² As a result, LGBTQ youth may be more likely than non-LGBTQ youth to be held pretrial and experience worse outcomes in court.

Finally, it can be difficult for LGBTQ youth to obtain or change government-issued IDs. To obtain a Texas identification card, an applicant must provide proof of U.S. citizenship, Texas residency,

From Home to Jail:

Navigating the pathways of trauma that drive LGBTQ youth directly into the justice system



identity, and a Social Security number; and apply at a local driver's license office and pay a fee of \$11–\$16. Youth under the age of 18 must be accompanied by a parent or guardian.²³ For unsheltered or homeless youth, these requirements are nearly impossible to meet.

Foster Care System Involvement

Family rejection can increase the possibility that LGBTQ youth will experience abuse, run away from home, or be placed in a foster or group home. One national survey showed 54% of homeless LGBTQ youth respondents had been sexually, physically, or emotionally abused by family members before they became homeless.²⁴

LGBTQ youth are twice as likely as non-LGBTQ youth to live in a foster or group home.²⁵ Current research demonstrates that 16% of youth in out-of-home foster care identify as LGB, and 62% of those are youth of color.²⁶

LGBTQ youth experience discrimination, abuse, and harassment from staff and peers at disproportionately high rates. Many foster care facilities and group homes do not have anti-discrimination policies that protect LGBTQ youth, and foster care staff rarely receive cultural competency training to understand and support the unique needs of LGBTQ youth.²⁷ Implicit bias among staff can lead them to assume that LGBTQ youth, especially youth of color, are highly sexually active, predatory, reckless, and older than their age.²⁸

Nearly 23% of LGBQ youth in the juvenile justice system have experience in the foster care system compared to only 3% of non-LGBQ youth. One in five transgender or gender nonconforming (TGNC) incarcerated youth had experience in the foster system compared to 4% of non-TGNC incarcerated youth.²⁹

Minimal data is collected and maintained on LGBTQ youth in the Texas foster care and juvenile justice systems. Currently, data that does exist is spread across multiple agencies, including the Texas Health and Human Services Commission, the Texas Department of Family and Protective Services, and the Texas Juvenile Justice Department. This not only obscures major disproportionalities in the foster care and juvenile justice systems but hinders the successful outcomes of LGBTQ youth who move between agencies.

Mental Health Conditions and Substance Use

Seventy-five percent of mental health conditions develop before the age of 24. Family strife during the coming out and self-identification process can result in a significant amount of stress and trauma for LGBTQ youth.³⁰ As a result, LGBTQ youth experience high rates of mental health conditions, including suicidality. One study found 18% of LGB youth had experienced major depression in the past year, 11% met the criteria for PTSD, and 31% reported suicidal behavior at some point in their lifetime.³¹

According to the 2017 Texas Youth Risk Behavior Surveillance System (YRBSS) survey, LGB youth reported higher rates of mental health conditions and suicidal behavior. Over half (57%) of LGB youth reported they felt sad or hopeless during the past 12 months compared to 30% of non-LGB youth.³² Suicidal behavior among youth directly pushes them toward the justice system. During a mental health crisis, parents or guardians may not know how to properly respond, and many are likely to call law enforcement for an emergency intervention. Law enforcement officers may not be trained in mental health crisis intervention, which puts youth who are experiencing a mental health crisis at greater risk of unnecessary arrest, incarceration, hospitalization, or even death.³³

Youth in low-income and uninsured households may not be able to regularly visit a mental health professional due to cost. Unsupportive parents may refuse to help their LGBTQ child find appropriate mental health care, and many LGBTQ youth may live in areas where culturally sensitive mental health care does not exist. As a result, youth may not access mental health services for fear of discrimination or stigma. Thus, a disproportionate number of LGBTQ youth use substances to cope with trauma and mental health issues.

The self-reported rates of substance use by LGB versus non-LGB youth in Texas (2017) are as follows:

- 44% of LGB youth drink alcohol versus 25% of non-LGB youth;
- 6% of LGB youth have used methamphetamine versus 2% of non-LGB youth; and
- 9% of LGB youth have injected substances versus 2% of non-LGB youth.

Although data on substance use among transgender and GNC youth in Texas is not available, a study in California found that transgender youth use substances at 2.5 to 4 times the rate of other youth.³⁴ The fact that LGBTQ youth in Texas use substances at higher rates than non-LGBTQ youth puts them at greater risk of system involvement. Taken together, the prevalence of mental health conditions, suicidality, and substance use among LGBTQ youth in Texas strongly suggests that the mental health needs of these youth are largely unmet.

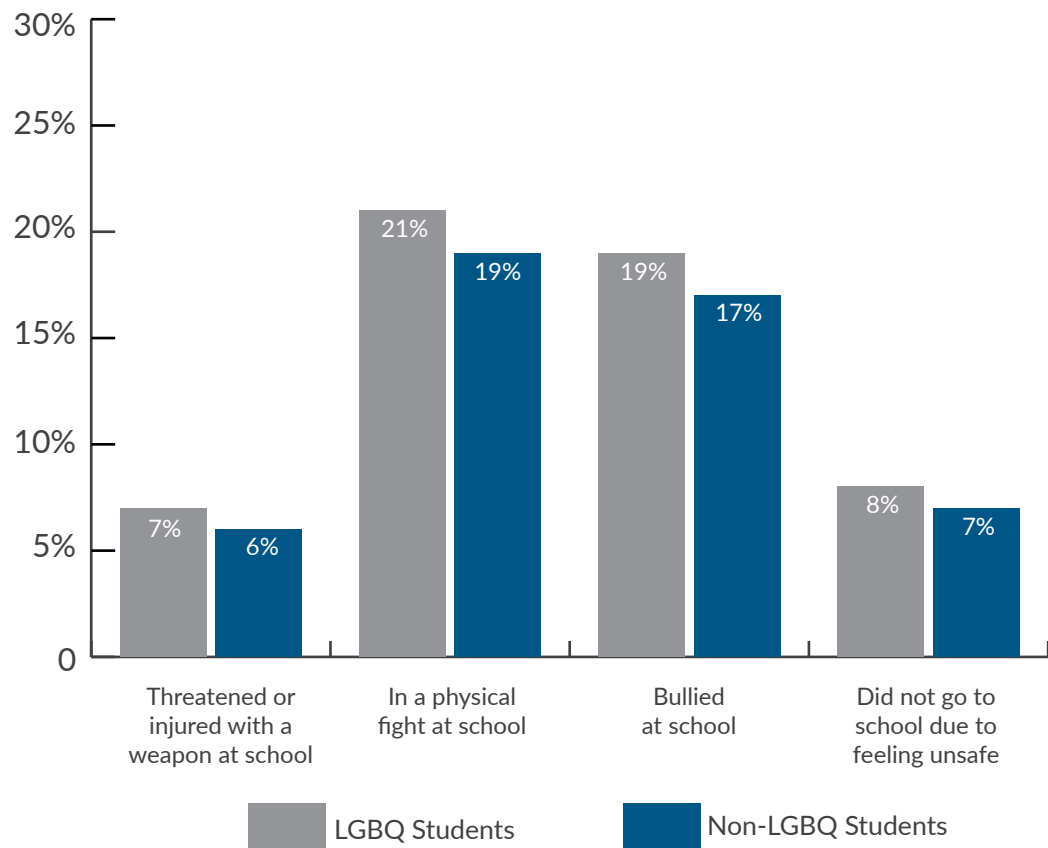
Unsafe Schools and the School-to-Prison Pipeline

Schools and educational settings can be hostile, discriminatory, and unsafe places for LGBTQ students. Although the Texas Legislature has not passed laws that would protect LGBTQ students, the Texas Education Agency and more than 900 Texas school districts now prohibit discrimination based on sexual orientation and gender identity in schools.³⁵ However, Texas law requires that educational materials for minors describe homosexual conduct as an unacceptable lifestyle and a criminal offense.³⁶

A 2015 study conducted in Texas found that 78% of students surveyed experienced verbal harassment from peers due to their sexual orientation; 58% were verbally harassed due to their gender expression; 35% reported physical harassment by other students because of their sexual orientation; and 26% reported physical harassment due to their gender expression.³⁷

As the chart below shows, LGB students experience bullying, harassment, and assault in Texas schools at higher rates than non-LGB students. Unfortunately, the YRBSS data exclude transgender and GNC students.

