

The Educator's Guide



BUDDHA DOG PRODUCTIONS PRESENTS

WHERE JUSTICE ENDS

"...A POIGNANT NEW DOCUMENTARY..."
THE HUFFINGTON POST

"...A HEARTBREAKING MOVIE AND POWERFUL STORY..." WLRN
NPR RADIO

"...A POWERFUL NEW DOCUMENTARY SHEDDING LIGHT ON THE INJUSTICES FACED BY TRANSGENDER INMATES IN THE US..."
ABC NEWS, MIAMI

WHEN PUNISHMENT FOR GENDER IDENTITY IS CRUEL BUT NOT UNUSUAL



Acknowledgements

We gratefully acknowledge the assistance, in preparing this educational guide, given by George Zuber, Director and Producer of *Where Justice Ends*; Michael Jacoby, documentary and narrative producer and director, including the award-winning feature *Ten More Good Years* about the challenges faced by LGBTQ elders; Shannon Minter, civil rights attorney and legal director for the National Center For Lesbian Rights; Brian McNaught, sexuality educator, corporate diversity coach, and author specializing in LGBTQ issues in the workplace; Dee Farmer, transgender speaker and plaintiff in the U.S. Supreme Court decision, *Farmer v. Brennan*; Scott Greenberg, Executive Director of The Freedom Fund, and former researcher at the Brennan Center For Justice; and Jamison Green, author, educator, and past president of the World Professional Association for Transgender Health (WPATH).

Distributed for all educational activities by Films Media Group and Films On Demand

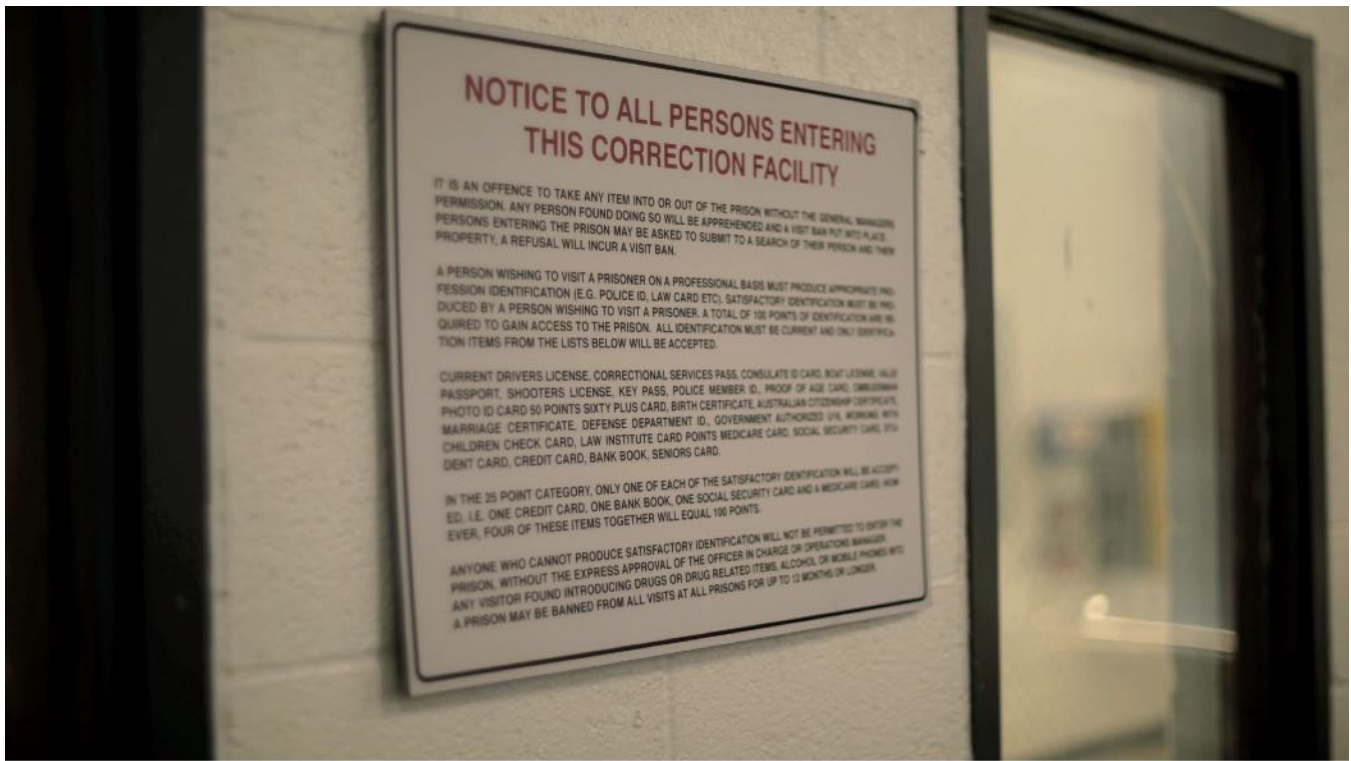
For Information, please contact Sharon Golan at sgolan@infobase.com.

© 2020 Buddha Dog Productions LLC

Table of Contents

How to Use This Guide & Film	5
About the Film	9
Background Information:	10
Who are transgender people?	10
Goals of U.S. Justice	13
Challenges in Implementing Justice	15
Activities	19
Activity 1: Circumstances Leading to Increased Encounters Between Transgender People and the Police	19
Family Rejection	20
Discrimination in Schools	21
Community Discrimination	22
Employment Discrimination	23
Police Prejudice	23
Legislative Discrimination	24
Suggested Activity 1 Group Discussion Questions	24
Activity 2: A Transgender Person Being Arrested	26
Harassment by Police	27
Physical Humiliation During the Arrest Process	28
Lack of Access to Bail	28
Suggested Activity 2 Group Discussion Questions	28
Activity 3: Court Room (In)Justice	30
Impact of Poverty and Lack of Social Skills	30
Lack of Understanding by Public Defenders and Judges	31

Suggested Activity 3 Group Discussion Questions	32
Activity 4: Incarceration	33
Lack of Appropriate Facilities	34
Abuse by Other Inmates	35
Prejudice and Abuse by Prison Guards and Staff	36
Use of Solitary Confinement	38
Suggested Activity 4 Group Discussion Questions	39
Activity 5: Challenges After Release	40
Set Up For Failure	40
Residual Issues	41
Resource Challenges	42
Suggested Activity 5 Group Discussion Questions	42
Activity 6: Hope for Change	44
Improvements in Some Communities	44
Prison Rape Elimination Act (PREA)	45
Medical Care for Transgender Inmates	46
Mixed Progress	47
Suggested Activity 6 Group Discussion Questions	48
Glossary of Related LGBTQ Terms	49



HOW TO USE THIS STUDY GUIDE AND FILM

COURSE STRUCTURE

Educators are encouraged to use this guide in combination with viewing the film, *Where Justice Ends*. The guide is designed to engage participants in discussions about social justice, and the effect of cultural prejudices and personal belief systems within the U.S. justice system. The film and the guide's activities foster discussion about these topics so that participants will better understand what it means to be transgender in American society, and what many transgender people undergo when encountering the U.S. justice system. It is our hope that these insights will become part of a broader study that fosters greater acceptance for those who seem to differ from how we see ourselves.

The guide is designed to take participants through five stages experienced frequently by transgender people who encounter the law in the U.S., including (1) aspects of daily life before encountering the law, (2) encounters with the police and arrest, (3) justice in the courtroom, (4) incarceration in state or federal prison, and (5) life after prison. Through each of these lessons, educators will refresh the participants' memories by watching relevant segments of *Where Justice Ends* identified in each of the activities. Additional information is provided, including quotes from related research and writings with links to the complete reference documents.

LEARNING OBJECTIVES

Upon completion of this course, participants will be able to:

- Have a better understanding of the nature, complexity, and diversity of the transgender experience.

- Distinguish between the goals of the U.S. justice system and the challenges facing the justice system in actual practice.
- Explain many of the hardships experienced by transgender people in their daily lives that lead to a disproportionately high rate of incarceration in the U.S.
- Have an increased understanding of the special challenges faced by transgender people incarcerated in state and Federal prisons.
- Recognize the increased challenges faced by transgender inmates after release from prison.
- Understand some of the attempts to improve conditions for incarcerated transgender people.

GRADE LEVELS

This guide is prepared primarily for college/university study. It is also available for high school studies with appropriate guidance.

ILLUSTRATIVE SUBJECT AREAS

Civil & Human Rights, Social Justice & Prison Reform, Criminal Justice, Law, LGBT Studies, Womens' Studies, Ethics, Psychology, Sociology, Current Events

SUMMARY OF ACTIVITIES

The activities in this Educator's Guide are presented in the following order:

Activity 1: Circumstances Leading to Increased Encounters Between Transgender People and the Police

This lesson explores the many factors that contribute to a greater likelihood of a transgender person being arrested by the police. Those factors often begin early in life, particularly if a transgender youth does not receive family support, or worse, is rejected by family members. Other factors include ostracism at school leading to increased dropout rates, employment and housing discrimination, racial disparities, religious intolerance, and discrimination by governmental agencies, including the police. After participants watch the film, the educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

Activity 2: A Transgender Person Being Arrested

This lesson looks at what a transgender person experiences when encountering the police. It is all too common for police officers to treat a transgender person differently, based on physical appearance or seeming discrepancies between transgender expression and personal identification. The experience may be shaped by lack of police training, lack of proper jail policies and facilities, and verbal abuse, humiliation, and physical harm by other detainees or the police. After participants watch the film, the

educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the Activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

Activity 3: Courtroom (In)Justice

This lesson considers why transgender people often do not have access to adequate legal advice or representation. While courts may assign a public defender to represent a transgender person suspected of a crime, public defenders are often overworked, unfamiliar with the transgender experience, or are impaired by their own personal prejudices about transgender people. Personal prejudice of judges can interfere with fair treatment for a transgender person in the courtroom, and result in excessive sentences. After participants watch the film, the educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

Activity 4: Incarceration

This lesson explores what many transgender people experience while incarcerated in state and Federal prisons. While prison environments in the U.S. can be harsh for most inmates, transgender people in prison are exposed to some of the worst conditions. Transgender inmates are almost always placed in prison facilities based solely on genitalia, resulting in many transgender women being housed with men. Transgender inmates are often the target of verbal, physical, and sexual abuse; they may have medical and psychological needs ignored; and they may be denied appropriate clothing and other personal needs. After participants watch the film, the educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

Activity 5: Challenges After Release

This lesson looks at life after prison. Upon parole or other forms of release, many transgender people are required to live in the same communities where their troubles began, surrounded by the same prejudices and hardships they faced prior to arrest. Transgender people may be forced to live where they were previously denied employment, endured housing discrimination, received little or no support from governmental agencies or local churches, and suffered the prejudices of local police. All of this is worse now that they have a criminal record. After participants watch the film, the educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

Activity 6: Hope For Change

This lesson touches on the basis for some hopeful improvements. A handful of

communities are developing police policies and jail facilities that are better able to respond to the unique circumstances faced by transgender people. Some states are making progress in implementing the Prison Rape Elimination Act (PREA), which mandates safer environments for all inmates in local, state, and Federal prisons. Court rulings have begun to increase the likelihood that transgender inmates will receive medically-necessary treatment. Nevertheless, progress continues to be slow. After participants watch the film, the educator can review scenes specific to these issues. Time codes are inserted next to the scene description in the activity. Suggested discussion questions, some of which may require participants to perform additional research, are posed at the end of the activity.

