

**Backgrounder Memo for the Alternatives to Incarceration Work Group on People who Identify as Transgender, Gender-Non-Conforming, and/or Intersex (TGI)¹
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Introduction

In Los Angeles County, like most jurisdictions around the country, there is little data or research on how many people identifying as transgender, gender-non-conforming, or intersex (TGI) are in jail and the drivers of their incarceration. While Million Dollar Hoods analyzed LA County Sheriff's Department (LASD) arrest and booking data on cisgender women, equivalent data was not available for TGI people.² We do know that there is a small unit in LA County Jail for people who both identify as "LGBT" and request placement there; limited jail programming for "gay and transgender people;" and that there is some law enforcement policy guidance regarding the treatment of TGI people.³ However, there is no publicly available information on how many TGI people are incarcerated daily or related data like charges, booking status (e.g. pre-trial), homelessness, etc.

¹ The Gender and Sexual Orientation Ad Hoc Committee developed recommendations pertaining to people who identify as cisgender women; lesbian, gay, bisexual, and/or queer (LGBQ+); and transgender, gender-non-conforming, and/or intersex (TGI). The Ad Hoc Committee included people directly impacted by the LA County criminal justice system, County employees, service providers, non-profit advocates, and interested community members, among others. We convened ten times to prepare the recommendations, including several meetings focused only on people who identify as TGI. The associated recommendations are the result of consensus built among Committee members about the issues driving incarceration for the aforementioned populations and possible solutions.

The term "transgender" applies to people whose gender identity does not correspond to the sex they were assigned at birth. The term "gender-non-conforming" applies to people whose gender expression does not conform to male-female gender binary. The term "intersex" applies to people born with reproductive or sexual anatomy and/or a chromosome pattern that falls in the continuum between typical binary definitions of male or female. (See <https://transequality.org/issues/resources/understanding-transgender-people-faq>.) We will use the acronym TGI throughout this memo, though it should be noted the acronym is meant to be inclusive beyond the listed identities, accounting for Two-Spirit community members and all other gender-expansive identities. While there is significant overlap in issues related to the incarceration of each sub-group within the Ad Hoc Committee, directly impacted community members and service providers noted the importance of space to focus on TGI people specifically. In addition, there are separate memos focused on people who identify as cisgender women as well as on people who identify as lesbian, gay, bisexual, and/or queer (LGBQ+).

² According to Million Dollar Hoods data analysis of booking data, the LA County Sheriff's Department (LASD) does not currently collect or make publicly available arrest/booking information on sexual orientation or transgender and gender-non-conforming populations. Moreover, LASD Custody Division Population Quarterly & Yearly Reports only note the number of people incarcerated in the "LGBT" unit but does not include any other data related to this population or those who identify as TGI in the jail more broadly.

³ Alex Villanueva, *Los Angeles County Sheriff's Department Custody Division Population Year End Review* (Los Angeles: Los Angeles County Sheriff's Department, 2018), 14-15, 36; LASD Manual of Policy and Procedures section - 5-09/560.00 – "Interactions with Transgender and Gender Non-Conforming Persons," <http://shq.lasdnews.net/shq/mpp/5-09.pdf>.

Nonetheless, based on the limited data available and lived experiences shared by members of the Gender and Sexual Orientation Ad Hoc Committee, the demographics and drivers of incarceration for TGI people in LA County appear consistent with what is happening across the country. Many of the TGI people in jail are people of color; survivors of violence and trauma; have unmet health needs; and experience pervasive discrimination because of gender identity.⁴ They often experience housing instability or homelessness and participate in survival economies to meet basic needs; these circumstances increase the chances of arrest.⁵ Many TGI people then endure gender-based violence and harassment in the criminal justice system—from arrest through incarceration—and thus LA County’s efforts to develop and scale alternatives to incarceration for TGI people are critical.⁶ Below, we discuss what we know about incarcerated TGI people from research and promising approaches to divert TGI people from jail.

What Do We Know about TGI People and Incarceration?

To develop ATI recommendations tailored to the needs and strengths of TGI people, the Gender and Sexual Orientation Ad Hoc Committee convened to discuss what we know about the TGI people incarcerated in LA County and what has driven their incarceration. We developed the following information through the expertise of people in LA County with lived experience of the criminal justice system who joined the Ad Hoc Committee as well as available research on national trends.

