

January 22, 2024 **FEATURE**

A Crisis Behind Bars: Legal Issues Impacting Transgender People in Prisons

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The modern movement for LGBTQ+ rights has been characterized by resistance to the criminalization of LGBTQ+ identities. Criminal laws have been used against LGBTQ+ people in various areas of their lives because such laws criminalized them for who they are. For example, sodomy laws were used to justify firing an LGBTQ+ person or to deny them custody of a child. And the AIDS epidemic starting in the 1980s also brought new laws that criminalized people living with HIV and further stigmatizing LGBTQ+ people. In 2003, as the result of decades of activism, *Lawrence v. Texas*, 539 U.S. 558 (2003), marked a turning point, as the US Supreme Court held that the US Constitution protects the liberty of LGBTQ+ people to forge intimate personal relationships and engage in private, consensual sexual conduct. *Lawrence* was a landmark advancement in the community’s fight for legal equality and a foundation for marriage equality. The community also gained and affirmed rights that protect against discrimination through legislative advocacy and litigation.

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Despite this progress, transgender people continue to be disproportionately impacted by systemic violence and discrimination. For example, the 2023 state

legislative sessions were the most dangerous targeted attacks against transgender and nonbinary people, particularly young people. Several state legislators used the criminal legal system to pass extreme laws that would make providing health care a felony, increase policing of LGBTQ+ people, attempt to outlaw and force drag performers out of the public's view, and forbid the mere mention of LGBTQ+ people. Cullen Peele, [Roundup of Anti-LGBTQ+ Legislation Advancing in States Across the Country](#), Human Rts. Campaign (May 23, 2023).

Throughout this modern history of criminal laws and policing against the community, public defenders and the defense bar have fought against these unconstitutional and discriminatory laws. Indeed, for many members of the bar, this is a personal attack on them and their families. And for the community, this has caused many to have experience or contact with the criminal legal system. For example, LGBTQ+ people are incarcerated at higher rates than non-LGBTQ+ people, and states continue to criminalize people living with HIV and people engaged in sex work. Yet, despite the long history of targeted attacks on transgender people, historically as a movement there has been a relative lack of representation of transgender people and centering the needs of transgender people. And transgender, gender-nonconforming, and nonbinary (TGNCNB)–led movements often report lower levels of support and collaboration from outside the TGNCNB community. This is a call for us to prioritize the safety, health, and well-being of transgender people in our work. Advocates must strive to identify the major legal issues that impact incarcerated transgender people and understand the legal claims and barriers to addressing these harms.

Protected and Served? A Community Survey on LGBTQ+ People, People Living with HIV, and the Criminal Legal System

In 2012, Lambda Legal's *Protected and Served?* community survey found that LGBTQ+ people and people living with HIV experience significant discrimination at the hands of government entities. Lambda Legal, [Protected](#)

[*and Served?: Executive Summary*](#) (2012). Compounded by factors such as race and income, this discrimination can take many forms, such as harassment and violence by police or prison guards, discriminatory statements by court personnel, hostility by school security, and disproportionate discipline by school administrators. See generally Chinyere Ezie, *Dismantling the Discrimination-to-Incarceration Pipeline for Trans People of Color*, 19 Univ. of St. Thomas L.J. 276 (2023). The survey found that many in the criminal legal system operate under official or *de facto* policies, practices, and attitudes that have historically characterized LGBTQ+ people and people living with HIV as criminals.

Over the past decade, there has been some progress in the courts, police departments, and prisons and jails. However, that progress is limited by ongoing violence against the community, the lack of accountability, and limited enforcement of policies and the law. Since that original survey, awareness of the ways that the criminal legal system harms Black, Indigenous, and people of color (BIPOC); LGBTQ+ people; and others who have been made marginalized has grown significantly, due in no small part to the 2020 racial uprisings against police violence in response to the murder of George Floyd and others by police. LGBTQ+ people have been among those at the forefront of protests against police violence and the push to address the systemic violence against marginalized communities inflicted by the criminal legal system in this country. There is much more to be done to address the historic and ongoing harms of the criminal legal system, mass incarceration, and police violence.