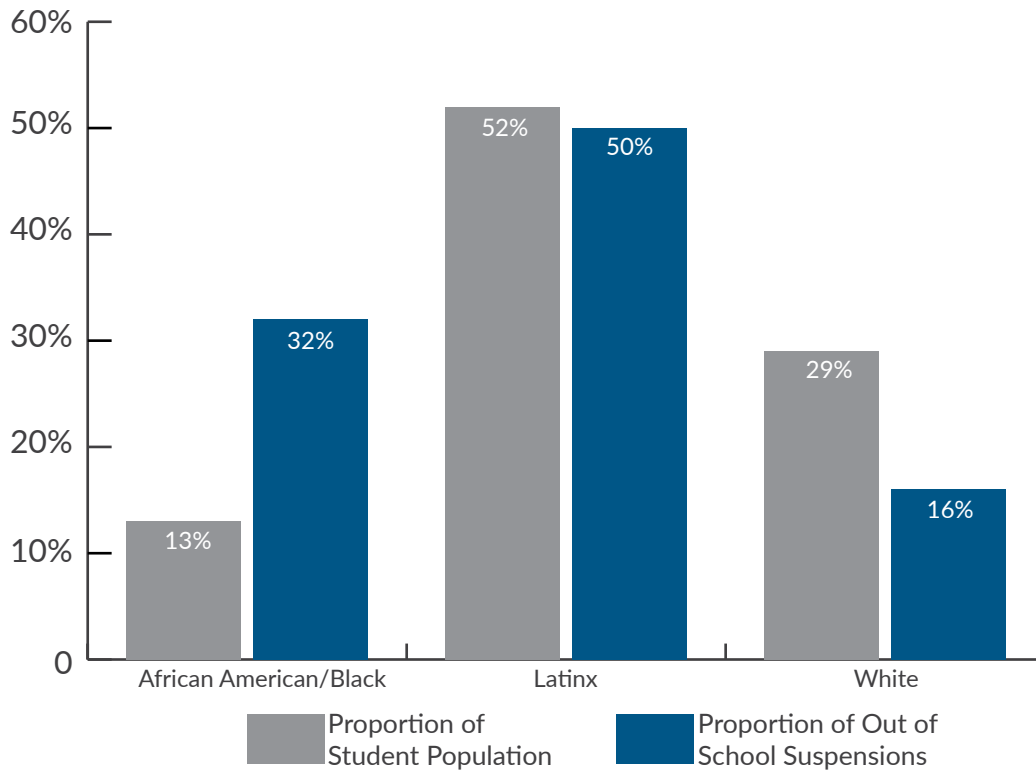
**Rates of Bullying and Harassment in Texas High Schools
LGBQ Versus Non-LGBQ Students, 2017**



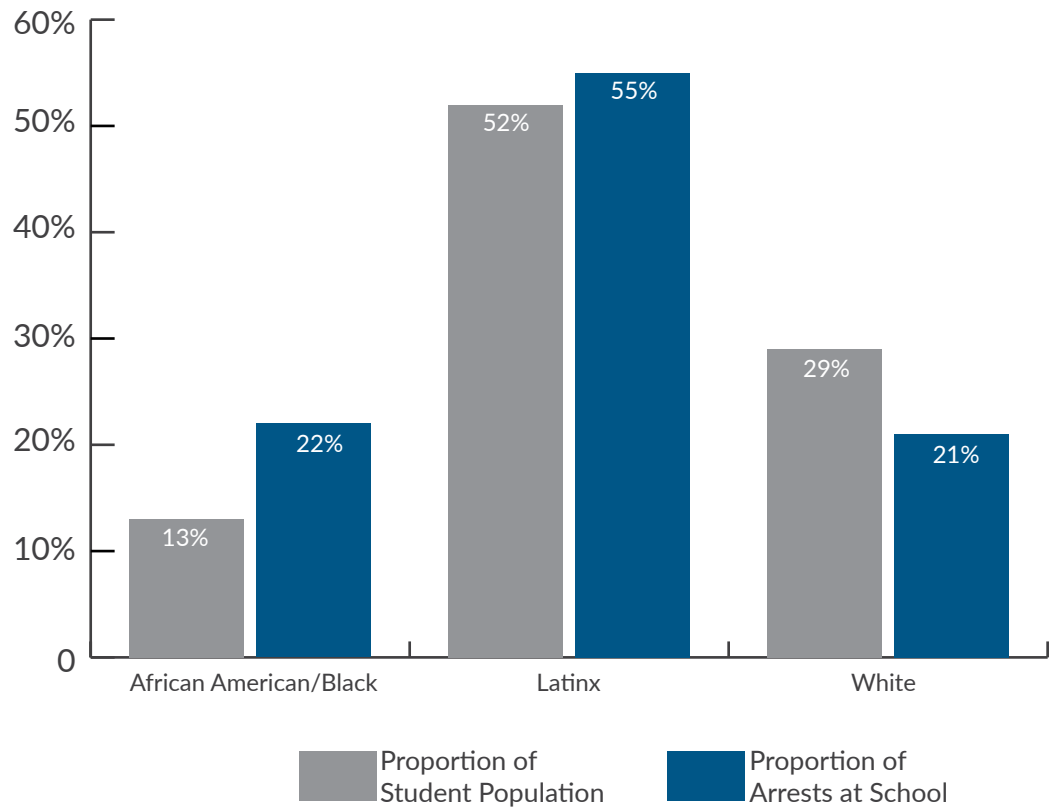
Additionally, forms of discipline and forcible removal from school increase the risk that LGBTQ students, especially students of color, will come into contact with the justice system. Over 200 school districts in Texas employ an internal disciplinary force to handle behavior issues, while many other districts across the state bring law enforcement officers into schools, many of whom do not receive youth-specific training. Only school districts that serve more than 30,000 students require youth-focused competency training for officers in schools.³⁸

As a result, LGBTQ students, particularly Black and Latinx students, are at especially high risk of forcible removal from school (i.e., out of school suspension), arrest at school, and referral to juvenile probation — colloquially known as the school-to-prison pipeline. While it commonly refers to the experiences of Black and Latinx students, LGBTQ students can easily land in the pipeline. The following charts show the discrepancies by race among the various types of disciplinary actions taken against students in Texas public schools.