ABOUT THE FILM

Where Justice Ends focuses on the intersection of two important and timely topics of social justice — conditions within the U.S. prison system, and the injustices that befall transgender people encountering the law. The staggering conditions at the center of this film are largely invisible to many. Perhaps nowhere else do the inequities of our criminal incarceration fall more heavily than on the transgender community.

Where Justice Ends looks into why so many transgender people encounter the police, how those encounters often lead to discriminatory treatment, and the inhumane conditions that transgender people all too frequently experience. The film examines how high unemployment of transgender people, family rejection, and homelessness contribute to staggering rates of incarceration. One of every 6 transgender persons is likely to be incarcerated at some point in their lives, and nearly one of every two black transgender people will be similarly incarcerated.

In revealing the injustices to transgender people, the film hears from current and former inmates, researchers, mental health experts and leading transgender activists across the country. Four key stories form the centerpiece. Ashley Diamond (pictured right), a black transgender woman born and raised in Rome, Georgia, was arrested for pawning a stolen miter saw, and sentenced to 12 years in some of Georgia's harshest prisons. Michelle-Lael Norsworthy,



who endured physical abuse and sexual harassment, including an hours-long gang rape while incarcerated in California, demanded gender confirming surgery deemed medically necessary, resulting in a precedent-setting victory. CeCe McDonald defended herself from a violent attack, and was then arrested and incarcerated even though she was the victim. In the late 1980s, one transgender woman, Dee Farmer (pictured left) refused to endure abuse, assault and rape in prison. As explored by *Where Justice Ends*, her struggle led to the most significant ruling from the U.S. Supreme Court requiring humane conditions for the treatment of all prisoners, *Farmer v. Brennan*. That 1994 decision ultimately led to the Prison Rape Elimination Act of 2003, mandating safety from sexual abuse in prisons. As the film discovers, little has improved in the more than 25 years since the Supreme Court's ruling.



Background Information

Who Are Transgender People?

In thinking about transgender people, it helps to distinguish between *sex*, which is generally understood as *male* and *female*, and commonly determined by one's genitalia, and *gender*, which is determined by one's sense of self. While most Americans are now familiar with the word transgender, many have little understanding of the breadth and diversity of transgender people and what life is like for many transgender people in the United States.

People have a tendency to try to create order out of the diversity and disorder that exists in the natural world. One way to do that is to divide all people into two genders — male and female — based on physical attributes. One of the first questions asked of a new parent is whether the baby is a boy or a girl. Often, there is virtually no discourse allowing for variations.

The Oxford English Dictionary defines transgender as “denoting or relating to a person whose self-identity does not conform unambiguously to conventional notions of male or female.” The word transgender is an umbrella term that covers a wide diversity of experiences. Under that umbrella are people who, at least in some respect, and to some degree, have a personal identification with the gender that is not reflected in the sex



assigned to them by society. Transgender people often describe a mismatch or disconnect between the sex assigned to them at birth based on genitalia and their internal, personal sense of gender identity. In the simplest terms, people assigned as male at birth, based on male genitalia, whose internal gender identity is as women, are referred to as transgender women. People assigned as female at birth, based on female genitalia, whose internal gender identity is as men, are referred to as transgender men.

The spectrum of transgender people is broad. Many transgender people completely identify with the opposite sex from the sex assigned to them at birth, and they generally believe it is essential that they align their outward appearance, as much as possible, to their internal sense of identity. In order to do so, they may undergo gender-confirming medical procedures, which may involve genital reconstruction, breast enhancement, and other feminizing procedures for transgender women, and chest reconstruction and other masculinizing procedures for transgender men. People who have, or want to, undergo gender confirming surgery are often referred to as transsexual people.

Some transgender people have an innate need to express occasionally or frequently as other than the sex assigned at birth. While that need is strong, they may nevertheless not

want to alter their body or their daily appearance at all times. Such individuals are most commonly referred to as cross-dressing people. Because our society permits women to commonly wear clothes often associated as male without transgressing today's social norms, most cross-dressing people are physically men (based on their genitalia) because our society believes that men wearing women's clothing is taboo.

Being transgender is not a whimsical experience. Transgender people should not be confused with people who may don clothes associated with the other sex for costume or entertainment. A transgender person's sense of a disconnect between sex assigned at birth and an internal sense of gender identity is innate and powerful.



The umbrella of *transgender* includes more expressions than only cross-dressing people and transsexual individuals. For example, some people may choose to live their daily lives expressing a gender different from the sex assigned at birth without any desire to undergo gender confirmation surgery. Others may be uncertain of the degree to which they will ultimately express as transgender people. Today there is an emerging recognition some people need to cross social norms of gender expression, especially among young people who feel free to blur gender boundaries, whether in dress, hairstyles, or cosmetic makeup. Some people embrace the term *queer* or *gender queer* to signify their aversion to traditional labels.

Expressing gender identity is a very personal decision for transgender individuals. Some people begin the process by wearing gender-nonconforming clothes, fixing their hair or making other changes in their appearance to better match their internal gender identity. Sometimes, this is only in private. Many transgender people begin hormone therapy to better align their bodies with their internal sense of gender. Transgender people may embark on chest enhancement or reconstruction surgery or other feminization or masculinization procedures. For some transgender people, gender confirmation surgery is the ultimate goal. There is no one-step, one-size-fits-all process.

Just as apples and oranges are not the same, gender identity and sexual orientation are not the same. Gender identity is the perception, held by an individual, as to the nature of that person's gender, which may or may not align with the person's physical appearance or what others describe as the person's sex. On the other hand, sexual orientation describes the sex of the people to whom an individual is sexually attracted. As it has been said, "Sexual orientation is who you want to sleep with, and gender identity is who you want to sleep as." Accordingly, transgender people may be straight, gay, or bisexual, and the label that society attaches to a transgender person may change over time if and when the person's gender expression changes.

Until very recently, Western society had little understanding of transgender people and viewed transgender expression as a mental illness. With greater scientific research and understanding during the 20th Century, medical and mental health professionals began to

recognize that transgender people are not inherently “ill” even if they suffer from the consequences of being told that their gender is different from their internal gender identity, or “gender dysphoria.” It was not until the 21st Century that World Professional Association for Transgender Health (WPATH), which sets Standards of Care for transgender people, explicitly recognized that gender dysphoria is not a mental illness. In May 2013, the American Psychiatric Association also revised its diagnosis of transgender people to eliminate any implication that transgender people are suffering from a “disorder.”

Notwithstanding advances in greater understanding by researchers and health professionals, much of American society does not understand and may not accept transgender people. Societies frequently uses laws or other means to enforce conformity it deems desirable, and transgressing gender boundaries has been largely unacceptable in modern American society. People who don’t readily fit into a masculine or feminine stereotype may create an unacceptable sense of disorder for some people. Further, because many religions do not embrace the scientific fact that nature may not always align physical gender with internal gender identity, people for whom religion plays an important part of their lives may not accept transgender people.

While many transgender children have a sense of a disconnect between their assigned gender and their internal gender identity from among their earliest memories, they may also instinctively recognize that they are supposed to conform to the expectations of their family, friends and society at large. Consequently, some transgender people may deny their feelings for years, or even a lifetime.

Some children who are transgender are raised in environments that encourage diversity and self-expression with unconditional love and support. Those children may find it easier to align their internal sense of gender and outward expression as they grow and better understand their feelings and needs. Other transgender children may be raised in families that do not accept deviation from prescribed societal norms, especially when a child’s behaviors are viewed as rebellious or violations of firmly-held beliefs. Family beliefs can be strongly influenced by ethnic, racial, religious, and economic factors. Children who express gender in ways unacceptable to their families may be rejected, and they may find themselves struggling to survive at home and in school. A substantial majority of transgender students feel unsafe in school and unsupported by the school.¹ Many of those children become homeless and drop out of school, leaving themselves ill-prepared for adulthood, often living in poverty.

Poverty does not stop the desire to express, but it may prevent many transgender people from safely taking steps to better express their gender identity. Having neither medical insurance nor adequate money, and often having little or no support from family or friends, transgender people may be unable to access licensed medical professionals. Instead they may rely on hormone drugs sold on the street. Those hormone drugs frequently are of varying potency, and can contain dangerous ingredients. Unlicensed providers may augment breasts, cheeks and buttocks with unsuitable silicone implants or other products — even cement — ultimately leading to serious medical complications and disfigurements. Sadly, street procedures intended to help a transgender person align with an inner sense

¹ Kosciw, Joseph G., Greytak, Emily A., Zongrone, Adrian D., Clark, Caitlin M., and Truong, Nhan L., *The 2017 National School Climate Survey*, GLSEN, 2018

of gender may have exactly the opposite effect by creating unnatural appearances, leading others to denigrate that person as a “freak.”

People who are transgender often face severe economic discrimination. While some U.S. states or localities have enacted some degree of employment protection for transgender people, there are no national protections outlawing discrimination. Based on a study of transgender discrimination,² it appears that transgender people experience unemployment at approximately twice the rate of the general population. For transgender people of color, the rate is four times. Over one-quarter of the transgender respondents in the study reported losing their job because they were transgender or gender non-conforming; consequently, nearly three quarters of transgender people reported trying to hide their gender or gender transition in the workplace. Unemployed transgender respondents reported almost twice the participation rate in the “underground economy,” including sex work or selling drugs to survive. Because patriarchal attitudes and racial discrimination contribute to the shape of U.S. society, economic discrimination falls heaviest on transgender women of color.

Goals of U.S. Justice

The origin of the U.S. system of justice was born out of the principles of the British legal system, but shaped by the Founding Fathers, in part by injustices experienced by American colonists. One complaint of the colonists was that they were being denied fundamental rights granted to all Englishmen under the Magna Carta, including the right of trial by jury. Beginning with the Founding Fathers, and in recognition of the importance of a justice system that is fair to all, basic principles of justice in the United States are embedded in the U.S. Constitution, including the Bill of Rights and subsequent amendments.

The concept of “Equal justice under the law” is enshrined in the 14th Amendment to the United States Constitution, which states in relevant part, “No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws.” The principle of “equal justice” is deemed so fundamental to the system of justice in the United States that the phrase “Equal Justice Under Law” is engraved above the pillars on the face of the U.S. Supreme Court building in Washington, D.C. The basis for equal justice dates back to the Founding Fathers and before.