In April 2023, Lambda Legal, in partnership with Black and Pink National, a prison abolitionist organization, released *Protected and Served? 2022*, a report that shows the alarming rates of misconduct, abuse, and discrimination LGBTQ+ people and people living with HIV experience in the criminal legal system. Somjen Frazer et al., [*Protected and Served?*](#) (2023). The 2022 survey included new areas of focus and framed many questions differently from the 2012 survey and was not designed to provide specific measures of stasis or change over the past 10 years. But on at least two measures—just as they did in the 2012 report—BIPOC and/or TGNCNB people report significantly worse experiences with the criminal legal system. These disparities are a stark charge

to advocates and organizations to address racism, sexism, and transphobia in this system as foundational to their work. As a resource, for a glossary of terms used in this article and other terms, please see the *Protected and Served?2022* report.

The 2022 *Protected and Served?* survey heard from over 2,500 participants, including over 400 who were detained at the time of the survey, and found the following key points:

- **Low trust in government institutions:** Participants who had face-to-face encounters with police in the past five years (57 percent) were less likely to trust the police than those who did not.
- **Among those who had face-to-face interactions with police in the past five years,** TGNCNB participants experienced higher rates of physical, verbal, and sexual abuse in their most recent interaction with police than cisgender participants.
- **Abuse in detention is the norm, not the exception.** An overwhelming majority (94.3 percent) of detained participants reported experiencing abuse in prisons and jails, including one or a combination of 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.
- **Half of all participants that had engaged in sex work experienced police misconduct.** About 18 percent of survey participants indicated that they had “exchanged sex or sexual performance for money or other things of value” in the past five years. Half experienced some form of police misconduct while working in this capacity. Participants indicated that most commonly, police took their money (26 percent) or demanded sex in exchange for not arresting them (18 percent).

The 2022 survey found that in the courts, transgender participants of color were more likely to have their transgender status inappropriately revealed than white trans participants (38 percent vs. 22 percent). *2022 Protected and*

Served? at 37. For transgender people, respect and discretion is critical, especially around their transgender status. Being outed in a public and sensitive environment can be a danger to their safety. In the 2012 survey, 33 percent of transgender and gender-nonconforming respondents reported hearing discriminatory comments about sexual orientation or gender identity/gender expression in the courts. *Protected and Served?: Executive Summary, supra*. In a different survey, 13 percent of respondents who had in the previous year visited a court where employees thought or knew that they were transgender experienced at least one type of negative experience, including being denied equal treatment or service, verbally harassed, and/or physically attacked. Sandy E. James et al., Nat'l Ctr. for Transgender Equal., [The Report of the 2015 U.S. Transgender Survey](#) 214 (2016). Transgender people, like all people, must be able to access the courts free from concerns about bias, prejudice, and discrimination.

To illustrate this issue, in an outlier case, *United States v. Varner*, 948 F.3d 250 (5th Cir. 2020), the US Court of Appeals, Fifth Circuit, issued a decision that a federal court cannot require litigants, judges, court personnel, or anyone else to refer to litigants using pronouns matching their gender identity. Lambda Legal filed an amicus brief to ask the court to remove the harmful and disrespectful language in its opinion, which denied the party's request to be referred to consistently with her gender identity. The brief noted the ruling was well beyond the merits of the case at hand and that, regardless, judges have an ethical duty to ensure that all people, including transgender people, are treated fairly and respectfully in court. *See* Code of Conduct for United States Judges Canon 3A(3) (Jud. Conf. 2019) (requiring judges to "be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity"). This duty includes "the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias." *Id.* at Canon 3A(3) cmt. Judges are forbidden to engage in misconduct, including discrimination based on gender identity. *Id.* at Canon 3B(4) cmt. Unfortunately, the court did not do so. This is in contrast to the US Supreme Court and every other Circuit Court of Appeals in the country, all which have issued at least one opinion in which the pronouns consistent with the gender identity of a transgender person were

appropriately used. It is vital for the community's trust that courts are impartial, and everyone receives equal treatment under the law.