⁴ 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* (Washington, DC: National Center for Transgender Equality, 2016); National Coalition of Anti-Violence Programs (NCAVP), *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2016* (New York, NY: Emily Waters, 2017); Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011) (showing disproportionate rates of incarceration for transgender and gender-non-conforming people compared to American adults generally); Jason Lydon, Kamaria Carrington, Hana Low, Reed Miller, and Mahsa Yazdy, *Coming Out of Concrete Closets: A Report on Black and Pink's National LGBTQ Prisoner Survey* (Omaha, NE: Black and Pink, 2015); and TransLatin@ Coalition, *The State of Trans Health: Trans Latin@s and their Healthcare Needs* (Los Angeles: TransLatin@ Coalition, 2016).

⁵ Black and Pink, a nonprofit LGBTQ+ advocacy group, conducted a national survey of 1,000+ incarcerated LGBTQ+ people. Of respondents, over a third reported being unemployed prior to their incarceration, nearly seven times the 2014 national unemployment rate. 39% reported that they had traded sex for survival. Over half had sold drugs for money to meet basic needs. Lydon et al., 2015, 3. See also Lori Sexton, Valerie Jenness, and Jennifer Sumner, “Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men’s Prisons,” University of California, Irvine, June 10, 2009, 20 (finding one in five transgender people in men’s prisons in California had been homeless just prior to their incarceration).

⁶ See National LGBT/HIV Criminal Justice Working Group, Lambda Legal, and National Center for Transgender Equality, “Policing and the LGBTQ community,” (September 19, 2019), <https://docs.house.gov/meetings/JU/JU00/20190919/109952/HHRG-116-JU00-20190919-SD042.pdf>. Black, Latin@/Hispanic, mixed-race, and Native American/American Indian respondents to Black and Pink’s survey were twice as likely to have been in solitary confinement at the time of the survey than white respondents. Lydon et al., 2015, 5. See also 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* (New York: Center for Gender & Sexuality Law at Columbia Law School, 2014); and Sexton et al., 2009, 21-2.

TGI people are disproportionately incarcerated compared to adults in the U.S. generally.

People who identify as transgender or gender-non-conforming have higher incarceration rates than adults in the U.S. generally.⁷ (See Figure 1.)

Figure 1

| % of ADULTS WHO HAVE SPENT TIME IN JAIL OR PRISON⁸ | | |
|--|-------------------|-----------------|
| Transgender / GNC people | Transgender women | Transgender men |
| 16% | 21% | 10% |

For many LGBTQ+ people, especially people of color, this contact with the criminal justice system starts at a young age.⁹ Black and Pink, a nonprofit LGBTQ advocacy organization, surveyed over 1,000 incarcerated LGBTQ people and found that 58% of respondents' first arrests took place when they were under the age of 18.¹⁰ Black and Latinx respondents were more likely to have their first arrests occur when they were under 18 compared to white respondents.¹¹

Members of the Ad Hoc Committee discussed how rejection by family because of gender identity often contributes to early system involvement. They described how a lack of safety and nurturing from family often leads TGI people to leave home at a young age, causing repercussions like poor mental health, lack of housing, and trauma. Additionally, some talked about how this amplified the other challenges TGI people face—for example, finding a job in the face of discrimination or without having completed high school.

Many TGI people are economically marginalized because of pervasive discrimination based on gender identity and make money for survival in ways that increase the chances of arrest.

The gender-based discrimination that TGI people sometimes face with family also happens in important arenas like the workplace, making it harder to find and keep a job. TGI people often encounter additional challenges to finding employment, including a lack of job-readiness training, insufficient educational degrees, lack of identification that matches gender identity, language barriers, and immigration restrictions.¹² Once at work, hostility is common; people in

⁷ Grant et al., 2011, 163.

⁸ Ibid.

⁹ LGBTQ+ connotes lesbian, gay, bisexual, transgender, queer and other identities related to gender and sexual orientation. Some research includes TGI people in this larger acronym rather than breaking statistics out that are particular to TGI people, but nonetheless LGBTQ+ research can provide some useful context on the TGI experience.

¹⁰ Lydon et al., 2015, 3.


¹¹ Ibid.