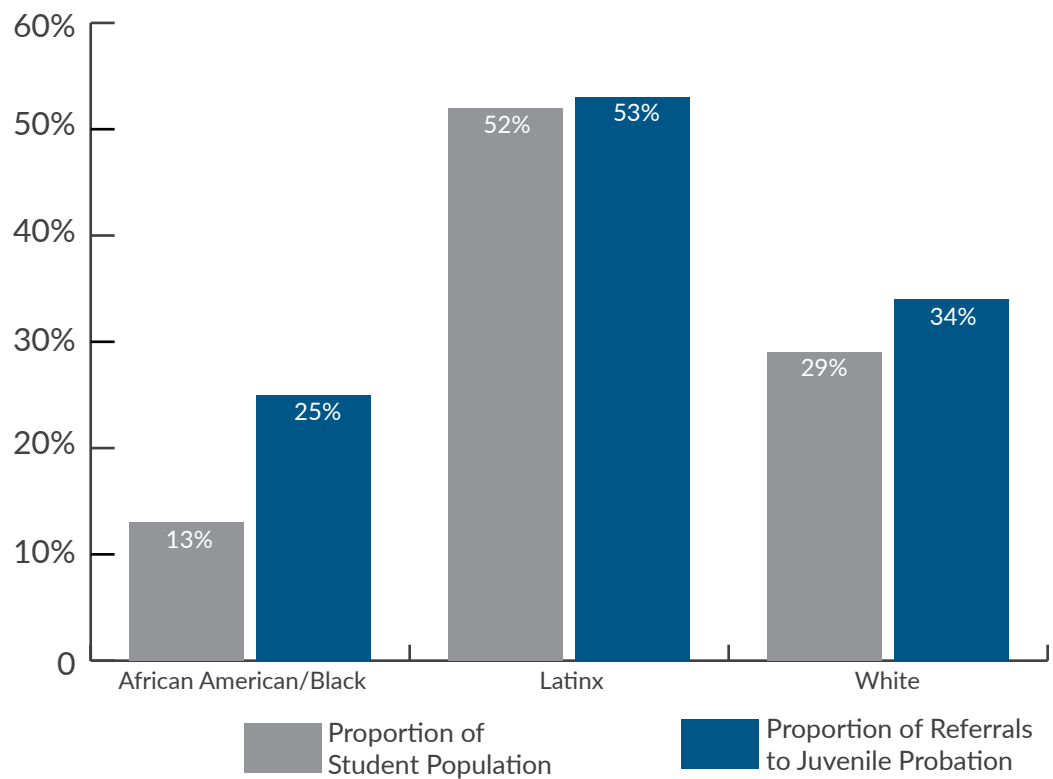
Rates of Out of School Suspensions by Race
Texas Public School Students, 2016–2017



Arrests at School by Race
Texas Public School Students, 2014–2015



Rates of Referrals to Juvenile Probation by Race
Texas Public School Students, 2015



As long as policymakers and school staff continue to support policies that discriminate against LGBTQ students, as well as continue to rely on law enforcement to manage issues and behavior, many LGBTQ students, especially those who are Black and Latinx, will be funneled from the education system to the justice system.

Policy Recommendations to Support LGBTQ Youth

Expand services and support for unsheltered and homeless youth

Roughly 110,000 youth in Texas are unsheltered or homeless, including over 17,000 LGBTQ youth.³⁹ The Legislature should grant additional funding for services and programs that serve homeless and unsheltered youth to break the cycle of housing instability.

Divert unsheltered and homeless youth from the justice system for survival crimes

Research shows that community-based services better address the needs of vulnerable youth than the court system.⁴⁰ Texas should provide incentive funding to counties to promote arrest diversion into community-based services for homeless youth who commit nonviolent survival crimes.

Simplify the process for youth to obtain new government-issued identification documents

The Legislature should order the Texas Department of Public Safety to implement a simplified process for homeless youth and youth who have changed their gender to apply for identification documents.

Collect and publish aggregate data on LGBTQ youth in the Texas foster care and juvenile justice systems

To provide the most effective, data-informed services and support to the LGBTQ youth population, Texas should begin collecting aggregate data on LGBTQ youth in the foster care system and, separately, the juvenile justice system, and take all steps to keep the data as current as possible and make it publicly available.

Promote acceptance and inclusion of LGBTQ youth in Texas' foster care system

Many of the obstacles LGBTQ youth encounter in the foster care system can be attributed to rejection from foster parents whose religious convictions are at odds with providing accepting and affirming care to the youth.⁴¹ Stakeholders should intentionally recruit foster families who are willing to provide LGBTQ youth with the care they need and provide training to help ensure foster families are culturally competent in trauma-informed and inclusive care.

Fund wraparound mental health care and substance use services for youth

Seventy-five percent of mental health conditions develop and appear before the age of 24, which often includes co-occurring substance use; however, less than \$1 out of every \$1,000 of general revenue goes agencies to address substance use disorders.⁴² Legislators should allocate additional funding to school-based and community-based mental health and substance use programs for youth.

Divert youth with mental health conditions and/or substance use disorders from the justice system

Texas must stop using the justice system as a one-size-fits-all response to public health issues. Legislators should instruct law enforcement officers to divert youth with mental health conditions or substance use disorders into community-based diversion services.

Train law enforcement officers how to handle youth experiencing a mental health crisis

The Crisis Intervention Team (CIT) for Youth program trains law enforcement officers in best practices for handling youth with mental health conditions.⁴³ Texas should require all law enforcement agencies coming in contact with youth to receive CIT program training and to divert youth with mental health needs into more appropriate community-based services.

End overreliance on referrals to law enforcement to manage student behavior

Legislators should limit the function of school police officers to school security, rather than student behavior management, and all school police officers should be required to undergo youth-specific training, regardless of the size of the school.⁴⁴

LGBTQ Adults and Texas' Justice Systems

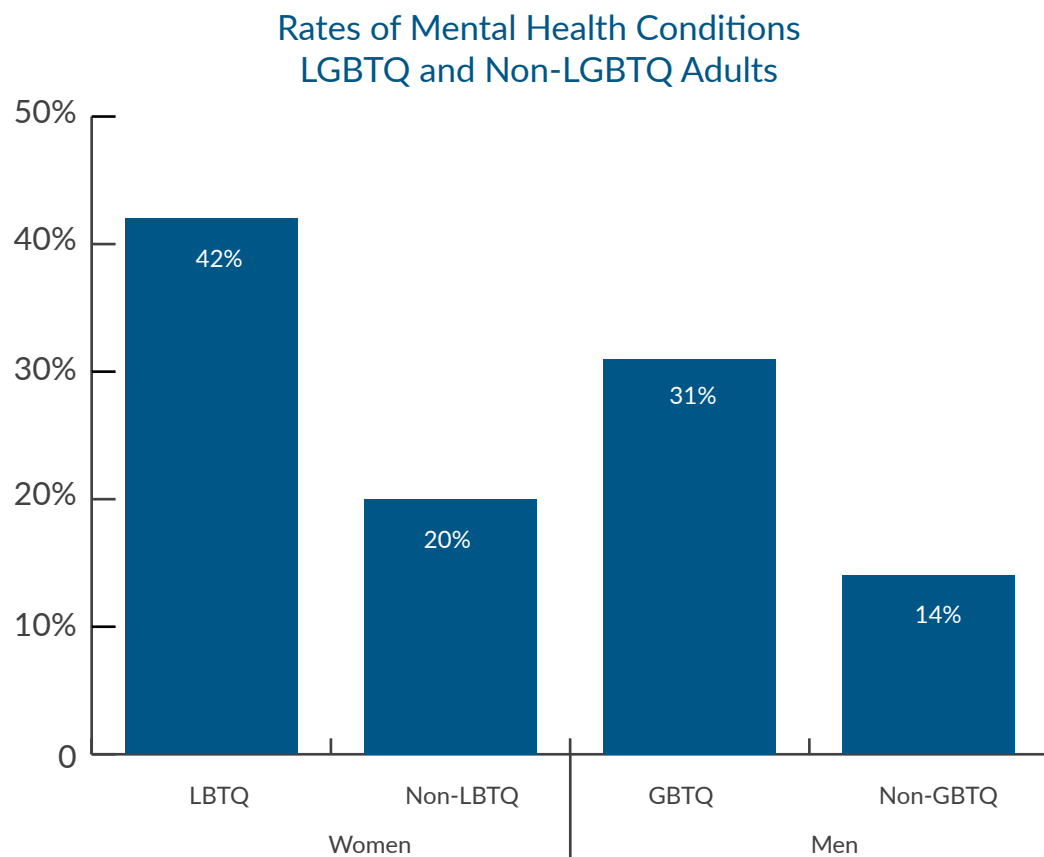
Although they make up 3%–5% of the general adult population in the U.S.,⁴⁵ LGBTQ adults are vastly overrepresented in jails and prisons across the country. The National Inmate Survey (NIS) conducted by the U.S. Bureau of Justice Statistics shows 6% of men in jails and 9% of men in prisons identify as gay, bisexual, or as having had sex with other men. Nationwide, over 36% of women in jails and 42% of women in prisons identify as lesbian, bisexual, or as having had sex with other women.⁴⁶ Only 3% of people incarcerated in the Texas Department of Criminal Justice (TDCJ) self-reported as LGBTI, pointing to apprehension people may feel about self-reporting within the Texas prison system.⁴⁷