A Crisis Behind Bars

Verbal harassment and discrimination in courts is just one example of the bias that transgender people face in the criminal legal system. Transgender people also encounter harassment and violence from law enforcement and other government actors within the system. The experiences within carceral institutions are illustrative of the ways the entire system is levied to harm transgender people and is strong evidence that advocacy must focus on the needs of incarcerated transgender people. Each year, Lambda Legal receives hundreds of requests for assistance from incarcerated transgender people who have been denied medically necessary health care, who have been punished for attempting to socially transition through their gender expression, who have been sexually victimized, or who have had their grievances ignored outright by departments of corrections—leaving the court system as their only means of recourse. From 2020–2022, Lambda Legal received over 1,000 calls for help from incarcerated people. Of those, almost 40 percent were from transgender or nonbinary people. Many are encountering multiple issues at the same time. There is a crisis behind bars and a desperate need for legal assistance.

Although just 0.6 percent of the adult US population—about 1.4 million people—are transgender, transgender people are significantly overrepresented in prisons and jails because of systemic discrimination against them. Andrew R. Flores et al., Williams Inst., *How Many Adults Identify as Transgender in the United States?* 3 (2016); Nat'l Ctr. for Transgender Equality, *LGBTQ People Behind Bars* 5 (2018), (noting transgender people report being incarcerated at twice the rate of the general population). Studies have shown that one out of six (or 16 percent) of transgender people have been incarcerated at some time during their lives—a rate that skyrockets to 47 percent among Black transgender people. Mara Keisling et al., Ctr. for Transgender Equal. & Nat'l Gay & Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 163 (2011). A 2015 study of 28,000

transgender Americans also revealed that one in 10 (9 percent) Black transgender women and nearly 2 percent of all transgender people polled had been incarcerated in the previous year—five to 10 times the incarceration rate of the general population. James et al., *supra*, at 190.

It is important to note that most of the available information, including case law, discusses the legal needs of transgender women—and mostly women who have been housed in men’s facilities. This focus is understandable given the relative lack of information available on this particularly vulnerable and historically neglected community. The lives and needs of transgender men, nonbinary people, and intersex people must not be forgotten. It is possible that the available numbers do not fully capture the extent of the harms faced by transgender people, which is a diverse community. For example, as a safety measure, some people might not disclose that they are transgender. Nonbinary, gender-nonconforming, or intersex people might not be included or might be excluded from this dataset. Furthermore, some cisgender people may face anti-transgender harassment or violence based on bigoted views of what a woman or man should look like. Those who do not conform to binary ideas of gender expression are also harmed.

The Eighth Amendment and Transgender Rights

The Eighth Amendment to the US Constitution has been a powerful tool to address safety issues, including the serious risk of harm caused by housing someone in a facility that does not correspond to their gender identity and denial of medical care for transgender people in civil litigation. For advocates, *Farmer v. Brennan*, 511 U.S. 825 (1994), is one of the most important cases concerning the rights of incarcerated people. In *Farmer*, the US Supreme Court held that someone who is raped while incarcerated due to the “deliberate indifference” of prison officials suffers cruel and unusual punishment under the Eighth Amendment. But what is often not discussed is that Ms. Dee Farmer, a Black transgender woman, is the first openly transgender person to have her case heard before the Court. Her case has been relied on in thousands of cases concerning the liability of prison officials who acted with deliberate indifference to a substantial risk of serious harm to an incarcerated person and

was influential for the federal Prison Rape Elimination Act, Pub. L. No. 108-79, 117 Stat. 972 (codified as 34 U.S.C. § 30301 et seq.) (2003) (PREA).

Safety and Housing: Ms. Farmer’s story is sadly not unique or rare. Incarcerated transgender people experience a disproportionate and disturbing level of sexual violence in prisons and jails. PREA recognized that LGBTQ+ people are particularly vulnerable and are at heightened risk for sexual assault. *See* Nat’l Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,106, 37,109 (June 20, 2012). Research, recognized by courts and social scientists alike, demonstrates the extraordinary forces—including systemic and repeated trauma, abuse, betrayal, and fear of retaliation that transgender and gender-nonconforming people and incarcerated people experience. *See, e.g.,* James et al., *supra*. At least 15 percent of all transgender people report being sexually assaulted while in police custody or in jail. Off. for Victims of Crime, [Sexual Assault in the Transgender Community 2](#) (2014). And research demonstrates that once an incarcerated transgender person has been a victim of sexual assault, they are more likely to experience further assaults. Just Detention Int’l, [Targets for Abuse: Transgender Inmates and Prison Rape 2](#) (Mar. 2013), (“Once targeted for abuse, the majority of transgender survivors are subjected to repeated sexual assaults.”).