“Justice is indiscriminately due to all, without regard to numbers, wealth or rank.”
John Jay

“All men are created equal.” Thomas Jefferson

“There can be no truer principle than this — that every individual of the community at large has an equal right to the protection of the law.” Alexander Hamilton
This concept of equal justice recognizes that the courts should treat all persons alike under the law, regardless of factors such as a person’s social status, wealth (or lack of wealth), race, gender, and age. Inherent in this principle is that all people

² Jaime Grant, Lisa Mottet, and Justin Tanis, *Injustice at Every Turn, Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, page 3.

must obey the law and that no one is above the law. Indeed, each Justice of the U.S. Supreme Court must take the Judicial Oath, which requires each Justice to “administer justice without respect to persons and do equal right to the poor and to the rich.” As the ultimate judge of U.S. law, the Supreme Court is charged with ensuring that the promise of equal justice is fulfilled.

Rule of law is viewed as different from rule of *the* law — an ideal of what the law should be, not what the law is at any point in time. It has long been recognized that it is fundamental to the U.S. system of justice that, while the rule



of law is collectively determined by the will of the people, justice for the minority must also be protected. As stated by Thomas Jefferson, “All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression.”

Under the Fifth Amendment to the Constitution, the U.S. justice system is to provide for “due process of law.” Due process embodies the principle that an accused person is entitled to a fair adjudication through the court system. Fair treatment by the court includes several elements such as:

- Protection under the Fifth Amendment against being tried twice for the same crime (“double jeopardy”);
- Protection under the Fifth Amendment against an obligation to bear witness against oneself (“self incrimination”);
- The right under the Sixth Amendment to be informed of the nature and cause of an accusation of a crime;
- The right under the Sixth Amendment to a public hearing; and
- The right under the Sixth Amendment to trial by an impartial jury.

Trials under the U.S. justice system are adversarial in nature in that the “peoples’ lawyers”, or prosecutors, and lawyers for the defense each present their strongest case. Nevertheless, the burden of proof in both evidence and persuasion is borne by the prosecution. A presumption of innocence is one of the oldest fundamental rights

embodied in criminal justice. In the United States, a presumption of innocence is a constitutional right embodied in due process.³

The judge presiding over a trial is viewed as a neutral referee with an independent and impartial role. That role requires that judges be fair to both the accused and the prosecution, and to have a legal basis, in the Constitution and applicable laws, in making their decisions. Under the U.S. system of justice, judges are not to impose their own personal beliefs and prejudices in making such decisions.

Throughout history, people have debated the purpose and appropriate nature of punishment for committed crimes. One of the earliest beliefs is that there should be consequences for committing a crime and the punishment should be retribution for the bad done to another (“an eye for an eye”). Some believe that punishment of criminals will deter others from committing future crimes, either by the convicted criminal once released or by others who may be prone to breaking the law. Also, some people believe that a key goal of punishment should be rehabilitation of criminals so that, with better education, skills development, and adequate medical and mental healthcare during the period of punishment, inmates will better be able to re-enter life as productive members of society. U.S. society has embraced each of these views to differing degrees throughout its history.

Regardless of which view of punishment predominates, the U.S. justice system holds that there should be a reasonable degree of proportionality in the rendering of punishment. In other words, the “punishment should fit the crime.” The concept of parsimony — the principle that the nature and length of punishments for crimes, should not be more severe than necessary to achieve the retributive or preventive purposes — is a key element of the U.S. justice system. Under the Eighth Amendment to the Constitution, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Over time, the concepts of “excessive” and “cruel and unusual” have changed, often requiring courts, including the U.S. Supreme Court, to provide continuing guidance on the nature of acceptable punishment.

Challenges in Implementing Justice

The goals of the U.S. justice system have not readily translated into reality. Today there is widespread recognition that all aspects of the American system of justice are challenged and in need of examination. Some, but not all, of those concerns include the following.

Income disparities often lead to a lack of opportunities for education, training, and meaningful employment for the poor. People without opportunities nevertheless need essentials such as food, shelter and medical care, and may be forced to turn to some form of crime to survive. U.S. poverty is skewed towards racial minorities, especially people of color, which leads, in part, to disproportionately high rates of black and Hispanic people in prison. Poverty and violence against women also contribute to the sharp rise in incarcerated women, which increased by over 750 percent between 1980 and 2017, or twice the rate of increase for men.⁴ Absent parents leave children exposed to even greater

³ In *re Winship*, 397 U.S. 358 (1970), the United States Supreme Court decision held that “the Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged.”

⁴ *Incarcerated Women and Girls*; The Sentencing Project, June 2019

poverty, leading to cycles of poverty and crime. For example, boys born into families in the poorest 10 percent of Americans have a 25 percent likelihood of being incarcerated (or having been incarcerated) by their early 30s.⁵

Racial profiling. Every day in the U.S., minorities, especially people of color and Latino origin, are targeted by law enforcement and private security for searches, questioning and even detentions without any evidence of criminal activity. Such encounters lead to a higher risk of being arrested, or even killed, by police. For example, a 2019 report by the ACLU found that black individuals comprised 86 percent of those arrested in Washington, D.C. from 2013 to 2017 even though D.C.'s population is only 47 percent black (or 10 times the rate of arrests for white people). The disproportionate arrest rate is likely due, in significant part, to racial profiling, as illustrated by the fact that 78 percent of all people arrested for driving without a valid permit — something that cannot be determined before pulling a driver over — are black.⁶

Mass incarceration. As of 2019, nearly 2.3 million people were incarcerated in the U.S., but that captures only a piece of the Americans encountering the U.S. justice system. While over 60,000 people are sentenced to prison every year, there are over 10 million jail admissions.⁷ Because most people taken to jail have not been convicted, “jail churn” is especially high. Some arrested people make bail within hours, but others too poor to pay bail may remain behind bars for weeks or months before trial. The bottom line is that the U.S. has less than five percent of the world's population but 25 percent of the world's prisoners.⁸

Sentencing laws and racial discrimination. Many experts believe that the enactment of mandatory sentencing laws in the U.S. have helped to drive the sharp rise in U.S. incarceration, contributing to a state of mass incarceration. Such laws are frequently described as draconian and racially discriminatory. For example, a study by the United States Sentencing Commission found that black men that commit the same crimes as white men were given Federal prison sentences nearly 20 percent longer. That report also found that the increased discretion given to judges in applying sentencing guidelines after U.S. Supreme Court's 2005 *United States v. Booker* ruling increased the rate of racial discrimination by judges.⁹

The war on drugs. Increasingly, there is recognition that the U.S. is in the midst of an opioid scourge. According to 2019 report from the U.S. Health and Human Services Department (HHS), an estimated 10.3 million Americans, some as young as 12, misused opioids in 2018. When combined with all illicit drug use, the HHS estimates 19.4 percent of all U.S. civilians engaged in some form of substance abuse in 2018.¹⁰ Police make 1.6

⁵ Adam Looney and Nicholas Turner *Work and opportunity before and after incarceration*, The Brookings Institution, March 2018, page 13.

⁶ *Racial Disparities in D.C. Policing: Descriptive Evidence From 2013-2017*; ACLU, July 2019

⁷ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2019*; Prison Policy Initiative, March 2019

⁸ *Incarceration Rates By Country*; World Population Review, 2019

⁹ Glenn R. Schmitt, Louis Reedt, and Kevin Blackwell, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, November 2017, pages 6 and 10

¹⁰ *The National Survey on Drug Use and Health (NSDUH)*, August 2019, Table 1.1B

million drug arrests each year, over 85 percent of which are for mere possession¹¹. There are nearly a half million Americans incarcerated in prison for drug offenses, many of which are for non-violent possession charges. By a large margin, drug offenses account for the most offenses of people incarcerated in Federal prisons (45.4 percent).¹² Drug arrests are disproportionately high in poor communities, and the resulting criminal records contribute to unemployment and an increased likelihood of repeat arrests and longer sentences for many racial minorities.

Excessive punishments. Incarceration rates in the U.S. began to skyrocket in the early 1970s, causing the U.S. to have the highest per capita incarceration rate in the world.¹³ According to the National Research Council, the rate of incarceration in state prisons for six main crime types rose by 222 percent between 1980 and 2010, far exceeding the rate of population growth.¹⁴ While sentencing laws and the “war on drugs” were significant factors in the rise, a general trend of being “tough on crime” also fueled the increase. State and local judges, who must regularly run for election, were also influenced by the general demand for tough sentences. Lobbying by for-profit companies providing services to the “prison industry” also contributed to the trend for longer sentences. America’s youth are also impacted by excessive punishment. According to the U.S. Department of Justice, 83 percent of all inmates at juvenile facilities are held for delinquency offenses, which includes technical violations such as violations of probation and parole. Others are held for “status offenses,” such as “running away, truancy, and incorrigibility,” which are not crimes, or because they were referred for abuse, neglect or mental health problems, sometimes by parents.¹⁵

Unsafe prison conditions. Much of the U.S. prison system is characterized by overcrowding, violence, gangs, sexual abuse, and other risks to inmate health and safety. While few statistics covering the extent of unsafe conditions in U.S. jails and prisons are rigorously gathered, a steady stream of reported abuses suggest that such problems are widespread and not limited to only a few facilities. They may also be on the rise. According to a 2018 report from the Bureau of Justice Statistics, inmate allegations of sexual victimization in 2015 was nearly triple the number recorded in 2011; 42 percent of the substantiated victimizations were perpetrated by prison staff members.¹⁶

Recidivism. An often stated goal of the justice system in the U.S. is rehabilitation leading to successful re-entry by former inmates into society. Nevertheless, many factors combine to lead to appallingly high levels of former inmates returning to prison, or recidivism. In 2018, the U.S. Department of Justice estimated that 83 percent of released prisoners were

¹¹ 2017 *Crime in the United States*, Federal Bureau of Investigation’s Uniform Crime Reporting Program, Arrests Table - Arrests for Drug Abuse Violations, and Table 29 - Estimated Number of Arrests.

¹² *Inmate Statistics: Offenses*, Federal Bureau of Prisons, February 2020.

¹³ *Incarceration Rates by Country 2020*, op cit.

¹⁴ *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Jeremy Travis, Bruce Western, and Steve Redburn, ed; National Research Council. 2014, page 74.

¹⁵ Sarah Hockenberry, *Juveniles in Residential Placement*, 2015; U.S. Department of Justice, January 2018, page 3.

¹⁶ Ramona R. Rantala, *Sexual Victimization Reported By Adult Correctional Authorities*, 2012-15; U.S. Department of Justice Bureau of Justice Statistics, July 2018, page 1.

re-arrested within 9 years, with four-fifths being re-arrested with 3 years of release.¹⁷ Prisons create an environment where first-time non-violent offenders are mixed with some of the most violent criminals and gangs. Many inmates have limited education, lack useful job skills, or have drug addiction, and many suffer from mental health illnesses. Prisoner release is frequently characterized by inadequate or non-existent guidance and transitional resources. Even those inmates who are provided rehabilitative opportunities while incarcerated face limited employment opportunities when released. Nearly half of ex-prisoners in the U.S. earn nothing during the first full calendar year after release, and the median earnings for those with any employment is just over \$10,000.¹⁸

Difficult as all of these factors are for anyone encountering the U.S. justice system, the impact falls heaviest on transgender people.