¹² Michaé Pulido, *#TransPolicy Agenda: Our Fight for Equality* (Los Angeles: TransLatin@ Coalition, 2019), 18.

the Ad Hoc Committee described the difficulties of being the only transgender person at their jobs and hearing transphobic and homophobic remarks made by coworkers, customers, etc.

Given these difficulties in the workplace, transgender and gender-non-conforming people have double the unemployment rate as the national average and are more likely to have incomes below the federal poverty line.¹³ Thus, TGI people sometimes turn to work for survival that increases the chances of arrest, including sex work and selling drugs.¹⁴ (See Figure 2.) People in the Ad Hoc Committee similarly conveyed their experience that people engage in survival work periodically as needed to stay afloat and added unstable housing and unmet behavioral health needs as further contributing factors.

Figure 2

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|  | <ul style="list-style-type: none">- Only 21% of T/GNC people have ID that matches gender identity.¹⁵- 90% of T/GNC people have experienced harassment or discrimination on the job or taking actions to hide their identity in order to avoid it.¹⁶- T/GNC people have 2x unemployment rate as national average.¹⁷- T/GNC people are 4x more likely to have an annual income <\$10K than the general population.¹⁸- Black and Pink survey: 39% of respondents reported that they have traded sex for survival. Selling drugs is also a frequent means of survival: over half of respondents have sold drugs for money.¹⁹ |
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Many TGI people experience housing instability or homelessness that undermines their ability to thrive and increases the risk of arrest.

In addition to financial disadvantages, TGI people also encounter gender-based discrimination in housing that leaves many without shelter, including in LA.²⁰ Around a fifth of transgender people nationally are homeless prior to their incarceration.²¹ Ad Hoc Committee members discussed the many times they faced discrimination by landlords because of negative stereotypes of TGI people—even if they had sufficient income, stable employment, or a Section 8 voucher. This also extended to accessing residential services like treatment or shelters, where TGI people often feel unsafe due to harassment or are turned away because of gender identity, leaving them homeless.²² Being on the streets or unstably housed exposes TGI people to law enforcement contact, survival work, and arrest.

¹³ Hanssens et al., 2014, 60.

¹⁴ Ibid., 63-4; Lydon et al., 2015, 3.

¹⁵ Hanssens et al., 2014, 60.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Lydon et al., 2015, 3.

²⁰ Pulido, 2019, 19.

²¹ Sexton et al., 2009, 20; Lydon et al., 2015, 3.

²² TransLatin@ Coalition, 2016, 22 (finding in a survey of transgender people in Southern California that 68% of participants who do not have stable housing reported that they do not know of a shelter they can

For many TGI people, trauma and unmet health needs contribute to system involvement by undermining pillars of stability and the ability to thrive.

Many TGI people cannot access gender-affirming health care, leading people to postpone necessary care and to experience poor health outcomes.²³ With rampant discrimination against TGI people and frequent histories of trauma and violence, system-involved TGI people urgently need behavioral health support.²⁴ However, discrimination and alienation again create barriers to health and wellness for TGI people. Members of the Ad Hoc Committee described being unable to access important substance use treatment, including being released from jail to residential treatment that would not accept transgender women, having to do self-advocacy for appropriate alternatives to incarceration, and trying to mask gender identity to increase the chances of acceptance in treatment. People also talked about a strong desire for therapists and medical professionals who identify as TGI and people of color to maximize positive engagement with care. The Ad Hoc Committee saw the compounded barriers to care as intertwined with homelessness, substance use issues, and ongoing system involvement.

TGI people often experience discrimination, harassment, and violence in the criminal justice system. System involvement is a source of trauma for TGI people and alternatives to incarceration are crucial to wellness and sustained access to care.

In the Ad Hoc Committee, members talked in vivid detail about traumatic experiences with law enforcement and incarceration. For example, gender-non-conforming people recounted aggressive comments and physical searches by police riddled with gender-based bias. Members talked about constant profiling and harassment by police, especially of transgender women in public spaces.