Advocates can use the PREA Standards to establish that constitutional rights or other laws have been violated. When determining whether to house a transgender prisoner in a facility for males or females, the PREA Standards require prison officials to “consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.” 28 C.F.R. § 115.42(c). And an incarcerated transgender person’s own views as to their safety must be given “serious consideration.” *Id.* § 115.42(e). In support of this, the US Department of Justice has argued that categorical refusals to transfer an incarcerated transgender person to housing that corresponds to their gender identity without due consideration of the risks identified by screenings and assessments violate the Eighth Amendment’s prohibition on cruel and unusual punishment. And a failure to ever house transgender prisoners in housing that corresponds to their gender identity suggests that the requisite screening and

assessments are either not taking place or are so inadequate as to be entirely ineffective. Statement of Interest of the United States, *Diamond v. Ward*, No. 20-cv-00453, 2022 WL 3221224, at *9 (M.D. Ga. Nov. 1, 2021); *see also* [PREA Frequently Asked Questions](#), US Dep't of Just., Nat'l PREA Res. Ctr., (2016).

Additionally, courts in both civil and criminal proceedings should consider other factors to establish the risk of sexual violence to incarcerated LGBTQ+ people, particularly transgender women. First, contrary to PREA and its implementing regulations, prisons and jails almost always house transgender women based on their anatomy, not their gender identity. Therefore, “they often have to shower and change their clothes in front of male inmates and staff,” they are often prevented from presenting as women, and they are placed at significant risk for violence. Kate Sosin, [Trans, Imprisoned—and Trapped](#), NBC News (Feb. 26, 2020); *see also* Just Detention Int'l, *Targets for Abuse, supra*, at 2. Based on the widespread violence that transgender people endure, this violence is not just a hypothetical risk. Second, “sexual abuse thrives in prisons and jails in which staff allow, or participate in, the degradation of inmates on the basis of their gender identity.” *Id.* Third, those who present “stereotypically feminine characteristics are especially vulnerable to sexual abuse.” Hum. Rts. Watch, [No Escape: Male Rape in U.S. Prisons](#) (2001). For example, in *Greene v. Bowles*, 361 F.3d 290, 292, 294 (6th Cir. 2004), the court stated that to defeat summary judgment, a transgender woman “need only point to evidence from which a finder of fact could conclude her vulnerability made her placement . . . a substantial risk to her safety . . .,” including the plaintiff’s “feminine demeanor” and appearance in the vulnerability analysis. This is, of course, much more complex, as femininity itself is a target in a male prison, compounded by the power relationship and sexual regulation of carceral spaces. And a person who has a feminine or nonbinary gender expression in a male facility can be dangerously stereotyped as sexually deviant or promiscuous so that they are targeted for violence, or if they do experience violence and report it, their claim might not be taken seriously, or they may be blamed for it.

In advocating for a client’s safety and/or risk created by housing placement, one should develop a record that details the risk, who it was reported to, and what, if anything, was done to address the risk. Advocates can use information

about risk to a client during the criminal sentencing phase or when initial housing decisions are being made. For example, criminal defense attorneys may consider seeking amicus support at the sentencing phase to discuss the safety risk and other housing issues experienced by LGBTQ+ people. Both advocates and incarcerated people can refer to the PREA Standards if they are at risk of sexual victimization, for enforcement procedures of department policies, or to show where a policy in practice deviates from the standards. These can be urgent situations, especially if someone is dealing with an immediate risk of harm.