¹⁷ Mariel Alper and Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*; Bureau of Justice Statistics, U.S. Department of Justice, May 2018, page 1.

¹⁸ Looney, *op cit.*, page 1.



ACTIVITIES

ACTIVITY 1: Circumstances Leading to Increased Encounters Between Transgender People and the Police

According to the U.S. Department of Justice, approximately 6.6 percent of all Americans born in 2001 are likely to spend some time during their life incarcerated¹⁹. High as that may sound, especially in comparison to other developed countries²⁰, that rate is dwarfed by the incarceration rate for transgender people in the U.S. Approximately 16 percent of all transgender people have been incarcerated during their lifetime, and that rate rises to 47 percent for all black transgender people²¹.

Transgender people do not have any greater propensity to criminality that would explain the higher rates of incarceration. Indeed, even a cursory look demonstrates that numerous facets of U.S. society set up many transgender people for poverty. Transgender youth expressing gender differently than social norms are often rejected by family, and are frequently the target of classmates — sometimes even teachers — in school. Churches, particularly those of more

¹⁹ Bonczar, Thomas P., *Prevalence of Imprisonment in U.S. Population, 1974-2001*, U.S. Department of Justice, Bureau of Justice Statistics, August 2003, page 1

²⁰ *Incarceration Rates by Country 2019*, op. cit.

²¹ Jamie Grant, op cit., page 163.

conservative denominations, may preach that deviations from gender norms are sinful, and offer no sanctuary or support.

These forces contribute to transgender youth dropping out of school and running away from home, often leaving them ill-prepared for adulthood. The lack of skills and societal prejudices contribute to intense employment discrimination, often forcing transgender people to find other means to survive on the streets. Petty crime to obtain minimal food, shelter, clothing and medical care — and little ability to properly obtain gender-confirming procedures — feeds discrimination and police prejudice, all of which becomes a cycle.

Family Rejection

“I knew that I was different from, you know, most of the kids my age. Of course, certainly all the boys that were my age. I had ran into the living room and I can remember my family be sitting in the family area and me running in telling everybody, ‘Guess what? I got a big secret? I’m different than everybody else.’ And so everybody was like, ‘Well what are you talking about?’ And everybody was shooing me out of the way. I was like, ‘I’m a girl.’ And so that began the trials and tribulations of Ashley Diamond.” Ashley Diamond

[Watch Ashley Diamond’s coming out story \(00:14:00 through 00:16:00\)](#)

- **Childhood hopelessness**

“[Ashley’s] younger sister, Diana, said their father ‘forgave’ Ms. Diamond for being transgender before he died. ‘But when we were younger — one time Daddy hit Ashley, and her nose was bleeding so much it could have filled a gallon jug,’ she said. Ms. Diamond said both her parents had difficulty accepting her. ‘Oh, my God, my mom used to give me boy lessons,’ she said. ‘I would literally have to walk around and practice grabbing my crotch. She is terribly sorry about it now, but I was, like, “Mom, you really tortured me.”’ At school, Ms. Diamond was relentlessly harassed. ‘Children would crowd around her and shove her into lockers and call her “faggot” and different things,’ Kelly Diamond said. At 15, Ms. Diamond attempted suicide. ‘When I got to the hospital and they brought me back to life, the doctor was able to clarify what I was feeling, that I was trapped in the wrong body,’ she said. ‘For the first time in my life, I had a little bit of hope.’” Read the entire New York Times article about Ashley here: <https://www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison.html>

- **Education and income influences**

“Transgender and gender nonconforming youth – across the country and in New York State – face serious challenges. Nationally, a staggering 41 percent of people who are transgender will attempt suicide at least once. The vast majority (almost 75 percent) of transgender students report being verbally harassed at school in the past year, and one-in-three have been physically assaulted. More than half have

avoided going to school due to harassment, and one-in-six (15 percent) have left school altogether. Close to 60 percent experience family rejection. One-in-five transgender people experience homelessness during their lives, and in New York City, the average age that a transgender person becomes homeless is only 13-and-a-half.” The complete report, *Dignity for All?* by the New York Civil Liberties Union, can be found here: https://www.nyclu.org/sites/default/files/publications/dignityforall_final_201508.pdf

- Racial influences

“From education to employment and housing discrimination, from police brutality to health care disparities, Black transgender people are suffering at extremely high rates due to bigotry and transphobia. Nearly half of all Black transgender respondents report being harassed at work and at school. Twenty-six percent are unemployed and 34 percent report annual incomes of less than \$10,000 per year. These numbers are appalling and these living conditions are unacceptable for any human being — gender conforming or not. NBJC is committed to bringing visibility to the gross inequities faced by our transgender brothers and sisters, and to creating a world where gender non-conforming individuals can work, love and seek medical attention without fear of discrimination, harassment or violence.” More information can be found here: <https://www.thetaskforce.org/new-analysis-shows-startling-levels-of-discrimination-against-black-transgender-people/>

- Religious influence on families

“Religious differences also extend to questions about societal acceptance of transgender people. Most white evangelical Protestants (61%) say society has “gone too far” when it comes to accepting people who are transgender. And Pew Research Center polling conducted in the summer of 2016 found that seven-in-ten white evangelical Protestants think that transgender people should be required to use the public restrooms that correspond with their birth gender.” More information on religious views about the transgender community can be found here: <https://www.pewresearch.org/fact-tank/2017/11/27/views-of-transgender-issues-divide-along-religious-lines/>

Discrimination in Schools

“My high school year, I quit school because the teasing had reached a certain level. Even though I was cool with a lot of the “cool kids”, my best friends were some of the most popular cheerleaders and things in this town, it still was, you know, there were always people who had a problem with it.” Ashley Diamond

Watch Ashley Diamond speak about dropping out of high school (00:16:00 through 00:16:45)

- Dropout rates

“Discrimination at school, in turn, leads to dire outcomes. The transgender population unemployment rate is ‘twice the rate of the general population,’ the NYCLU says. Twenty-five percent of these youth who suffered verbal harassment, sexual or physical assault, or expulsion have been homeless. Only 14 percent transgender or gender nonconforming youth who didn’t endure this abuse have been homeless. Some 50 percent of transgender youth who left school because of harassment were ‘currently or formerly homeless,’ the NYCLU, paraphrasing research, says.” This news article can be found here: <https://www.newsweek.com/new-york-fails-transgender-youth-lgbt-trans-teens-346002>

- Lack of opportunity to build skills for adulthood

“Discrimination is harmful to all students, but for transgender students, it also undermines their full integration into society. National data links harassment in schools to sky-high rates of depression, unemployment and homelessness for transgender individuals.” More information can be found here: <https://www.nyclu.org/en/press-releases/report-exposes-illegal-treatment-transgender-and-gender-nonconforming-students-new>

Community Discrimination

“We were confronted by a group of Neo-Nazis outside of a bar, and they said very derogatory statements. Calling us ‘chicks with dicks’ and ‘faggots,’ and ‘African babies,’ and telling us to go back to Africa. So we knew that the situation was dire.” CeCe McDonald

[Watch CeCe McDonald recall being harassed and brutally being beaten while walking on the street \(00:22:00 through 00:26:30\)](#)

- Medical services

“From routine checkups and emergency room visits to medical and mental health services for gender dysphoria, transgender people face barriers to accessing health care.” Recent examples of a lack of access to medical care for transgender people can be found here: <https://www.usatoday.com/story/news/2018/12/11/transgender-health-care-patients-advocates-call-improvements/1829307002/>

- Emotional trauma

“With the escalated prevalence of mental health issues for transgender populations, the literature suggests clinicians and transgender people seeking therapy would benefit alike by being comfortable exploring the many influences of trauma on one’s life: childhood adversity, neglect, abuse (physical, sexual, verbal), and ruptured or unhealthy attachments with their primary caregivers.” Read more about the effects of trauma here: <https://www.psychologytoday.com/us/blog/minority-report/201912/trauma-and-transgender-identity>

- Violence against transgender people

“LGBTQ people of color, particularly transgender women of color, experience a significant amount of violence. According to FBI data, LGBTQ people are the most likely group to experience a hate crime, and a recent report by the National Coalition of Anti-Violence Programs shows that 60 percent of hate violence against LGBTQ and HIV-affected people was against people of color.” More information is available here: <https://www.theroot.com/how-police-fail-to-protect-and-serve-lgbtq-communities-1790856644>

Employment Discrimination

“The job market would be a market that I would be discriminated against in fiercely. I would get jobs. After they would identify my gender on the marker, say my license or birth certificate or whatever document they would be requesting, I would be immediately fired.”
Ashley Diamond

[Watch Ashley Diamond share her struggles on finding work \(00:16:58 through 00:17:42\)](#)

- Street survival, including non-violent street survival crimes

“The National Transgender Discrimination Survey (NTDS) examined the experiences of over 6,400 transgender adults across the United States in 2008-2009. To date, it remains the largest reported survey of transgender people in the US.1 The NTDS found that transgender people overall experience high levels of discrimination in every area of life, as well as high levels of poverty, unemployment, homelessness, negative interactions with police, incarceration, and violent victimization. As a result, many transgender people participate in the sex trade in order to earn income or as an alternative to relying on homeless shelters and food banks. The criminalizing and stigmatizing of sex work in the United States can worsen the discrimination and marginalization that transgender people already face in society.” Read more on transgender experiences in the sex trade here: https://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf

Police Prejudice

- Lack of understanding and training in the police

“American policing is in grave need of reform. Reports of racial and religious profiling, killings of unarmed civilians, and sexual abuse and other forms of misconduct by police across the nation are all too common. Over half (58%) of transgender people who interacted with law enforcement that knew they were transgender in the last year reported experiences of harassment, abuse or other

*mistreatment by the police according to the US Transgender Survey (USTS). Transgender people often feel, accurately, that they can do nothing about this mistreatment, knowing that they risk falling victim to additional mistreatment by those tasked with conducting and overseeing the complaint process.” Read the complete National Center for Transgender Equality report *Protect and Serve: Police Department Policies Towards Transgender People* here: https://transequality.org/sites/default/files/docs/resources/FTPS_FR_v3.pdf*

Legislative Discrimination

“My interaction with the police has always been difficult because when anytime that my name is ran or they have to look at my identification and it doesn’t match up with what they’re seeing, it’s automatically an instant problem.” Ashley Diamond

[Watch Ashley Diamond’s explain how a government ID can lead to discrimination \(00:01:43 through 00:02:18\)](#)

“The officer that arrested me, he did not quite know that I was transgender until he asked me for my identification and I gave it to him. And he looked at it and he was like, “Well on here, it says male.” And I was like, “Well I’m transgender.” And after he realized that I was transgender, like his whole attitude changed against me. It wasn’t no longer like okay, I’m dealing with a woman. Now it was like, I’m dealing with a freak.” Jayda

[Watch Jayda relive the moment when she was arrested \(00:04:00 through 00:04:26\)](#)

- **Identification**

“These measures (BILLS) target transgender and nonbinary people for discrimination, such as by barring access to or even criminalizing the use of appropriate facilities, including restrooms, restricting transgender students’ ability to fully participate in school and sports, barring healthcare for transgender youth, allowing religiously-motivated discrimination against trans people, or making it more difficult for trans people to get identification documents with their name and gender.”