Incarcerated LGBTQ people face a myriad of challenges when they openly identify themselves as LGBTQ. They are more likely to experience abuse and harassment by staff and others in the correctional facility, improper placement and solitary confinement, and denial of health care and programming.⁴⁸ Many LGBTQ people

do not identify as LGBTQ at intake to avoid abuse, violence, and mistreatment. Thus, the trauma LGBTQ youth experience often carries into adulthood.

Mental Health Conditions and Substance Use

As with LGBTQ youth, LGBTQ adults experience higher rates of depression, anxiety, and suicidality than non-LGBTQ adults. LGBTQ people are three times more likely than the general population to live with major depression, generalized anxiety disorder, PTSD, thoughts of suicide, or substance abuse disorder.⁴⁹ The chart below shows the greater prevalence of mental health conditions in LGBTQ women than men, and compares the prevalence to non-LGBTQ adults.



In Texas, LGBTQ adults experience mental health conditions at double the rate of non-LGBTQ adults. In the 2015 Behavioral Risk Factor Surveillance System survey, 30% of LGBTQ adults reported that they were diagnosed with a depressive disorder by a health care professional compared to 17% of non-LGBTQ adults.⁵⁰

Research demonstrates the connection between discriminatory public policies and poor mental health. Multiple studies show that mental and physical health improve among LGBTQ people when governments implement policies that protect and support members of LGBTQ communities.⁵¹

Twenty to thirty percent of LGBTQ adults abuse substances, and a quarter of LGBTQ adults abuse alcohol. One study found that 26% of LGBTQ adults in

Texas reported being binge drinkers, and 15% reported being heavy drinkers. Among non-LGBTQ adults in Texas, 14% were binge drinkers and 6% were heavy drinkers.⁵²

Employment, Housing, and Identification Discrimination

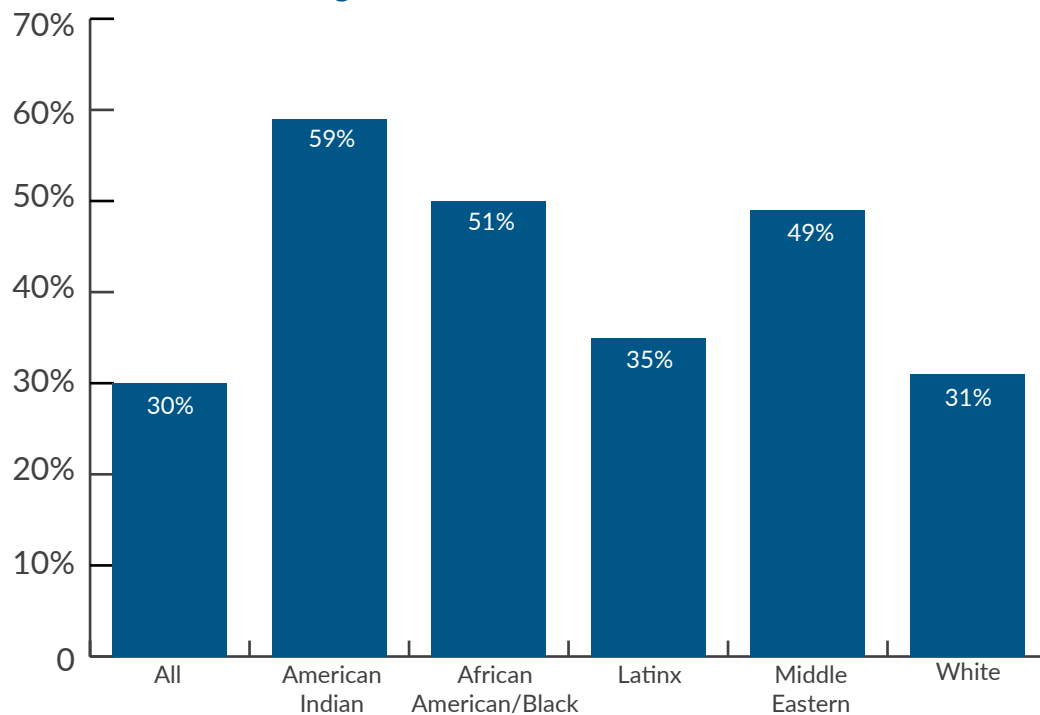
Currently, Texas does not have laws that protect LGBTQ people from discrimination in employment, housing, and public accommodations. No laws prohibit health insurance providers, including state Medicaid, from excluding coverage for transgender individuals. Only 12% of the 27.9 million people living in Texas are covered by some form of LGBTQ non-discrimination law.⁵³

Lawful discrimination is a precursor to justice system involvement and increases the likelihood that LGBTQ people in Texas will become unsheltered or homeless, be unable to access appropriate medical care, be unable to maintain a job, or live in poverty. Without stable housing, income, and access to health care, many LGBTQ people must rely on survival economies to meet their needs, which increases the possibility of sexual exploitation and incarceration. Indeed, the 2015 U.S. Transgender Survey states that almost 20% of transgender people reported having to resort to survival sex, and an even higher percentage reported having to engage in sex work due to discrimination based on their gender identity.⁵⁴

Of the 2,628 felony prostitution arrests of individuals in Texas with three or more prior arrests between May 2017 and April 2018,⁵⁵ only 146 were provided services and programming through community supervision.⁵⁶ Without connection to gender-sensitive programs, resources, and services, the chance of reoffending is astronomically high, potentially tethering them to further sexual exploitation or survival crimes.