Access to Medically Necessary Health Care: The Eighth Amendment can be used to protect an incarcerated person's right to medically necessary care in civil litigation. It is well established that the US Constitution requires that state prison systems and officials must not deny medically necessary care to people in its custody or intentionally delay or interfere with the treatment once prescribed. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). There is no exception for particular medical conditions, including gender dysphoria. Indeed, courts have recognized that delays or interference with medical treatment for transgender people can cause irreparable harm, including emotional distress, anxiety, depression, attempts at self-treatment, and, in some cases, death by suicide. There is broad agreement among leading medical and mental-health professional associations and organizations—including the American Medical Association, the American Psychological Association, the American Psychiatric Association, the American Academy of Family Physicians, the American Congress of Obstetricians and Gynecologists, the Endocrine Society, the National Association of Social Workers, and the World Professional Association for Transgender Health—that gender dysphoria is a serious medical condition and that treatment for gender dysphoria is medically necessary. Press Release, Endocrine Soc'y, [AMA Strengthens Its Policy on Protecting Access to Gender-Affirming Care](#) (June 12, 2023); Lauren Mizock et al., Am. Psych. Ass'n, [Fact Sheet: Gender Diversity and Transgender Identity in Adolescents](#), (last visited Nov. 3, 2023); Am. Psych. Ass'n, [Guidelines for Psychological Practice with Transgender and Gender Nonconforming People](#), 70 Am. Psych. 832, 861 (Dec. 2015); [Position Statement on Treatment of Transgender \(Trans\) and Gender Diverse Youth](#), Am. Psychiatric Ass'n. (2020); [Care for the Transgender and](#)

Gender Nonbinary Patient, Am. Acad. of Fam. Physicians (Oct. 2020); [Debunking the Myths About Gender-Affirming Care](#), Nat. Assoc. of Soc. Workers (last visited Sept. 6, 2023).

Gender dysphoria is the medical diagnosis used to describe the clinically significant distress that arises from the conflict between a transgender person's assigned birth sex and gender identity. If left medically untreated, gender dysphoria can result in debilitating depression, anxiety, and, for some people, suicidality, and death. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013). Courts have consistently recognized that gender dysphoria is a serious medical condition. *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019) (recognizing that gender dysphoria is a sufficiently serious medical need to implicate the Eighth Amendment) (collecting cases). The international medical professional association focused on transgender health needs, the World Professional Association for Transgender Health, Inc. (WPATH), has established internationally accepted Standards of Care (WPATH Standards) for the treatment of gender dysphoria. See World Pro. Ass'n for Transgender Health, [Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 8](#), 23 Int'l J. Transgender Health (Supplement 1) S1, S18 (2022) ("Gender-affirming interventions are based on decades of clinical experience and research; therefore, they are not considered experimental, cosmetic, or for the mere convenience of a patient. They are safe and effective at reducing gender incongruence and gender dysphoria."). As part of the WPATH Standards, people with gender dysphoria may undergo a process of social and medical transition, the effectiveness of which is supported by robust clinical research, to live in a manner consistent with their gender identity.

In practice, prison and jail departments and officials have argued that the course of treatment they have provided is adequate despite gross deviations from accepted standards of care, or that the necessary care is elective or cosmetic. In some instances, incarcerated people have alleged that departments have denied or severely delayed initial assessments to receive a diagnosis. As with other medical and mental health conditions, the proper treatment for gender dysphoria depends on the individual patient's medical

needs. One issue that has come up in health care cases is that through policy or practice, a department has prohibited the provision of certain treatments. For example, in *Hicklin v. Precythe*, No. 16-CV-01357, 2021 WL 5881766 (E.D. Mo. Dec. 13, 2021), Jessica Hicklin challenged a Missouri Department of Corrections (MDOC) “freeze-frame” policy that barred access to hormone therapy as treatment for gender dysphoria for those in its custody if they were not receiving treatment prior to incarceration. Although multiple medical and mental health experts confirmed Ms. Hicklin’s gender dysphoria diagnosis and strongly advised hormone therapy, access to gender-affirming canteen items, and permanent hair removal in accordance with the current treatment standards, MDOC officials denied Ms. Hicklin those medically necessary interventions. The lack of appropriate treatment for gender dysphoria caused Ms. Hicklin to experience serious psychological and physical symptoms (including panic attacks, anxiety, racing heartbeat, shortness of breath, sleep disturbance, lack of appetite, headaches, and excessive sweating) and put her at substantial risk of self-harm, including auto-castration and suicidal thoughts or acts.