A list of anti-trans bills introduced in early 2020 alone can be found here: <https://www.aclu.org/legislation-affecting-lgbt-rights-across-country>

Suggested Activity 1 Group Discussion Questions

- Do you have friends, relatives, co-workers or others that you know in your community who are transgender? What do you understand they experienced with their family and in school?
- Do you know whether any employers that you have worked for have a policy that specifically includes/excludes hiring LGBTQ people?

- What are some of the impediments to a stable life if a person does not have a permanent residence?
- Why do you believe some transgender people engage in sex work?
- What is your state's policy regarding issuing identification documents (e.g., drivers licenses) to transgender people based on their gender identity?

ACTIVITY 2: A Transgender Person Being Arrested

When the police encounter a transgender person, they often find that person to be unacceptably different. That sense of difference may be based on distinguishing features in the transgender person's appearance. Such distinguishing features may be due to a transgender person's inability to fully express gender identity, often resulting from a lack of financial and emotional support. Because many states make it difficult, if not impossible, for transgender people to obtain identification matching their preferred gender expression, police officers all too often react poorly when the name or photo on a transgender person's driver's license does not match the appearance of the person they have stopped.

Relatively few communities have implemented effective educational programs to help police officers better understand and respect transgender people. Even where police have

undergone such training, individual officers may nevertheless treat transgender people as "freaks of nature" due to their own religious or cultural prejudices or their own personal insecurities.



Such discrimination often leads to an automatic assumption that a transgender person is guilty of a crime. Consequently, police are known to even stop transgender people for simply walking in some neighborhoods, a situation described as "walking while

trans."²² Such prejudice sometimes leads police to treat transgender individuals as guilty of crimes even when they are victims of crimes.

Police procedures and county jail facilities may be ill-prepared to appropriately process and house a transgender person after arrest. During the process, transgender detainees are frequently disrespected by mis-gendering, unnecessary and dehumanizing questions, and outright ridicule. Transgender people in custody routinely endure verbal abuse from the police, who may find them to be "sinful deviates." Such abuse can even include exposing a transgender person's genitalia, parading that person in front of others, and photographing a naked transgender person for sport. Due to a lack of relevant procedural guidelines, adequate facilities, or indifference, transgender detainees are frequently housed in group cells with others where they become targets of verbal and physical abuse.

When arrested, transgender people are often charged with non-violent, street survival crimes, such as prostitution, petty theft, or minor drug dealing. Even when bail is set at a modest amount, a transgender person struggling to survive may be unable to raise bail money for

²² *Unjust: How The Broken Criminal Justice System Fails Transgender People*, Center For American Progress and Movement Advancement Project, May 2016, page 11

release. While incarcerated awaiting trial, those transgender detainees may lose what little gainful employment they have, their housing, a car and other personal possessions. Further, like many homeless people, even if released on bail, transgender people also may lack a mailing address to receive notice of their hearing date, resulting in a failure to appear and a new warrant for arrest.

Harassment by Police

“Being booked into the jail was the most horrifying experience in my life. There was always things like taunting from the very beginning you know. ‘Put IT in that cage over there.’ It was always degrading references in terms to my gender.” Ashley Diamond

[Watch Ashley Diamond, Miss Major and Eryka talk about what it’s like to be arrested \(00:05:15 through 00:07:18\)](#)

- **Walking while trans**

“One summer afternoon in 2017, [Candii] was smoking a cigarette outside her apartment building in the Bronx when a police car pulled up. It was a vice squad, and they threatened to arrest her—she was standing on that corner, they alleged, because she was a sex worker. She denied it; she was just having a smoke. Fine, the officer said. How about you work with us, then, to help us identify drug dealers and sex workers in the neighborhood? He offered \$1,500. She refused. Again, the officer told her he’d book her on prostitution—unless she performed oral sex on him. Terrified, Candii complied. ‘I didn’t have another option,’ she said. ‘I ran home grateful that I wasn’t in jail.’ Candii is one of the many transgender women to have been profiled by what activists have dubbed the Walking While Trans ban. The law criminalizes ‘loitering for the purpose of engaging in a prostitution.’ Police routinely use the legislation, which has been on the books since 1976, to target trans women of color, arguing that what they’re wearing or where they’re standing is sufficient proof that they’re selling sex. The complete article from The Nation, The Walking While Trans Ban is “Stop and Frisk 2.0” can be found here: <https://www.thenation.com/article/activism/walking-while-trans-repeal/>

- **Lack of understanding by police**

“In some cases, LGBTQ hate crime victims have actually been arrested and charged with crimes for defending themselves. CeCe McDonald, a black transgender woman with a history of surviving physical and sexual assault, was the only person arrested after defending herself against a group of white men and women who were shouting racist and transphobic slurs as she walked by and then slashed her face with glass, unprovoked.” Read more about this case here: <https://www.rollingstone.com/culture/culture-news/the-transgender-crucible-114095/>

Physical Humiliation During the Arrest Process

“When I was arrested, the police were very mean to me. They were verbally abusive to me. They actually ripped my clothes open and exposed my genitalia.” Janetta Johnson

Watch Janetta Johnson recall the physical assault she endured while being arrested (00:04:27 through 00:04:37)

- Physical assault during arrest

“More than one-fifth (22%) of transgender people who had interacted with police reported police harassment, and 6% of transgender individuals reported that they experienced bias-motivated assault by officers. Black transgender people reported much higher rates of biased harassment and assault (38% and 15%).” This topic is discovered more fully in Chapter 6 of the National Center for Transgender Equality’s report, *Blueprint for Equality: A Transgender Federal Agenda*, which can be found here: <https://transequality.org/blog/the-federal-trans-agenda-in-a-word-cloud>

Lack of Access to Bail

“Transgender people struggle to find jobs, to find housing, to just basically exist – survival...They are often living in poverty and this disproportionately affects people of color” M. Dru Levasseur

Watch M. Dru Levasseur explain how lack of jobs creates poverty for many transgender people (00:17:14 through 00:17:42)

- Lack of access to bail

“Transgender people tend to have a harder time raising bail than other inmates because they are less likely to have family willing to vouch for them, according to Strangio.” Learn more about why bail is difficult for many transgender people to come up with here: <https://thecity.nyc/2019/09/layleen-polancos-death-spurs-transgender-inmate-bail-fund.html>

Suggested Activity 2 Group Discussion Questions

- When a transgender person encounters the police, there is a likelihood that they will be discriminated against. Explain what this discrimination could look like based on the examples given in the film.
- Does your community’s police have a policy regarding how a police officer should interact with a transgender person? Does that policy mandate treating all people with respect, dignity and professionalism, including transgender people?
- Why is making bail more difficult for many transgender detainees compared to the general population?

- Does your community have bail policies that recognize that many detainees, especially homeless people, may not have a permanent address where they can receive court appearance notices? Should nonviolent offenders be released without requiring bail? Given that the daily cost to hold a detainee in county jails is significant, what do you recommend if a detainee can not afford to pay even a minimal bail amount (e.g., \$25 or \$50)?

US LIKELIHOOD OF INCARCERATION

ALL GENDERS



6%

TRANSGENDER



16%

BLACK
TRANSGENDER



47%

ACTIVITY 3: Courtroom (In)Justice

The same inexperience in navigating society and society's prejudices, which adversely affect many transgender people in their daily lives, follows them when they encounter the U.S. justice system. Transgender people who lack family support, both emotional and financial, and who may be barely able to support themselves on a day-to-day basis, are almost certainly unable to afford adequate legal counsel. Consequently, they most often rely on court-appointed public defenders.

Even the most passionate public defenders are frequently overworked, and they may have little understanding of what life is like for a transgender person. Indeed, a public defender may also share some of the common misunderstandings and prejudices about transgender people, which can adversely impact their efforts in defending a transgender detainee.

In many other ways, a courtroom may also harbor prejudices about transgender people. It is not uncommon that transgender defendants are mis-gendered and subject to verbal abuse in court. Such prejudices contribute to the assumption that, once arrested, a transgender person cannot be relied on to give truthful testimony, and is most likely guilty of some crime. Discrimination against transgender people all too often leads to longer, harsher sentences even for non-violent survival crimes.

Impact of Poverty and Lack of Social Skills

"Me at 32 years old, never having a felony, never really being in any real trouble was facing a very serious charge of burglary." Ashley Diamond

[Watch how prejudice and lack of jobs leads to poverty and crime \(00:17:42 through 00:18:25\)](#)

- Inability to navigate being charged with a crime
“In a survey by Lambda Legal, of transgender and gender non-conforming respondents who had been in court anytime during the past five years, 33% heard a judge, attorney, or other court employee make negative remarks about a person’s sexual orientation, gender identity, or gender expression.⁸⁷ Transgender and gender non-conforming people of color in the survey reported even higher rates; 53% had heard discriminatory comments in the courts.” More detail can be found in the report Protected and Served? here: <https://www.lambdalegal.org/protected-and-served/courts>
- Lack of family and community support
“Transgender and gender non-conforming youth may experience family rejection and isolation, which can result in homelessness and a lack of support network. In a national survey of transgender adults, 57% experienced family rejection.” Please read Unjust: How the Broken Criminal Justice System Fails Transgender People: <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

Lack of Understanding by Public Defenders and Judges

“I learned how this system works...They didn’t want to use any type of professional testimony from people who do statistics on trans violence and the lives of trans people, and, you know, the violence that then ensues.” CeCe McDonald

Watch CeCe McDonald and Naomi Goldberg explain how prejudice permeates throughout the courtroom. (00:26:37 through 00:28:27)

- Overworked
“In the recent Washington Post opinion article titled “I’m a Public Defender. It’s Impossible for Me to Do a Good Job Representing My Clients,” Tina Peng writes about how in 2014 she worked on over 300 felony cases—double what the American Bar Association recommends. Her story is one shared by many public defenders in densely populated areas throughout the country. In California, for example, while the state recommends 150 felonies per year, the average Fresno public defender handles 1,000 felonies per year.” More details on this subject can be found here on the American Bar Associations website: <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/articles/2015/overworked-underfunded-fair-trial-issue-indigent-defendants/>
- Unfamiliar with transgender people and their experience
“Transgender people are frequently mistreated by the justice system. Court and legal staff, including their own attorneys, may be unfamiliar with the issues facing transgender people, at best, and at worst may treat transgender people with disdain and hostility.” Please read page 19 of the report Unjust: How the Broken Criminal Justice System Fails Transgender People: <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

- Personal prejudices
“How do you put faith in someone who is supposed to be advocating for you when they are calling you names behind closed doors?” An example of Public Defender’s expressing prejudice toward a transgender client can be read here: <https://www.recordnet.com/news/20190630/sj-public-defenders-office-staffers-accused-of-mocking-lgbt-client-harassing-worker>
- Longer and harsher sentences
“Once Ms. McDonald was arrested, she became part of our nation’s broken justice system. As a transgender person and a person of color, she had a difficult life but now it has become much more difficult. She maintained her innocence when the prosecution charged her with first-degree murder. When the prosecution offered to reduce her charge to second-degree manslaughter, Ms. McDonald accepted the plea. Given the choices, most people would have accepted the plea. Over 95 % of cases settle in plea bargains. There are no guarantees at the end of a trial and it is a time consuming and costly process.” Read the National LGBTQ Task Force article, “Cece McDonald Released From Prison” here: <https://www.thetaskforce.org/cece-mcdonald-released-from-prison/>

Suggested Activity 3 Group Discussion Questions

- A transgender person may experience words or actions in a courtroom suggesting bias against transgender people. What are some likely prejudices that a transgender person might encounter?
- Is it important that all accused persons have legal representation even if they can’t afford to pay a lawyer? Why or why not? What is the basis for that right in the U.S.? Do you believe the system of assigning public defenders is effective? What other arrangements might be considered?
- What might be done to create a better understanding of transgender people by judges?
- What changes in the US Justice system could reduce the disparities that exist due to gender, gender identity, sexual orientation, or race?