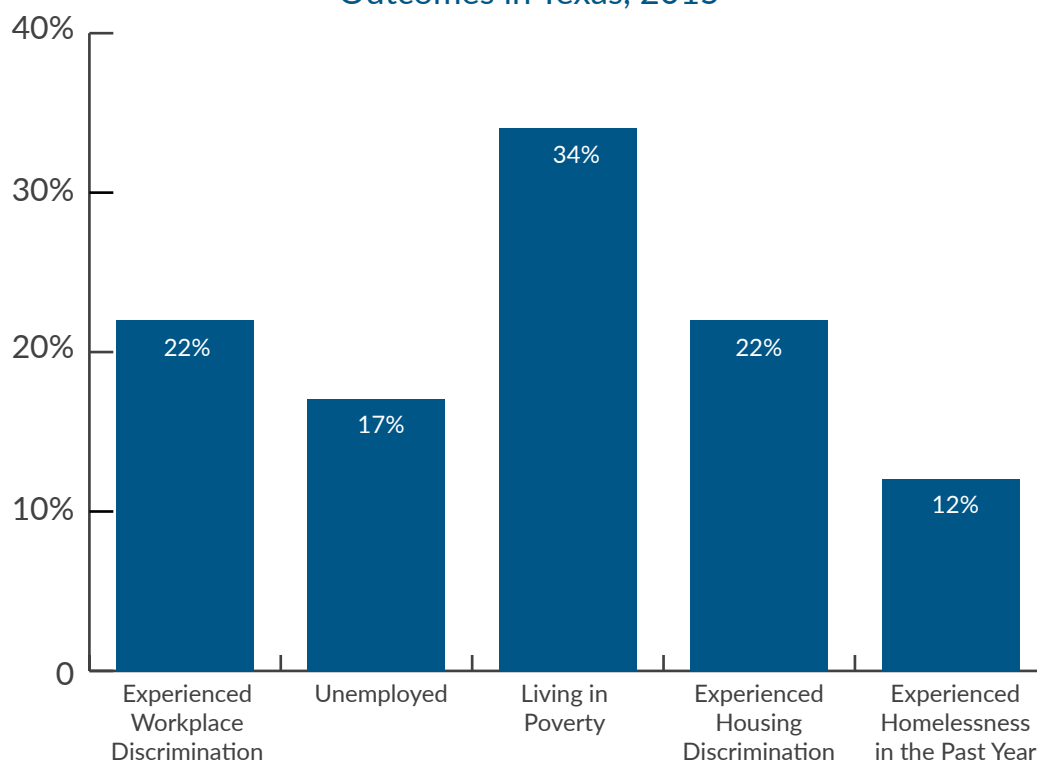
LGBTQ people are more likely to face workplace discrimination, unemployment, poverty, homelessness, and subsequent justice system involvement. A National Center for Transgender Equality (NCTE) study found that 17% of transgender respondents in Texas reported being unemployed and more than 34% of respondents in Texas were living in poverty.⁵⁷ The following chart shows the rates of homelessness among different female transgender communities.

Rates of Homelessness Transgender Women in the U.S., 2015



Nearly a quarter of respondents in Texas reported that they were denied housing or evicted from a home or apartment due to their gender identity or expression. In the past year, 12% reported being homeless.⁵⁸ The chart below demonstrates the rates of discrimination, poverty, and homelessness among transgender people in Texas.

Discrimination Against Transgender People Outcomes in Texas, 2015



Given that Texas law creates nearly insurmountable barriers for transgender adults to change their government-issued identity documents — only about 9% of transgender adults in Texas have been able to change their ID documents.⁵⁹ Transgender adults:

- can legally change their names by submitting a petition to the court— however, they cannot change their names if they have a recent felony conviction (i.e., less than two years old) or are on parole or probation;
- can only obtain an amended birth certificate by submitting a court order to Texas Vital Statistics. There is a fee associated with altering the birth certificate and, at any point in the process, a judge can refuse to grant a court order or certify a petition;⁶⁰ and
- can only change the name or gender on a driver's license by providing an amended birth certificate and a court order.

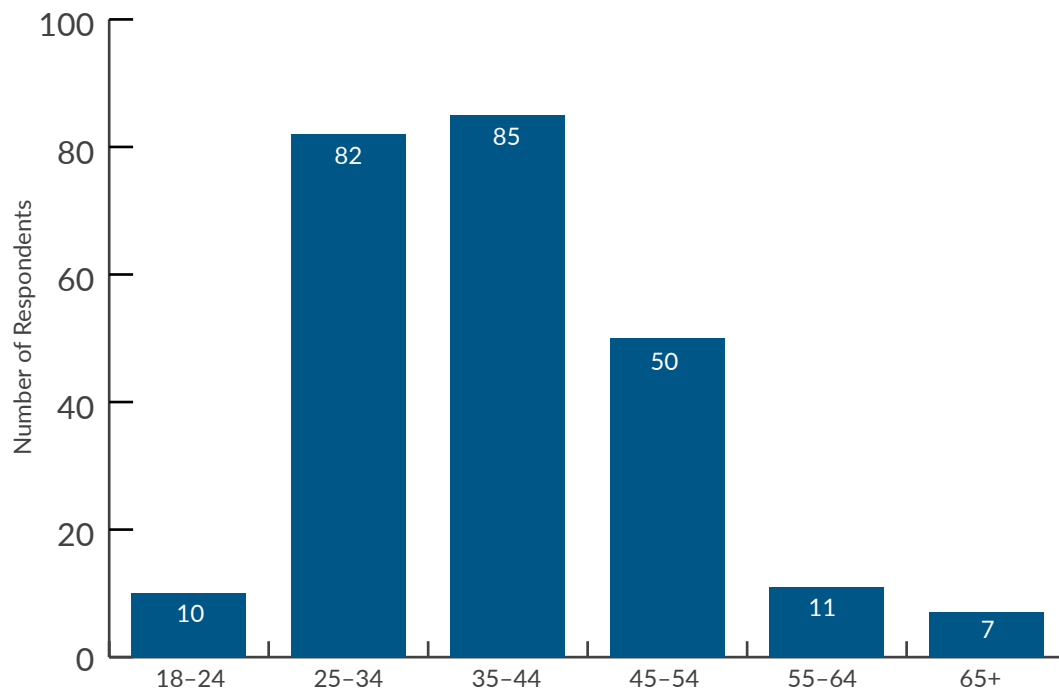
Transgender adults released from a TDCJ facility may experience even more difficulty obtaining a new, correct government-issued ID. TDCJ aims to provide every person exiting a facility with a valid birth certificate, a Social Security card, and a state-issued ID card.⁶¹ A proper ID is crucial to secure employment and housing, and without it, transgender individuals, particularly those who were previously incarcerated, struggle to establish independence.

Failed at Every Stage: Findings from the Black and Pink Survey

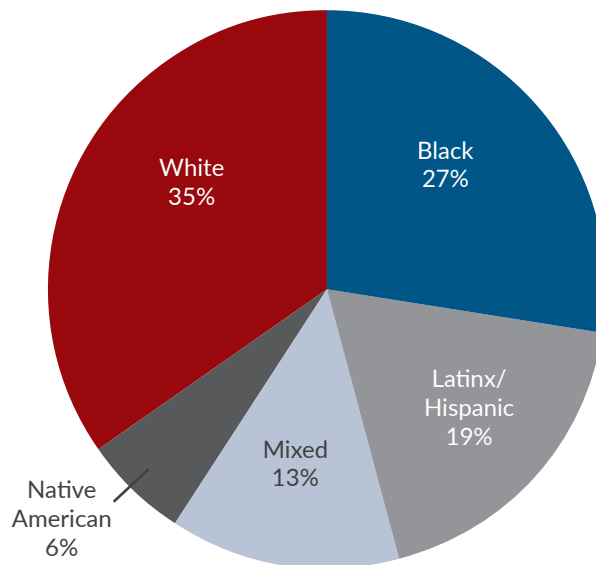
What are the characteristics and experiences of LGBTQ people who are incarcerated in Texas prisons? In 2014, Black and Pink, a coalition of LGBTQ people with justice system involvement and “free world” allies, conducted a survey of over 1,000 LGBTQ-identified people in prisons around the country.

Of the 245 respondents in Texas prisons, 59% identified as LGBTQ before incarceration, 65% struggled with substance abuse, and 58% were diagnosed with a mental illness. The following charts provide the respondents' age and racial composition, age of first incarceration, and sentence length. Note: 64% of respondents were first incarcerated before the age of 22; another 65% of respondents have been incarcerated more than once.