The district court struck down the policy as cruel and unusual punishment because it denied vital health care to Ms. Hicklin. The court permanently barred defendants from enforcing the discriminatory “freeze-frame” policy and found that policy is a blanket ban on providing hormone treatment to any transgender person who was not receiving such treatment prior to incarceration. Despite the victory in *Hicklin* and other cases concerning access to gender-affirming care, Lambda Legal continues to hear from incarcerated people that departments have blanket bans on providing gender affirming surgeries in defiance of the case law establishing that such bans are unconstitutional.

Gender Dysphoria Is Protected under the Americans with Disabilities Act

In addition to constitutional protections, the Americans with Disabilities Act (ADA) could be a powerful legal tool to protect the rights of transgender and nonbinary people who experience gender dysphoria in prisons and jails.

Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Over 20 years ago, in *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 210 (1998), the US Supreme Court held that the ADA applies to prisons. The ADA also applies to jails, law enforcement agencies, and courts. [Criminal Justice](#), U.S. Dep't of Just., Civ. Rts. Div. (2023).

In *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), Kesha Williams was incarcerated for six months at the Fairfax County Adult Detention Center. Ms. Williams was initially placed in women's housing but was moved to men's housing after staff learned that she was a transgender woman experiencing gender dysphoria. Ms. Williams alleged that her hormone medication was confiscated and her medical care was delayed or denied. She also experienced harassment by other incarcerated people and persistent, intentional misgendering and harassment by prison deputies. Ms. Williams' requests to shower privately and have body searches conducted by women on staff were also denied. After her release, Ms. Williams filed a lawsuit alleging violations of the ADA and other claims.

As a matter of first impression, the US Court of Appeals, Fourth Circuit, held that gender dysphoria is not a "gender identity disorder" within the meaning of the ADA's exclusion for gender identity disorders not resulting from physical impairments. This means that for purposes of the ADA, a person who experiences gender dysphoria could establish that they are a qualified individual with a disability. Before *Williams*, many district courts had come to the same conclusion. See *Doe v. Pa. Dep't of Corr.*, No. 20-cv-00023, 2021 WL 1583556, at *8-9 (E.D. Pa. Feb. 19, 2021) (collecting cases). At the end of the US Supreme Court's term, the Court denied a writ of certiorari over a blistering dissent by Justice Alito, leaving the Fourth Circuit ruling in place.

In practice, many facilities and departments have ADA coordinators to enforce the ADA, which incarcerated people have used for many years. People with gender dysphoria should be able to use the ADA processes in place to request

reasonable accommodations or to report discrimination or harassment because of their gender dysphoria as an additional way to protect their rights.

What Can Advocates Do?

There are many points within the criminal legal system where advocacy and resources are needed to protect the rights of incarcerated transgender people and to address discrimination and bias. Community members, advocates, and advocacy organizations must invest in and support TGNCNB-led organizations. Advocates must provide resources to those directly harmed by the criminal legal system. Advocates must be fully cognizant of the harms that they could cause to transgender people and organizations if they tokenize them, and they must work to prevent this.

One glaring obstacle for incarcerated people to enforce their rights is lack of resources and the many barriers that exist to asserting their rights. For example, a huge percentage of these cases are *pro se*. Often the complaint is screened out before the defendants are even served because the complaint lacks the necessary allegations to state the claim. Health care cases are resource-intensive and require the building of a record to show what care was provided, the adequacy of such care, or the denial of care. For cases involving treatment for gender dysphoria, expert witnesses, which may not be available for *pro se* plaintiffs, are needed to provide opinions on the diagnosis and treatment for gender dysphoria. A lawyer can make an incredible difference. Counsel brings resources and legal experience and expertise that can help navigate the complex legal system. Attorneys can look for opportunities for assigned counsel programs with federal district courts and can partner with organizations as co-counsel.