ACTIVITY 4: Incarceration

Transgender people sentenced to prison are most often placed in facilities based solely on their physical genitals, regardless of the person's gender identity or gender expression. Although not easy for any transgender person, such practices can be particularly dangerous for transgender women, especially transgender women of color. For all of the reasons discussed earlier, many transgender people who wish to fully express as a woman may lack the resources to complete gender-confirming surgeries. Nevertheless, they may appear in every other respect to be women with fully formed breasts, feminized facial features, and other secondary sexual characteristics. If placed in a male prison population, transgender women become targets for verbal, physical and sexual abuse.



Male inmates often see transgender women as easy targets. State and Federal prisons are rarely prepared to safeguard transgender women in otherwise male facilities. Prison guards and staff are likely to have little or no understanding of transgender people, and they may engage in discriminatory and abusive actions as well. When a transgender person is threatened or subjected to abuse, they are, all too often, placed in solitary housing units (the "SHU"), allegedly for their protection. Experts almost universally recognize that placing an inmate in solitary confinement for more than a short period of time is a form of torture. It is not unusual to hear of transgender people who have been housed in solitary units for weeks and even months. Ironically, some solitary housing units have double-bunk arrangements, and a transgender inmate may be forced to share that cell with another inmate, often putting the transgender person at even greater risk.

Many prisons have policies prohibiting access to gender-appropriate clothing, cosmetics, and other personal items by transgender inmates. Without those items, transgender people may be unable to present in accordance with their gender identity. The inability to appropriately present their gender unduly adds to the psychological trauma of incarceration and abuse. The lack of some personal items also contributes to physical discomfort, such as the unavailability of proper bras for transgender women with fully-formed breasts.

In many prisons, the medical needs specific to transgender inmates are delayed, minimized, or entirely ignored. Prison doctors are unlikely to have training about transgender people and their special medical needs, including, for example, the importance of hormone therapy, and medical tests that may continue to be essential even if a transgender inmate has previously completed gender confirmation surgery (e.g., prostate exams for transgender women). Doctors also may be unaware of the physical and emotional impact when a transgender person is prevented from expressing consistent with an internal sense of gender identity.

Lack of Appropriate Facilities

“For transgender prisoners, life is even more difficult. They face barriers and challenges in terms of accessing adequate health care, physical safety alone.” Naomi Goldberg

Watch Naomi Goldberg discuss how the lack of appropriate facilities can lead to physical abuse. (00:39:28 through 00:40:23)

- Absence of safe spaces

“Since entering California’s prison system in January 2015, Candice Crowder has been beaten, sexually assaulted, and sliced. But rather than address her repeated pleas for help and safety, the 33-year-old Black trans woman says prison staff beat her and placed her in solitary confinement, as well as in housing units closer to the prisoners who assaulted and abused her. Within months of entering the North Kern State Prison in January 2015, Crowder was placed in a cell with a man who was openly transphobic. When she told prison staff that she did not feel safe, she says prison staff beat her. Later... she was transferred to another prison, where she was placed in a cell with a man who pressured her to perform sex acts on him. With the help of a trans woman who was on the prison’s Men’s Advisory Council, which has direct access to the warden and other administrators, Crowder was transferred to another cell. Days later, however, another officer moved her back to the sexual abuser. Two weeks later, in September 2015, Crowder says the man violently raped her.” Read about Candice’s story and lawsuit against California’s CDCR: <https://rewire.news/article/2019/02/04/a-new-lawsuit-sheds-light-on-the-horrors-trans-people-face-in-prison/>

“Transgender people are almost exclusively placed in facilities based on their external anatomy or the sex recorded on their birth certificates. In other words, transgender women are almost always placed in men’s facilities and transgender men are frequently housed in women’s facilities. According to a study of California Department of Corrections facilities, over three-quarters (77%) of transgender people in men’s prisons identified as women and lived their lives as women outside of prison.” For more information, see pages 20-21 in *Unjust: How the Broken Criminal System Fails Transgender People*: <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

“Across the state, trans people are often held in jail and prison facilities that are not consistent with their gender, even though state law prohibits discrimination on the basis of gender identity and courts have held that it’s discriminatory to refuse to treat a person consistently with their gender identity. In part because they are housed incorrectly, trans people are exposed to overwhelming levels of abuse and harassment while behind bars, and they are far more likely than cisgender people to be targeted for the worst types of violence and mistreatment.” The complete report, *A New York Jail forced a Trans Woman Into a Men’s Facility* can be found on the ACLU website: <https://www.aclu.org/blog/lgbt-rights/criminal-justice-reform-lgbt-people/new-york-jail-forced-trans-woman-mens-facility>

Abuse by Other Inmates

“Was I raped? Was I brutally raped? Was I forced to provide oral copulation? Was I sexually harassed? Was I verbally abused because I was a transgender? I’ve been assaulted in every single prison that I’ve been to.” Michelle-Lael Norsworthy

[Watch Jennifer Orthwein and Michelle-Lael Norsworthy discuss the lack of protection for transgender people while in custody \(00:07:20 - 00:09:15\)](#)

“My incarceration consisted of physical abuse, name calling, and rape almost constantly. At Macon State, before being gang raped, of thinking that I was going to die. I can remember the moment like it was yesterday. My palms get sweaty, you know, just thinking about it.... When it was reported, I can remember the wardens, the whole way they handled it. I can remember them saying, ‘You shouldn’t have been here. We knew to get rid of you.’” Ashley Diamond

[Watch Ashley Diamond recall being gang raped and the lack of response by prison officials \(00:18:25 through 00:20:30\)](#)

- Verbal abuse, assault and rape

“Transgender women who are housed in men’s prisons are at especially high risk of sexual abuse. For example, one statewide study in California found that when transgender women were automatically housed with men, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities.” Read the full report here: <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>

“Miguel Crespo had told corrections officers at Kern Valley State Prison that he would kill Guerrero, a transgender woman who wore her hair long and tweezed her eyebrows, if he was forced to share a cell with her, according to an inmate who witnessed the incident and testified at Crespo’s murder trial. When Crespo moved in, Guerrero, 48, began filling out a form that prosecutors believe she intended to use as part of a transfer request...Prison guards told Crespo the move would be temporary, the other inmate testified. Later that night, after Crespo strangled Guerrero, he called the guards over and said, ‘You didn’t believe me. I told you I was gonna kill [Guerrero],’ according to the inmate.” Read the full article here: <https://www.kqed.org/news/11794221/could-changing-how-transgender-inmates-are-housed-make-prison-safer-for-them>

“According to a 2011-12 survey by the Bureau of Justice Statistics, 39.9 percent of transgender prison inmates and 26.8 percent of transgender jail inmates reported unwanted sexual activity with other inmates or sexual activity with prison staff members, which is always considered nonconsensual under the law, in the previous year — 10 times higher than for the general prison and jail populations.” The complete New York Times editorial, *Prisons and Jails Put Transgender Inmates*

at Risk, can be read here: <https://www.nytimes.com/2015/11/09/opinion/prisons-and-jails-put-transgender-inmates-at-risk.html>

Prejudice and Abuse by Prison Guards and Staff

“The officials allotted me no protection. I was essentially left to fend for myself. Oftentimes, they will put a trans women in with a guy who has a lot of time knowing that he’ll rape her... What do you do when the safe keepers are the people who are hurting you?” Ashley Diamond

Watch activist Miss Major and Ashley Diamond lament over the struggles transgender inmates have with “safe keepers” (00:33:52 through 00:35:13)

“Who’s going to protect me from you guys putting someone in the cell with me that’s going to cause me great harm?” Janetta Johnson

Watch activist Janetta Johnson and Ashley Diamond describe how guards used inmates to abuse them (00:36:22 through 00:37:38)

“Like the very first time that I went to prison, I was about 23 years old – the fact that you’re getting into the ‘big house,’ it’s very scary. I think for me what was more degrading was the process, right. The process of getting into, the process of, you know, the constant sexual harassment not only from the inmates, but also from the guards.” Bamby Solcedo

Watch as experts in the field and ex-inmates explain how the warden and prison staff contribute to the mental health problems facing transgender inmates (00:40:25 through 00:43:29)

- Verbal abuse, assault and rape

“I’ve seen this mother fucker with a beard,’ correctional officer James Schaefer, who appears on Facebook under the name James Schaefer, wrote in one group, after a post was shared last December about the transfer of a then-incarcerated transgender woman, Strawberry Hampton, to a women’s facility. ‘The state is stupid. I’d chop his pecker off for him than he can be female.’” Read the BuzzFeed article about prison guards posting private information and bullying former transgender inmates here; <https://www.buzzfeednews.com/article/emilyhoerner/illinois-prison-guards-mocked-transgender-inmates-facebook>

“Guards called her ‘faggot’ and ‘freak show’ and referred to her as ‘s/him.’ They forced her to shower in the presence of male prisoners and corrections officers and put her in a transparent-walled ‘suicide cell’ when she experienced post-traumatic stress from the sexual assault. Once inside, they removed her clothes and left her naked in front of male prisoners and staff while they searched for an anti-suicide smock called a ‘turtle suit.’” More on the abuse of Ms. Williams can be found on the ACLU website here: <https://www.aclu.org/blog/lgbt-rights/criminal-justice-reform-lgbt-people/transgender-prisoners-face-sexual-assault-and>