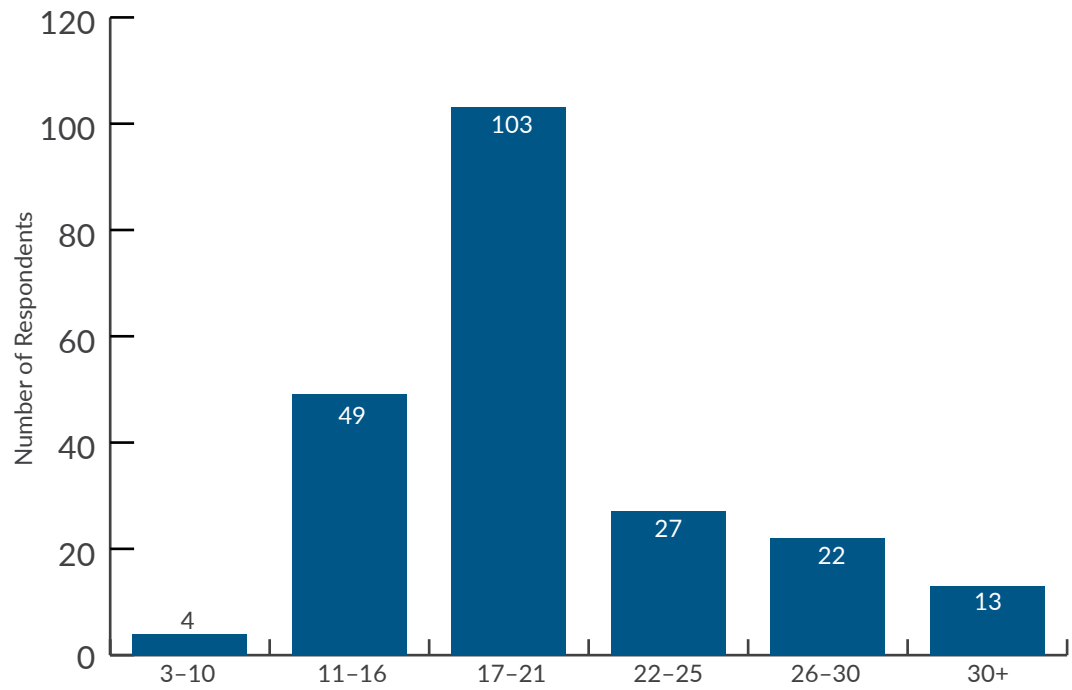
Age Distribution of LGBTQ People in Texas Prisons, 2014



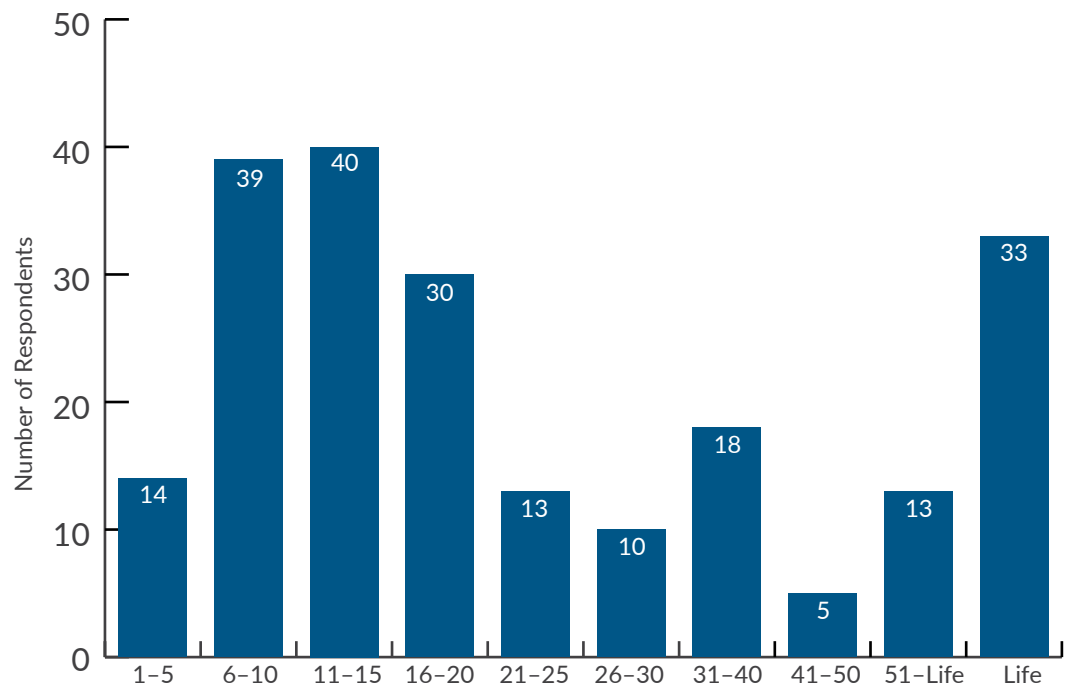
Race Distribution of LGBTQ People in Texas Prisons, 2014



Age of First Incarceration
LGBTQ Respondents in Texas Prisons, 2014



Sentence Length (in Years)
LGBTQ Respondents in Texas Prisons, 2014

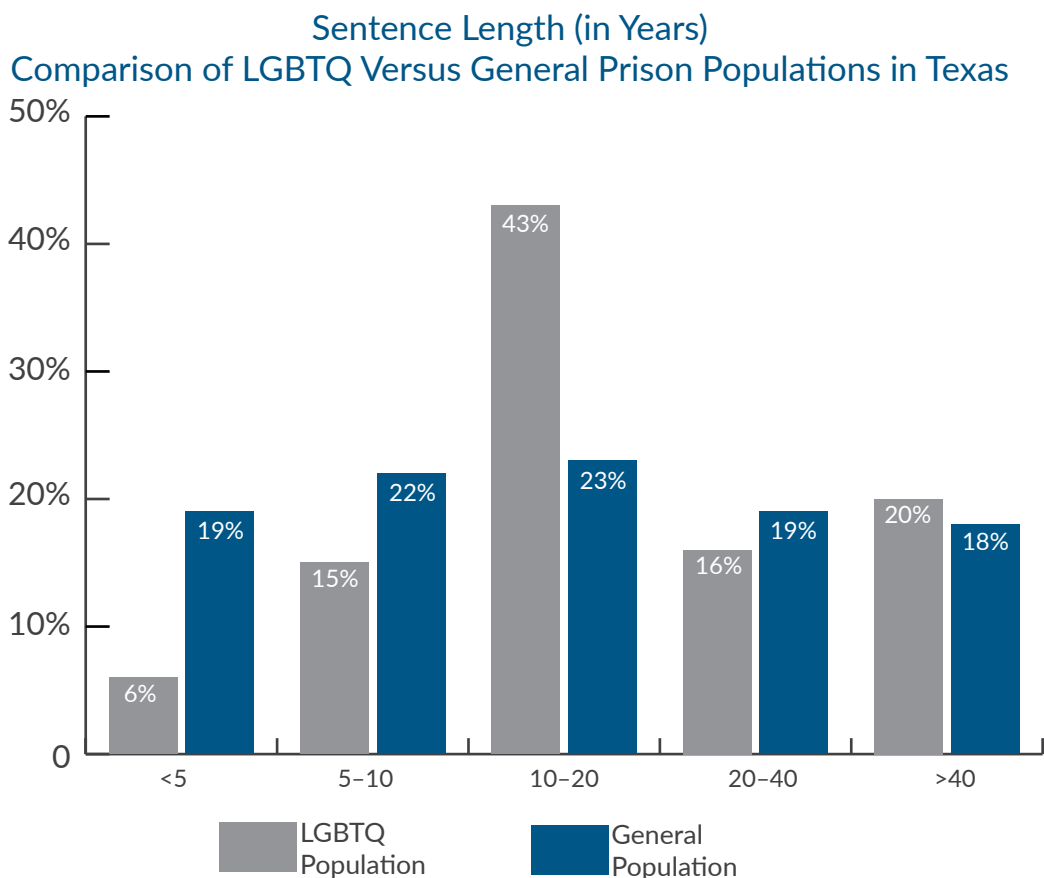


The Black and Pink survey data mirrors what other research has found: Black LGBTQ adults are overrepresented among prison populations, LGBTQ adults tend to receive longer sentences and thus stay in prison until older ages, most were first incarcerated before the age of 22, and the majority of LGBTQ adults in prison have been incarcerated more than once.⁶²