Another significant barrier for incarcerated people is the Prison Litigation Reform Act (PLRA), which requires that a person must first exhaust the prison grievance system before they can go to court. That means your client may have to wait months and continue to live under dangerous conditions that are causing them harm while going through the grievance process. For some, filing a grievance could subject them to harassment or retaliation. The PLRA also

limits the type and extent of relief that courts can grant and has a cap on attorney fees, which could be a disincentive for private attorneys to take on cases. Congress should make changes to the PLRA that will permit people in prison to bring their claims to court sooner and should work to eliminate barriers to enforcing constitutional rights.

One other way to get involved is through legislative and policy advocacy. Advocates, including those directly impacted by the criminal legal system, incarcerated and formerly incarcerated people, transgender people, and people of color, have worked to change or repeal harmful laws. In New York and California, advocates worked to successfully repeal these states' loitering laws. Commonly referred to as "Walking While Trans" laws, these allow police to apprehend anyone they assume to be engaging in sex work with essentially no evidence. Police disproportionately use this authority to target transgender women, especially women of color. To protect transgender people and other community members, coalitions in Illinois; New York; Washington, DC; and other jurisdictions are organizing, drafting bills, and working with policymakers to decriminalize sex work. For example, New York's Stop Violence in the Sex Trades (SVSTA) Act would decriminalize consensual adult prostitution offenses and amend provisions relating to the prosecution of such offenses and vacating judgments.

There have also been recent successes in affirming and protecting LGBTQ+ rights this past legislative session. Maryland enacted the Transgender Health Equity Act, which expands coverage for gender-affirming treatments under the state's Medicaid plan. Illinois enacted House Bill 4664, protecting access to gender-affirming care and reproductive health care. It also protects Illinois health care providers, including those providing abortions and gender-affirming care, from being targeted by states that have outlawed such care. New York established itself as a "safe haven" for gender-affirming care by enacting a new law that amends the criminal procedure law and other relevant laws to prohibit arrests or extraditions for aiding in the provision of care. Other states, including California, Colorado, and Washington, have enacted similar laws.

As the result of litigation, several states have changed their policies and procedures concerning incarcerated transgender people, including access to medical care, discrimination and misgendering, and housing placements. There have also been legislative achievements. For example, California's SB 132, the Transgender Respect, Agency, and Dignity Act, is a first step to address violence against transgender people in California's prisons, by requiring the department to place them in facilities according to their perception of personal safety, including by placing them in a facility consistent with their gender identity. Nevada's Senate Bill 153 requires the director of the Nevada Department of Corrections to adopt standards for the supervision, security, housing, and medical and mental health of incarcerated transgender, gender-nonconforming, nonbinary, or intersex people. And in New York, the Gender Identity, Respect, Dignity, and Safety (GIRDS) Act was introduced. This bill would require that prisons and jails house people consistent with their gender identities; ensure that staff respect a person's gender identity, including correct name and pronoun use and during searches; and mandate access to clothing, toiletry items, and grooming standards consistent with a person's gender identity.

Conclusion

Through cases and data, this article provides a snapshot of some of the issues impacting transgender people in prisons. As the LGBTQ+ community is facing an onslaught of legislative attacks and violence, a goal of this article is to encourage more individual community involvement and action. Despite recent legal advances, states throughout the country continue to use the law to criminalize LGBTQ+ people. And in many states, there are hostile attempts to push the community out of the public visibility or to outright question the existence of LGBTQ+ people. These attacks target transgender people by attempting to deny and criminalize their access to health care and other resources. They build upon the continued enforcement of discriminatory laws and policing practices that disproportionately impact transgender people. Yet, transgender people are resilient. Throughout the modern LGBTQ+ history, they have been at the forefront of organizing and protesting police violence, providing mutual aid and support to those harmed by violence or in need, and

challenging transphobia within the broader LGBTQ+ community. They are also legal advocates fighting in courts and statehouses, and leaders in their communities.

Members of the bar have a special opportunity as advocates to work to address and root out bias and discrimination in the criminal legal system and to provide support to transgender people. Members of the bar can stand for trans rights, can stand for LGBTQ+ rights, and can use the legal tools available to us to expand the horizon a little further toward a more equal and just future.

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