“One afternoon, two guards and a sergeant entered the unit. They put me in leg chains and chained my wrist to my waist. The three escorted me to a hospital bed within the infirmary. I was then chained to the bed and my one-piece overalls were taken down. I was held down by the sergeant and one guard, while the other guard raped me. The men taunted, ‘So you want to be a woman,’ and ‘we’ll show you how to be a woman.’” Read the entire report, *A Remedy for Male-to-Female Transgender Inmates: Applying Disparate Impact to Prison Placement* here: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1682&context=jgspl>

“Our analysis of ICE JICMS data showed 15 substantiated allegations of sexual abuse and assault in ICE detention facilities from October 2009 through March 2013. The 15 substantiated sexual abuse and assault cases had several similar underlying factors. In particular, ...3 cases involved transgender victims. In addition, 4 cases included a perpetrator who did not understand the zero-tolerance sexual abuse policy. In 4 of the 15 substantiated cases, a guard sexually abused a detainee...” The complete Government Accountability Office report, *Immigration Detention, Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, can be found here: <https://www.gao.gov/assets/660/659145.pdf>



- Neglect of medical needs / hormones

“I was interviewing a rather young trans woman who told me that she had been incarcerated for years, and she had been constantly asking for medical help, psychological help, counseling. And the physician, the prison physician, told her that she couldn’t possibly be transsexual because it didn’t show up in her blood work.” Randi Ettner

Watch Randi Ettner and several ex-inmates talk about the lack of hormone therapy available to transgender inmates (00:29:13 - 00:33:51)

“We have represented prisoners who have been denied access to health care related to gender transition, including a group of Wisconsin prisoners challenging a terrible law that tried to restrict any government funding for gender affirming care, Chelsea Manning in her challenge to the Department of Defense, and many others. We have also worked collaboratively with prisoners on many policy issues, including in the many rounds of providing comments on proposed PREA regulations.” Read *The Trump Administration is Attacking Trans People in Federal Prison* on the ACLU website here: <https://www.aclu.org/blog/lgbt-rights/criminal-justice-reform-lgbt-people/trump-administration-attacking-trans-people>

- Lack of appropriate clothing, grooming and personal items

“Being denied access to these items can amount to daily humiliation for some prisoners and can exacerbate gender dysphoria, harming their health. Courts have previously found that it may be unconstitutional to deny transgender prisoners access to items such as bras, cosmetics, or compression garments when access to those items is medically necessary for the treatment of gender dysphoria.” Read more of views of the National Center For Transgender Equality, *Policies to Increase the Safety and Respect For Transgender Prisoners* here: <https://transequality.org/sites/default/files/docs/resources/PoliciesToIncreaseSafetyandRespectforTransgenderPrisoners.pdf>

Use of Solitary Confinement

“I sat in jail for close to eight months, and I would say six of those months, I was incarcerated in solitary confinement because they felt that, you know, I was either in danger or I would put the general population in some kind of frenzy....” Jayda

watch as experts in the field and ex-inmates describe how the SHU is both a blessing and a curse (00:35:13 through 00:40:16)

- Excessive confinement in solitary is torture

“Experts who have examined the impact of solitary confinement have found three common elements that are inherently present in solitary confinement social isolation, minimal environmental stimulation and ‘minimal opportunity for social interaction.’ Research further shows that solitary confinement appears to cause ‘psychotic disturbances,’ a syndrome that has been described as ‘prison psychoses.’ Symptoms can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis and self-harm (see annex for a comprehensive list of symptoms).” Read more from the United Nations General Assembly report on cruel, inhumane or degrading treatment or punishment here: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>

“When a transgender woman is placed in solitary, she can be greatly harmed by the isolation of constant lockdown; by the strip searches that are often required any time a prisoner leaves her cell, even just to shower; and by the lack of appropriate

medical care that often results from placement in solitary confinement. The psychological consequences of solitary confinement can also be particularly devastating for transgender individuals, whom studies have shown to be at a generally elevated risk of suicide” Read the ACLU report “Still Worse Than Second Class: Solitary Confinement of Women in the United States here: https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf

Suggested Activity 4 Group Discussion Questions

- What are some possible disadvantages of incarcerating transgender people based their genitalia? Based on their gender identity?
- Many transgender inmates experience assault and rape while incarcerated. How do you believe the current prison system makes it possible for both other inmates, guards or prison staff to commit these crimes against transgender inmates?
- When do you believe it is appropriate to use solitary confinement in prison? Should transgender inmates be placed in solitary confinement if they are threatened with violence by other inmates? What might be some alternative means of providing transgender people in prison with safety from physical and sexual assault?
- What medical needs may be different for transgender inmates, compared to the general prison population?

ACTIVITY 5: Challenges After Release

While rebuilding life after serving time in prison is difficult for anyone, it is especially challenging for transgender people. Like many released inmates, transgender people are often paroled back to the same community where they previously encountered unrelenting discrimination and abuse. They face the same hardships as before in finding employment, except now they have the added challenge of a criminal record. Even with some level of income, it is difficult for transgender people to find housing. It is estimated that 80 percent of landlords perform background checks on potential tenants²³, and they often will not rent to people with a criminal record. Landlords who are uncomfortable with transgender people may use a criminal record to deny renting to transgender person even if he or she might otherwise rent to other former inmates.



Many former transgender inmates suffer from severe Post Traumatic Stress Disorder (PTSD) due to the abuse they had to endure while incarcerated. In many communities, there are little or no resources to assist former inmates in recovering from prison-related trauma. What few resources are available are likely to have little experience in addressing the unique needs of transgender people. Even if resources do exist, former transgender inmates may have difficulty identifying supportive services, and they are most likely to be unable to pay for such services. Like most people with a criminal record, the system is seemingly set up to ensure that former inmates will fail and ultimately return to prison.

Set Up For Failure

“...when they leave the system, it really becomes a cycle. There’s a lack of support, and they are brought back into a system that still discriminates against them, that still makes employment difficult. But now they have the added challenge of having a criminal record...” Naomi Goldberg

[Watch Naomi Goldberg and Ashley Diamond discuss the realities of life after parole \(00:43:28 through 00:44:54\)](#)

- Paroled back into same community

“Individuals exiting prisons and jails with a criminal record, and those who didn’t serve time, but who have a criminal record, face substantial challenges in rebuilding their lives. Finding employment and housing, accessing benefits and

²³ Vallas, Rebecca and Dietrich, Sharon “One Strike and You’re Out,” Center For American Progress, December 2014, page 19

health care, and reestablishing family connections are all important parts of successful reentry and avoiding the cycle of incarceration. For transgender people, the challenges to successfully rebuilding their lives are substantial— not only do they have a criminal record, but they also face high levels of discrimination because of their gender identity.” Read more on page 32 of *Unjust: How the Broken Criminal System Fails Transgender People* here: <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

- Same prejudices and discrimination

“The largest completed survey of transgender people found that almost half of all respondents— 47 percent—had faced discrimination in hiring, promotion, or job retention, and 78 percent experienced at least one form of harassment or mistreatment at work because of their gender identity. Many courts have acknowledged the challenges transgender individuals face. For example, the Ninth Circuit wrote that ‘significant evidence suggests that transgender persons are often especially visible, and vulnerable, to harassment and persecution due to their often public nonconformance with normative gender roles.’” More information can be found at <https://www.justice.org/what-we-do/enhance-practice-law/publications/trial-magazine/many-faces-transgender-discrimination>

Residual Issues

- Residual health issues

“Research finds that formerly incarcerated transgender people face health issues as a result of incarceration, further underscoring the need for access to health care. A study of transgender veterans who had involvement with the criminal justice system found significant physical and mental health disparities compared to formerly incarcerated veterans who were not transgender. The study suggests there are persistent effects of incarceration on later health outcomes in the transgender population.” Read more on page 33 of *Unjust: How the Broken Criminal System Fails Transgender People* here: <http://www.lgbtmap.org/file/lgbt-criminal-justice-trans.pdf>

- Residual traumas

“Broke and jobless — besides a couple of \$40 stints cleaning kennels at a friend’s pet shelter — Ms. Diamond cannot afford the fees for her parole and monitoring, for her required mental health treatment or for the psychiatric drugs she was advised to keep taking. (Prison doctors gave her diagnoses of gender dysphoria, post-traumatic stress disorder and bipolar disorder.). She also cannot afford hormones once her prison supply runs out; she has applied for Medicaid, but even if she qualifies for it, Georgia’s program, like that of most states, does not cover transition-related care for transgender people.” Read Ashley Diamond’s story of her trying times after release from prison here: <https://www.nytimes.com/2015/09/25/us/ashley-diamond-transgender-inmate-out-of-prison-but-not-fully-free.html>

Resource Challenges

- **Lack of resources**

“A trans person leaving the prison system can struggle to obtain safe housing and employment without proper identification, De La Torre explained, leaving them vulnerable to a life on the streets. One in five transgender people have experienced homelessness at some point in their lives, a problem compounded by discrimination in housing and employment and family rejection, according to the National Center for Transgender Equality.” Read the full article on transgender inmates adjusting to life after prison here: <https://www.nbcnews.com/feature/nbc-out/georgia-nonprofit-helping-trans-people-adjust-life-after-prison-n1008551>

- **Impact of a criminal record**

“Formerly incarcerated people may also face harsh consequences after their release if they are labeled as a ‘sex offender.’ Laws labeling people as sex offenders are overly broad and are often applied in a discriminatory fashion to target LGBT people. For example, in Louisiana some transgender women of color report being arrested, charged, and convicted of soliciting ‘crimes against nature...’ Labeling individuals convicted of certain crimes as ‘sex offenders’ places serious limitations on individuals convicted of these offenses even after they serve their sentence. These often include limitations on where someone can or cannot live, whether they have to receive ongoing supervision, and whether they must register or be tracked using electronic monitoring, all of which restricts access to employment and housing.” Read the full article on transgender inmates adjusting to life after prison here: <https://www.nbcnews.com/feature/nbc-out/georgia-nonprofit-helping-trans-people-adjust-life-after-prison-n1008551>

Suggested Activity 5 Group Discussion Questions

- Following release from prison, transgender inmates are often paroled into the same communities where their troubles started. Why might this be particularly problematic for a transgender person?
- Upon release from prison, what types of resources are available for transgender inmates to help them adjust to life out of prison? Are there likely to be special needs for a transgender person upon release?
- Why can it be more difficult for a transgender person to find employment after prison?
- The Federal Fair Credit Reporting Act (FCRA) requires that certain actions be taken by employers who request a criminal background of an applicant. What are those actions? Also, guidance from the Equal Employment Opportunity Commission (EEOC) discusses the circumstances, which do not constitute engaging in discrimination, when an employer can eliminate an applicant with a criminal record

because it poses an unreasonable risk. What are those circumstances, and what must an employer consider in doing so?

- What changes to the current U.S. justice system might reduce the rate of recidivism?