Transgender women recalled the ominous and dangerous experience of being incarcerated with cisgender men in the LA County Jail system. Multiple members also described the difficulty of reentry and connecting to services because of systemic hurdles for TGI people, including exclusion from programs. These experiences, which are consistent with national surveys (see Figure 3), reflect an urgent need to divert TGI people from jail and to tailored resources.

go to for help and feel safe as a trans person. 18.8% are either homeless or in temporary housing.); Grant et al., 2011, 4 (55% of T/GNC people attempting to access homeless shelters experience harassment, and 29% are turned away altogether.); and James et al., 2016, 180.

²³ The transgender population has over four times the national average rate of HIV infection, and 28% report they have postponed necessary medical care because of discrimination. Hanssens et al., 2014, 61.

²⁴ Black and Pink's survey found that 67% of respondents had been diagnosed with a mental illness. 7% were HIV+; black respondents were two times more likely to be HIV+ than white respondents. One third in romantic relationships experienced intimate partner abuse. Lydon et al., 2015, 5.

Figure 3

| | |
|---|---|
|  | <ul style="list-style-type: none">- A national survey found over 22% of transgender people who interacted with police reported harassment.²⁵ Also, in another survey, LGBT respondents of color, low-income respondents, and transgender respondents were much more likely to report an experience of misconduct or harassment by police.²⁶- Nearly half of LGBT survivors of violence who sought help from police report misconduct. In the 2000s, law enforcement agents have consistently been among the top three perpetrators of homophobic or transphobic violence against LGBT people reported to anti-violence organizations.²⁷- A 2007 study of people incarcerated in California showed 5% of straight men were victims of sexual assault including rape, while “an astonishing” 67% of gay, bisexual and transgender incarcerated people were.²⁸ |
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Changing the Trajectory

LA County is taking an important step in creating, expanding, and scaling alternatives to incarceration specifically for TGI people. While increased community-based systems of care can benefit all people, the availability of tailored and gender-affirming resources is crucial to helping system-involved TGI people, who are often excluded or alienated from services. Additionally, reevaluating criminal justice system policies and practices through a lens specific to TGI people will be important to meaningfully address drivers of incarceration. The following are some promising approaches to diverting TGI people from jail before and after arrest.

Ensure community-based services and alternatives to incarceration programming are affirming of the range of gender expressions and identities, trauma-informed, and rooted in harm reduction.

For many people, including those who identify as TGI, trauma is at the root of criminal justice system involvement and the path to recovery from issues like substance use disorder is complex. Thus, expanding trauma-informed, harm-reduction systems of care overall can help many TGI people. However, given the persistent and widespread gender-based discrimination TGI people face in accessing services and healthcare, best practices call for ensuring that available services do not discriminate against TGI people because of gender identity and that there are ample opportunities that are gender-affirming and tailored to the needs of TGI people.

While the federal government and many local governments have laws against gender identity discrimination, the reality is that it persists for TGI people. Thus, governments should use all available mechanisms—including contracting and legislation—to establish anti-discrimination policies for community-based services receiving funding and develop ways to enforce said

²⁵ Grant et al., 2011, 5.

²⁶ Hanssens et al., 2014, 12.

²⁷ Ibid.

²⁸ Valerie Jenness & Cheryl Maxson, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (Irvine: Center for Evidence-Based Corrections, 2007), 54.

policies.²⁹ Some have suggested these policies should be part of a general equity strategy and should prohibit discrimination against TGI populations. Policies should also proactively include guidance on how to affirm gender identity (e.g. ensuring full access to gendered areas of facilities, use of preferred pronouns/names, etc.).³⁰ And, finally, there should be easy ways to report violations—possibly coupled with immediate offers of services—and meaningful accountability if programs discriminate.³¹ Such policies are especially crucial to impose upon life-saving resources like emergency housing shelters.

One important way to ensure access to gender-affirming care is to fund organizations led by TGI peers and directly impacted people. As with all uniquely impacted populations, peer-led organizations are well-positioned to offer gender-affirming services tailored to the needs of TGI people, including obtaining identity documents, finding appropriate care placements, and advocating on behalf of people who have experienced discrimination.³² These programs can also be tailored effectively for certain groups, like young TGI people who have experienced homelessness or families looking to support LGBT relatives/children.³³

Prioritize the creation or expansion of safe housing options for TGI people as well as services for employment and medical / mental healthcare to address some of the root causes of system involvement.