The data also shows that LGBTQ respondents in Texas experienced hardship and discrimination at every point both outside and within the criminal justice system. Seventy-nine percent of respondents reported that they were assigned a court-appointed public defender. An additional 71% of respondents said that they could not afford bail and thus remained in jail prior to trial. Approximately half of all respondents claimed that their attorney (43%), the prosecutor (54%), or the judge (46%) discriminated against them at some point during their trial.

Seventy-seven percent of respondents claimed that prison staff verbally harassed them, and 12% said prison staff sexually assaulted them. Eighty-five percent of respondents reported that others in the prison verbally harassed them, and 69% said that other people physically assaulted them. Eighty-eight percent of transgender and nonbinary gender respondents had experienced verbal harassment by staff in comparison to 74% of cisgender respondents. Eighty-four percent of transgender and nonbinary respondents also had been physically assaulted by another person compared to 66% of cisgender respondents.

The chart below shows the vast majority of LGBTQ survey respondents received a sentence of 10 years or longer, while the majority of the general population received a sentence of 20 years or less.⁶³



Policy Recommendations to Support LGBTQ Adults

Develop wraparound mental health care and substance use disorder services for adults

Texas ranks near the bottom in per capita spending on mental health services in the country. With substantial planned reductions in spending on health and human services at the federal level, Texas agencies could lose billions of dollars in the upcoming years.⁶⁴ Legislators should continue to expand funding of mental health and substance use services and programs and identify ways to fill funding gaps.

Train law enforcement officers how to handle someone experiencing a mental health crisis

Legislators should require all law enforcement agencies to participate in the Crisis Intervention Training (CIT) program. It is critical for officers to be trained in best practices for handling an individual with mental health conditions and substance use issues, building connections between law enforcement and community-based services, and diverting individuals to appropriate mental health services and support.

Divert individuals with mental health conditions and/or substance use disorders from the justice system

Legislators should provide funding mechanisms and instructions to allow law enforcement to divert LGBTQ adults with mental health conditions or substance use disorders into community-based services that will support treatment needs.

Pass legislation prohibiting discrimination in employment and housing

Legislators should explicitly prohibit employment and housing discrimination based on sexual orientation or gender identity and expression.

Simplify the process for changing and obtaining government-issued identification documents

The Legislature should order the Texas Department of Public Safety to implement a simplified process for homeless adults and people who have changed their gender to easily apply for identification documents.

Divert individuals who are experiencing homelessness from the justice system

As long as Texas responds to homelessness with incarceration, the state will continue to waste millions of taxpayer dollars on institutionalizing people. Legislators should instruct law enforcement officers to divert homeless or unsheltered adults who commit nonviolent survival crimes into community-based diversion services.

Create an independent oversight entity over state and county correctional institutions

The Legislature should create an independent oversight entity over the Texas Department of Criminal Justice and county jails to monitor conditions, allegations of abuse, and deprivation of rights, as well as identify opportunities for improvement. An independent monitor should have unrestricted access to incarcerated individuals, records, and correctional staff. Independent oversight will improve conditions for all incarcerated individuals, particularly vulnerable populations such as LGBTQ persons in the justice system.

Endnotes

1. Center for American Progress (CAP) and Movement Advancement Project (MAP), *Unjust: How the Broken Criminal Justice System Fails LGBT People* (2016), <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>.
2. Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N. T. Brown, *Many Adults Identify as Transgender in the United States?* (The Williams Institute 2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.
3. Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey* (National Center for Transgender Equality 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.
4. TDCJ data responsive to an Open Records Request.
5. Definitions used in the glossary obtained from *Unjust: How the Broken Criminal Justice System Fails LGBT People* by the Center for American Progress (CAP) and the Movement Advancement Project (MAP), as well as from *Protected and Served?* by Lambda Legal.
6. Christy Mallory, Taylor N.T. Brown, Stephen T. Russell, Brad Sears, *The Impact of Stigma and Discrimination Against LGBT People in Texas* (The Williams Institute 2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-Impact-of-Stigma-and-Discrimination-Report-April-2017.pdf>.
7. Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade, and Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, Center for Gender & Sexuality Law at Columbia Law School (May 2014) https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.
8. Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth* (The Center for American Progress 2010), <https://cdn.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.
9. Sabra L. Katz-Wise, Margaret Rosario, and Michael Tsappis, "LGBT Youth and Family Acceptance," *Pediatric Clinics of North America* 63, no. 6: 1011–1025 (2016).
10. National Alliance on Mental Illness, "LGBTQ" (2018), <https://www.nami.org/Find-Support/LGBTQ>.
11. Quintana et al., *On the Streets*.
12. Ending Community Homelessness Coalition, *Youth Homelessness Needs Assessment, Austin/Travis County* (2016), <http://www.austinecho.org/wp-content/uploads/2016/11/161214-FINAL-youth-homelessness-needs-assessment-1.pdf>.
13. *Strategic Plan for NEST, Collaborative to Prevent LGBTQ Youth Homelessness*, <http://www.montrosecenter.org/hub/wp-content/uploads/2014/12/NEST-Plan-final-9-14-15.pdf>.
14. Michael Barajas, "San Antonio's Homeless LGBTQ Youth Find a Safe Space to Become Themselves," *San Antonio Current*, June 29, 2016, <https://www.sacurrent.com/the-daily/archives/2016/06/29/san-antonios-homeless-lgbtq-youth-find-a-safe-space-to-become-themselves>.
15. MaDonna Land, Program Director Tony's Place Houston, interview with author.
16. Voices of Youth Count, Travis County, Texas Report on Youth Homelessness: Findings from the Youth County, Brief Youth Survey, and Provider Survey, Chapin Hall at the University of Chicago, 51.
17. Alycia Welch, Director of Policy & Planning, Lone Star Justice Alliance, interview with author.
18. Administration on Children, Youth and Families, *Administration for Children and Families Family and Youth Services Bureau Street Outreach Program: Data Collection Study Final Report*, April 2016, https://www.acf.hhs.gov/sites/default/files/fysb/data_collection_study_final_report_street_outreach_program.pdf.
19. Meredith Dank, Lilly Yu, Jennifer Yahner, Elizabeth Pelletier, Mitchyll Mora, and Brendan Conner, *Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex* (The Urban Institute, September 2015), <https://www.urban.org/sites/default/files/publication/71446/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf>.
20. MaDonna Land interview.
21. Texas Department of Public Safety, *2016 Texas Arrest Data*, <http://www.dps.texas.gov/crimereports/16/citCh9.pdf>.
22. Katayoon Majd, Jody Marksamer, and Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights 2009), http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf.
23. Texas Department of Public Safety (2018), "How to apply for a Texas Identification Card," <https://www.dps.texas.gov/DriverLicense/applyforID.htm>.
24. Laura E. Durso and Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, (The Williams Institute 2012), <https://>