Many TGI people with criminal justice system involvement are at high risk of homelessness or housing instability. Yet, many shelters discriminate, and few are explicitly inclusive of TGI people or competent at providing services to TGI people.³⁴ This leads to lack of shelter and care in crisis, feeding the cycle of system involvement. Across the country, jurisdictions are building shelters and residential programs specifically to meet the needs of TGI people, including in Los Angeles. LA County should build upon this success to create a more robust system of options locally.³⁵ Such a network should account for those with special needs like young people and

²⁹ Center for American Progress and Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People* (Denver: Movement Advancement Project, 2016), 133-35 (noting that governments should require organizations receiving government funding for reentry programs to have non-discrimination provisions around gender identity and non-discrimination legislation should also be considered to ensure equal access to programs and services).

³⁰ Pulido, 2019, 39; Hanssens et al., 2014, 56 (noting efforts in New York City to promote residential substance use programs that are respectful of gender identities of participants through anti-LGBT discrimination guidelines).

³¹ Tanvi Misra, “How To End Housing Discrimination Against Transgender People,” *Citylab*, March 31, 2017, <https://www.citylab.com/equity/2017/03/how-to-end-housing-discrimination-against-transgender-people/521265/> (suggesting that housing discrimination issues be addressed by making it easier to complain about violations, including not requiring victims to travel to pursue legal actions and making complaint centers more geographically accessible).

³² Pulido, 2019, 20.

³³ Center for American Progress and Movement Advancement Project, 2016, 11, 17 (describing the Family Acceptance Project, using research, intervention, education and policy to help diverse families support their LGBT children as well as the Lesbian, Gay, Bisexual & Transgender Community Center in New York City helping LGBT youth).

³⁴ *Ibid.*, 20.

³⁵ *Ibid.*, 30 (noting the “patchwork” of LGBT-focused shelters across the country, including in Los Angeles, among other cities). TransLatin@ Coalition, 2016, 39 (identifying housing needs for transgender

people who are HIV-positive.³⁶ There should be mandatory training for staff to provide gender-affirming services and policies requiring a standard of care and inclusion. Finally, local governments can play an important role in creating and enforcing anti-discrimination laws and policies for residential service providers, private landlords, and housing authorities alike.³⁷

Removing barriers to employment, including discrimination, is also beneficial to TGI people, particularly those with criminal records. Anti-discrimination laws and policies, like those suggested for housing/services, are important to develop and enforce. Additionally, best practices call for local government to offer robust workforce development opportunities for TGI people, which may initially require staff to be trained to effectively serve TGI people.³⁸ Other jurisdictions are also cultivating employment opportunities specifically for transgender people, like investing in development programs for TGI people to become self-employed independent contractors in the technology industry as a pathway to economic security.³⁹

Finally, timely and appropriate care for medical and behavioral health needs can play a large role in disrupting cycles of system involvement for TGI people. Thus, governments should employ anti-discrimination policies for healthcare providers and provide training on TGI-appropriate care as part of a broader commitment to equity and cultural humility.⁴⁰ Additionally, using peer support by TGI people can increase engagement with care.⁴¹ This is particularly important with sensitive issues like sexual assault or intimate partner violence where TGI people can support survivors through safety planning and any related court cases.⁴² Access to gender-affirming and inclusive care can improve health outcomes for TGI people and address crises before they happen.

Reconsider law enforcement practices that disproportionately impact TGI people, especially TGI people of color.

It is clear from national reports, literature, and the lived experiences shared in the Ad Hoc Committee that many TGI people are distrusting of law enforcement due to harassment, misconduct, and profiling—including feeling discomfort in even asking police for help.⁴³ Increasingly, jurisdictions, like LA County and City, have started to tackle this fraught

Latinx women in Southern California specifically and suggesting investment in various types of housing for “TransLatin@s”).

³⁶ Center for American Progress and Movement Advancement Project, 2016), 12; Pulido, 2019, 20-1 (noting replicable program model—Housing Opportunities for Persons with AIDS (HOPWA)—developed by U.S. Department of Housing and Urban Development (HUD)).

³⁷ Misra, 2017.

³⁸ Pulido, 2019, 40 (laying out recommendations on improving employment opportunities for TGI people in California, including the requirement for Trans cultural sensitivity trainings for government agencies engaging in workforce development).

³⁹ Center for American Progress and Movement Advancement Project, 2016, 35.

⁴⁰ TransLatin@ Coalition, 2016, 41-43.

⁴¹ Ibid., 43 (noting survey results on the importance of peer support to TransLatin@s).

⁴² Pulido, 2019, 26.

⁴³ James et al., 2016, 14 (survey results of TGI people showed respondents experienced high levels of mistreatment, harassment, and profiling by police and 57% reported they would feel uncomfortable asking the police for help).

relationship through policies and trainings for officers on respectful interaction with TGI people led by organizations focused on LGBTQ advocacy.⁴⁴ These approaches, when paired with accountability mechanisms, are important to addressing the homophobia and transphobia by law enforcement that has harmed TGI community members.

Some have pushed for jurisdictions to go beyond these basic policies for effective communication. Organizations have suggested bans on discriminatory policing practices like profiling TGI people as engaging in sex work (i.e. “walking while transgender”).⁴⁵ In a number of jurisdictions, including Washington D.C., LGBTQ and other advocates have started introducing landmark legislation to eliminate criminal penalties for consensual adult sex work in a move to decriminalize something that so often lands TGI people in jail.⁴⁶ Though the bills have yet to pass, TGI people and others who have engaged in sex work are increasingly strategizing and working with elected officials to advance decriminalization efforts.

Finally, given the perils of arrest and jail for TGI people, best practices call for increased TGI-inclusive diversion opportunities at the earliest point of contact with law enforcement. For jurisdictions like Los Angeles that are already expanding ATI services for cisgender women, it is suggested that programs—including gender-specific ones—are equipped to work with LGBTQ

⁴⁴ Brenda Gazzar, “How transgender inmates are treated has become a problem for police, so here’s what’s being done about it,” *Press Telegram* (January 10, 2019), <https://www.presstelegram.com/2019/01/10/how-transgender-inmates-are-treated-has-become-a-problem-for-police-so-heres-whats-being-done-about-it/>; LASD Manual of Policy and Procedures section 5-09/560.00 “Interactions with Transgender and Gender Non-Conforming Persons;” LAPD Chief of Police, April 20, 2012, guidelines to “All Department Personnel” on “Police Interactions with Transgender Individuals,” http://assets.lapdonline.org/assets/pdf/OCOP_04-10-12.pdf; Gregory Yee, “How Charleston police are using gender identity training to serve the LGBTQ community,” *The Post and Courier*, Jan 22, 2019, https://www.postandcourier.com/news/how-charleston-police-are-using-gender-identity-training-to-serve/article_92771aa6-18fa-11e9-897b-0f0d4512ea49.html; and Alyson Ward, “HPD will train officers to protect transgender Houstonians,” *Houston Chronicle*, April 11, 2018, <https://www.houstonchronicle.com/houston/article/HPD-will-train-officers-to-protect-transgender-12825571.php> (on Houston Police Department’s new “transgender competency training” after deadly violence against LGBTQ people was at a 2-year high in 2018).

⁴⁵ National Center for Transgender Equality, *Police Department Model Policy on Interactions with Transgender People* (National Center for Transgender Equality: Washington, D.C., 2019) (see #2, “Nondiscrimination and profiling based on gender identity,” which includes the following language: Consider an individual’s gender identity, gender expression, or actual or perceived sexual orientation as a reason to stop, question, search or arrest that individual, a basis for reasonable suspicion, or as prima facie evidence that the individual is, has or is about to engage in a crime, including, but not limited to, prostitution or lewd conduct.); and Center for American Progress and Movement Advancement Project, 2016, 50-51 (describing how transgender women often report that police assume they are engaged in sex work when they are simply “walking while transgender”).