- cloudfront.escholarship.org/dist/prd/content/qt80x75033/qt80x75033.pdf?m=ccu34.
25. Majd et al., *Hidden Injustice*.
26. Rosalyn Erney and Kristen Weber, "Not all Children are Straight and White: Strategies for Serving Youth of Color in Out-of-Home Care Who Identify as LGBTQ," *Child Welfare*, 96, no. 2: 151–177 (2018).
27. National Center for Lesbian Rights, *LGBTQ Youth in the Foster Care System* (2006), http://www.nclrights.org/wp-content/uploads/2013/07/LGBTQ_Youth_In_Foster_Care_System.pdf.
28. Erney and Weber, *Not all Children*.
29. Angela Irvine and Aisha Canfield, "The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population," *Journal of Gender, Social Policy & the Law*, 24: Iss. 2, Article 2, (2016) 3–4, <http://digitalcommons.wcl.american.edu/jgspl/vol24/iss2/2>
30. Greg Hansch, Public Policy Director, National Alliance on Mental Illness Texas, interview with author.
31. Stephen T. Russell and Jessica N. Fish, "Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth," *Annual Review of Clinical Psychology*, Vol. 12 (2016) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4887282/>.
32. Centers for Disease Control and Prevention, Youth Risk Behavior Surveillance System (YRBSS), Search Criteria: 2017, Texas, High School Years, LGB compared to Heterosexual, <https://tinyurl.com/y7kn44gx>.
33. Conor Friedersdorf, "Think Twice Before Calling the Cops on the Mentally Ill," *The Atlantic*, May 15, 2015, <https://www.theatlantic.com/politics/archive/2015/05/dangers-of-calling-the-cops-on-the-mentally-ill/393341/>.
34. Kris Tunac De Pedro, Tamika D. Gilreath, Christopher Jackson, and Monica Christina Esqueda, "Substance Use Among Transgender Students in California Public Middle and High Schools," *Journal of School Health*, Vol. 87, no. 5 (2017) <https://onlinelibrary.wiley.com/doi/pdf/10.1111/josh.12499>
35. John Wright, "Over 900 Texas School Districts Quietly Ban Anti-LGBT Bullying," *The Texas Observer*, September 28, 2015, <https://www.texasobserver.org/texas-school-districts-add-comprehensive-lgbt-protections/>.
36. Movement Advancement Project (MAP) 2018, "Texas' Equality Profile," http://www.lgbtmap.org/equality_maps/profile_state/TX.
37. GLSEN, *School Climate in Texas (2015 State Snapshot)*, <https://www.glsen.org/sites/default/files/Texas%20State%20Snapshot%20-%20NSCS.pdf>.
38. Kihana Ross, Kevin Cokley, Ryan Carlino, Susan Phan, Miranda Badgett, and Jacob Hood, *The State of Black Lives in Texas Education Report* (Institute for Urban Policy Research & Analysis, 2008), <https://utexas.app.box.com/v/2018-black-lives-tx-education>.
39. Texas Appleseed and Texas Network of Youth Services, *Young, Alone, and Homeless in the Lone Star State: Policy Solutions to End Youth Homelessness in Texas* (2017) https://www.texasappleseed.org/sites/default/files/YoungAloneHomeless_FullReport_fin.pdf.
40. Tori DeAngelis, "Better Options for Troubled Teens," *American Psychological Association*, 2011, <http://www.apa.org/monitor/2011/12/troubled-teens.aspx>.
41. Adam McCormick, "Two Views: Gay, Lesbian Couples Are Solution to Foster Care Backlog," *Austin-American Statesman*, April 22, 2016, <https://www.statesman.com/news/20170420/two-views-gay-lesbian-couples-are-solution-to-foster-care-backlog>.
42. Trevor Freeman, "Substance Abuse in the States: Treatment," Blog Post October 3, 2017, *The Council of State Governments*, <http://knowledgecenter.csg.org/kc/content/drug-abuse-states-treatment>.
43. National Center for Mental Health and Juvenile Justice, *Crisis Intervention Teams for Youth*, <https://www.ncmhjj.com/wp-content/uploads/2016/10/CITY-10212016v2.pdf>.
44. Texans Care for Children, "For Safe and Supportive Schools, Limit School Police Officers' Role to School Security," June 12, 2018, <https://txchildren.org/posts/2018/6/12/for-safe-and-supportive-schools-limit-school-police-officers-role-to-school-security>.
45. Frank Newport, "In U.S., Estimate of LGBT Population Rises to 4.5%," *Gallup*, May 22, 2018, <https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx>.
46. Ilan H. Meyer, Andrew R. Flores, Lara Stemple, Adam P. Romero, Bianca D. M. Wilson, and Jody L. Herman, "Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012," *American Journal of Public Health* (2017), 107, no. 2, 234–240.
47. TDCJ data responsive to an Open Records Request.
48. Lambda Legal, *Protected and Served?: Jails and Prisons*, https://www.lambdalegal.org/sites/default/files/publications/downloads/ps_executive-summary.pdf.
49. National Alliance on Mental Illness, "LGBTQ," <https://www.nami.org/Find-Support/LGBTQ>.
50. Mallory et al., *The Impact of Stigma and Discrimination*.
51. American Psychiatric Association, "Leading Mental Health Organizations Urge an End to Harmful 'Religious Freedom' Laws," April 20, 2016, <https://www.psychiatry.org/newsroom/news-releases/leading-mental-health-organizations-urge-an-end-to-harmful-religious-freedom-laws>.
52. Mallory et al., *The Impact of Stigma and Discrimination*.
53. Movement Advancement Project (MAP), *Texas' Equality Profile* (2018), http://www.lgbtmap.org/equality_maps/profile_state/TX.
54. National Center for Transgender Equality, "Poorly Considered Anti-Trafficking Policies Can Harm Trans Sex Workers," *Medium*, December 17, 2017, <https://medium.com/transequitynow/poorly-considered-anti-trafficking-policies-can-harm-trans-sex-workers-1366d48dab00>.
55. Department of Public Safety, Data Requests, State Jail Felony Arrests May 2017–April 2018, received August 2018.
56. Texas Department of Criminal Justice, State Jail Felony Probation Placements May 2017–April 2018, received August 2018.
57. Christy Mallory and Brad Sears, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Texas*, (The Williams Institute 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-ND-May-2015.pdf>.
58. National Center for Transgender Equality, *2015 U.S. Transgender Survey, Texas State Report* (2017), <http://www.transequity.org/sites/default/files/docs/usts/USTSTXStateReport%281017%29.pdf>.
59. Lou Weaver, Transgender Programs Coordinator, Equality Texas, interview with author.
60. National Center for Transgender Equality, *ID Documents Center: Texas* (2018), <https://transequity.org/documents/state/texas>.
61. Brad Livingston, "TDCJ Helps Secure State-Issued IDs to Aid Offender Reintegration," *Criminal Justice Connections*, March/April 2014, https://www.tdcj.state.tx.us/connections/MarApr2014/agency_vol21no4.html.
62. Meyer et al., "Incarceration Rates."
63. Jason Lydon, *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey*, Black and Pink, 27, <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets-Black-and-Pink-October-21-2015-.pdf>.
64. Joe Giuliani, "Texas Still Near Last in Mental Health Funding," *Community Impact Newspaper*, June 7, 2017, <https://communityimpact.com/houston/richmond/healthcare/2017/06/07/texas-still-near-last-mental-health-funding-2/>.

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