⁴⁶ National Center for Transgender Equality, 2018, 5 (including a summary of efforts to expand and reduce criminalization of sex work, including reference to the 2017 legislation introduced in Washington D.C.). In 2019, the D.C. bill lacked support to survive a committee vote. There have been similar proposals in New York and Massachusetts, among other states, but they have yet to gain traction to passage. Nonetheless, TGI people and others who engage in sex work have started to meet with members of Congress to educate officials on decriminalization efforts. See Marissa J. Lang, “D.C. effort to decriminalize sex work won’t move forward after 14-hour hearing,” *Washington Post*, November 17, 2019, https://www.washingtonpost.com/local/dc-politics/dc-effort-to-decriminalize-sex-work-wont-move-forward-after-tense-14-hour-hearing/2019/11/16/b7c77358-06ef-11ea-ac12-3325d49eacaa_story.html.

people, including developing trans-inclusive policies.⁴⁷ Also, consistent with the broader push for peer-led outreach models, organizations led by TGI peers that are comfortable working with law enforcement may provide a supportive landing place for pre-booking diversion.⁴⁸

Consult with system-impacted people to consider intake and ATI screening processes that are safe, voluntary, and maximize connections to tailored ATI programs.

For all entities seeking to decrease the incarceration of TGI people and increase positive outcomes through community-based care, one of the challenges is the lack of data that would help identify the drivers of incarceration, racial disparities, and possible solutions. Gender information is often collected in a binary way, erasing TGI people who likely experience disparities in arrests, prosecutions, ATI opportunities, and outcomes. Nonetheless, protocols for collecting data and identifying TGI people for diversion opportunities cannot be done without considering safety and ethics.

LA County would need to lead the way in developing a safe, ethical data collection system that helps divert TGI people from jail.⁴⁹ For some, it is suggested that questions related to gender identity and sexual orientation be added to existing data collection efforts and be included in analysis of existing programs.⁵⁰ It may be ideal to consider first a safe and respectful data collection process that allows for self-disclosure—especially if law enforcement is involved, as some TGI people may feel unsafe sharing such information.⁵¹ Whatever process is developed should be done so in consultation with impacted community members to ensure it is safe, ethical, and productive. The ATI Work Group’s efforts to tackle data collection and include issues related to TGI people is an important foundational step to developing a better system for diversion.

Train all court actors to engage with TGI people in gender-affirming ways.

In addition to law enforcement and service providers, TGI people frequently face barriers to diversion opportunities because of bias from various court actors, including lawyers, judges, and probation officers. These court actors should receive training on communicating effectively with

⁴⁷ National Center for Transgender Equality, *LGBTQ Criminal Justice Reform: Real Steps LGBTQ Advocates Can Take to Reduce Incarceration* (Washington, D.C.: National Center for Transgender Equality, 2018), 4.

⁴⁸ Pulido, 2019, 30.

⁴⁹ TGI advocacy organizations have encouraged the federal government to improve its own data collection to improve policies around gender identity and sexual orientation. *Ibid.*, 17.

⁵⁰ *Ibid.*, 14-16; and Center for American Progress and Movement Advancement Project, 2016, 41 (noting that, despite the success of diversion programs in cities like Seattle’s Law Enforcement Assisted Diversion (LEAD), there is very little research about how LGBT people interact with these programs).

⁵¹ The Fenway Institute and Center for Prisoner Health and Human Rights, *Emerging Best Practices for the Management and Treatment of Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex Youth in Juvenile Justice Settings* (Boston: The Fenway Institute, 2018), 40-43 (on safe and respectful intake processes for voluntary opportunities to identify as LGBTQI).

and understanding the needs of TGI people.⁵² Also, it has been suggested to look further at the treatment of TGI people by probation and reentry programs to promote fairness, improve services, and minimize violations fueled by bias.⁵³ This aligns well with efforts by the ATI Work Group to ensure that system actors are all trained to promote equity, including around LGBTQ+ communication and service provision.

Conclusion

TGI people are disproportionately arrested and incarcerated in the United States. Contact with law enforcement is often a source of trauma amidst a sea of challenges related to gender-based discrimination. In implementing the ATI Work Group vision, LA County will begin to more systematically divert TGI people from jail and offer care that promotes inclusion and wellness. The ATI roadmap, including recommendations developed specifically by the Gender and Sexual Orientation Ad Hoc Committee, reflects progress in the right direction.

⁵² Lydon et al., 2015, 7-8 (suggesting training court-appointed attorneys and judges on LGBTQ issues and appropriate communication).

⁵³ National Center for Transgender Equality, 2018, 4 (suggesting various strategies for addressing the discrimination and unfair conditions many LGBTQ people face on probation, including training on bias); and Center for American Progress and Movement Advancement Project, 2016, 118-9.