Activity 6: Hope for Change

The relentless and courageous actions of one transgender inmate, Dee Farmer, put into motion the possibility of improvements for transgender inmates, as well as all people in prison. In the late 1980s, Ms. Farmer refused to endure the relentless verbal, physical and sexual abuse she experienced while incarcerated in a Federal prison. Her suit against the prison warden and the Federal Bureau of Prisons led to a 1994 landmark ruling by the U.S. Supreme Court, *Farmer v. Brennan*, that the deliberate indifference of prison officials to substantial risk of harm to an inmate was a violation of the U.S. Constitution's prohibition against cruel and unusual punishment. In 2003, the U.S. Congress passed the Prison Rape Elimination Act (or PREA) mandating the establishment of standards to eliminate prison rape. In 2012, the U.S. Department of Justice issued final guidelines for the implementation of PREA. Notwithstanding the guidelines for the implementation of PREA, prison rape continues.

Although little has changed to improve conditions for transgender inmates in state and federal prisons, some county jails, including places like Los Angeles, Chicago, San Francisco and Fort Lauderdale, are attempting to address better environments to house transgender detainees. Those efforts include optional housing for LGBT inmates and providing transgender inmates a choice to be housed based on gender identity.

Proper medical care for transgender people in prison is an ongoing challenge in many county jails and state and Federal prisons. There is an increasing recognition by the courts that hormone therapies and gender-confirming surgeries are medically necessary and must be provided to transgender inmates. Nevertheless, receiving needed medical treatments is still a significant challenge for many transgender inmates.

Improvements in Some Communities

“Fort Lauderdale would have a whole section that was just trans and gay guys that were feminine. And there was a whole dorm that was like that. So that was the first time I had ever experienced anything like that.” Jayda

Watch as Jayda describes feeling safe while incarcerated in Fort Lauderdale in a ‘whole section’ dedicated to trans and effeminate gay men.’ (45:24 - 45:44)

- **LGBT Wing of the LA County Jail**

“[Los Angeles’ Men’s Central Jail], MCJ as many dub it, is a cauldron of racial tension where violence is easily stirred by a fluctuating daily population of 3,900 to 4,700 inmates packed in close quarters. But among the roughly 400 people housed in ‘K6G,’ the gay wing of Men’s Central Jail, there’s little outward expression of racial prejudice or gang rivalry. Inmates in these three open-plan dorms don’t worry much about the gang politics and violence among the ‘general population.’” Learn more about this facility here: <https://www.laweekly.com/in->

[the-gay-wing-of-l-a-mens-central-jail-its-not-shanks-and-muggings-but-hand-sewn-gowns-and-tears/](#)

- Emerging Best Practices

The American Medical Association urged in 2018 that transgender inmates be placed in facilities that match their gender identity. “The AMA urges that housing policies be changed to allow transgender prisoners to be placed in correctional facilities that are reflective of their affirmed gender status.” Read more about the AMA’s position here: <https://www.ama-assn.org/press-center/press-releases/ama-urges-appropriate-placement-transgender-prisoners>

There is an increasing awareness of the need to identify practical approaches to housing LGBT inmates in a safe, secure environment. In late 2019, Fenway Health issued a report entitled *Emerging Best Practices for the Management and Treatment of Incarcerated Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Individuals*. Read a summary of the report’s best practices and key recommendations, as well as a link to the complete report, here: <https://fenwayhealth.org/report-identifies-emerging-best-practices-in-the-management-of-lgbti-people-in-correctional-settings/>

The Seattle Police Department’s new policy reminds all officers to treat transgender people, like all people, with dignity, respect, and professionalism. It provides detailed guidance to help officers better understand how to properly consider the needs of a transgender detainee. The Seattle Police Department’s policy can be read here: <https://www.seattle.gov/police-manual/title-16---patrol-operations/16200---interaction-with-transgender-individuals>

Prison Rape Elimination Act (PREA)

“ In 2003, Congress passed the Prison Rape Elimination Act, or PREA, which was designed to reduce physical and sexual assault in Federal, state, and local prison facilities. It wasn’t until 2012 that the Justice Department first issued guidelines for the implementation of PREA”

[Watch experts tell Dee Farmer’s historic story of taking her case to the United States Supreme Court \(00:10:46 through 00:14:03\)](#)

- Understanding PREA

“The PREA Standards are a comprehensive set of federal rules that address all aspects of a facility’s operations as they relate to preventing, detecting, and responding to sexual abuse. The Prison Rape Elimination Act of 2003 required the U.S. Department of Justice to develop these standards. The Department of Justice issued its PREA Standards in 2012, and other federal agencies that hold people in detention have since adopted their own standards. Differing versions of the standards apply to different types of facilities, and some facilities that hold people involuntarily (such as psychiatric hospitals or civil commitment facilities) are not

covered.” An overview of the PREA regulations can be found here: <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>

Medical Care For Transgender Inmates

“After enduring years of assault, Michelle sued the California Department of Corrections in 2014 for cruel and unusual punishment.”

Watch as experts explain how Michelle-Lael Norsworthy sued the State of California and won her case (00:09:41 through 00:10:46)

- Position of the National Commission on Correctional Health Care

“Because jails, prisons, and juvenile confinement facilities have a responsibility to ensure the physical and mental health and well-being of inmates in their custody, correctional health staff should manage transgender patients in a manner that respects their biomedical and psychological needs.” Read the NCCHC’s position statement on health management, patient safety, and discharge planning here: <https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>

- Michelle’s case

“In a ruling issued on April 2, 2015, Federal District Court Judge Jon Tigar concluded that denial of care to Michelle violated her rights to adequate medical care under the Eighth Amendment to the U.S. Constitution. The court granted a preliminary injunction ordering the California Department of Corrections and Rehabilitation (CDCR) to provide her with “adequate medical care, including sex reassignment surgery...as promptly as possible.” Learn more about the landmark case here: <https://transgenderlawcenter.org/norsworthy-v-beard>

- Unsettled legal status

“Prisoners have a fundamental right to access necessary and effective medical care, and that includes the full range of treatments for gender dysphoria. So argues a strongly worded friend-of-the-court brief filed by the AMA and other medical and mental health professional organizations. The state of Idaho is fighting federal court-ordered gender-reassignment surgery for Adree Edmo—formerly Mason Edmo—a transgender female inmate who filed a civil rights lawsuit to get the gender dysphoria care that she was refused in prison. In December 2018, a federal district court ruled in favor of Edmo, citing Eighth Amendment protections against cruel and unusual punishment—in this instance, withholding needed medical care. The state appealed a court ruling in the case, Edmo v. Idaho Department of Correction, et al., sending it to the U.S. 9th Circuit Court of Appeals, where the AMA brief was filed. If the lower-court ruling is upheld, the procedure would be the first inmate gender-reassignment surgery in Idaho and reportedly only the second in the nation. The

first surgery was performed on a California inmate, also following a lawsuit.” Read the American Medical Association’s news story here: <https://www.ama-assn.org/delivering-care/population-care/transgender-prisoners-have-fundamental-right-appropriate-care>

“Writing for the majority, Circuit Judge James Ho said only California had ever provided gender reassignment surgery to a prisoner, and that was part of a settlement of a lawsuit. He said this meant the Texas Department of Criminal Justice’s refusal to consider the surgery as a possible means to treat Gibson’s diagnosed gender dysphoria...did not violate the Eighth Amendment. ‘Under established precedent, it can be cruel and unusual punishment to deny essential medical care to an inmate,’ wrote Ho. ‘But that does not mean prisons must provide whatever care an inmate wants.’” Read the entire Reuters article here: <https://www.reuters.com/article/us-texas-prison-lgbt-idUSKCN1RA2OZ>

Mixed Progress

- **Prison Rape on the Rise**

“Prison rape is far from being eliminated, and there have been complaints for years that the law lacks real teeth. But new numbers released Wednesday show there has been at least one big change since 2012: sexual assault behind bars is being reported more — a lot more.” Read the complete report here: <https://www.themarshallproject.org/2018/07/25/prison-rape-allegations-are-on-the-rise>

- **PREA in Jeopardy**

“In its latest attack on the rights of transgender people, the Trump administration on Friday rewrote federal guidelines for prisoners in a direct threat to the safety of transgender people in our nation’s prisons... This change stands in direct defiance of the Prison Rape Elimination Act, which mandates prison officials must screen all individuals at admission and upon transfer to assess their risk of experiencing abuse. The new policy strips away these guidelines and encourages broad, blanket placement of prisoners based on their sex assigned at birth.” Read how the rollback affects transgender inmates nationwide here: <https://transequality.org/press/releases/trump-administration-rolls-back-crucial-protections-for-transgender-people-in-prisons>

- **BOP Rollbacks**

“The Federal Bureau of Prisons (BOP) is rolling back an Obama-era policy put in place in 2012 that was intended to protect transgender inmates in federal prisons. The BOP on Friday released changes to its Transgender Offender Manual, and the revised manual strikes a sentence that instructs officials to consider transgender inmates” ‘gender identity’ when making decisions regarding prison housing. The manual now mandates officials ‘use biological sex as the initial determination’ for placement decisions.” Learn more here: <https://www.nbcnews.com/feature/nbc-out/bureau-prisons-rolls-back-obama-era-transgender-inmate-protections-n873966>

Suggested Activity 6 Group Discussion Questions

- What specific police policies might be most effective in treating transgender people with dignity, respect and professionalism?
- Why do you believe there is so little progress in implementing and enforcing the Prison Rape Elimination Act since the 1994 U.S. Supreme Court ruling in *Farmer v. Brennan*?
- What is the reasoning for providing gender-confirming procedures or surgery to a transgender person while incarcerated? Against providing such procedures?

Glossary of Related LGBTQ Terms

Cisgender: Cisgender refers to people who are not transgender. The prefix “cis” is derived from Latin meaning “on the same side” and accordingly, cisgender refers to people whose mind and body share congruence with respect to gender identity.

Cross-Dresser: People who have an innate need to present periodically by wearing clothing or displaying other elements of appearance commonly associated with the other sex. That need should not be confused with wearing clothes of the other sex for theatrical or entertainment purposes. Because it is largely acceptable in U.S. society for women to wear clothing typically associated with men, cross-dressing is more commonly associated with people assigned as “male” at birth having an innate need to express themselves in what is commonly viewed as a female appearance, including women’s clothing and makeup.

Gender Confirming Medical Procedures: Refers to medical steps, including gender confirmation surgery, and is only one small part of the transition process. This term is preferred over the deceptively simple and misleading term “sex change operation” that had been used in the past.

Gender Dysphoria: The discomfort or distress that a person may experience resulting from a lack of congruence between their internal sense of gender identity and their assigned sex at birth. In 2013, this term was adopted by the American Psychiatric Association to remove the stigma of the predecessor term, “gender identity disorder,” which implied a form of illness.

Gender Expression: Describes the way a person uses clothing, hair styles, voice, mannerisms or other means to their present gender to others.

Gender Fluid or Gender Queer: Some transgender people, most commonly younger people, recognize a more fluid gender identity, often being somewhere between male and female. As a result, they may prefer to shun strict gender labels, and instead identify as gender queer or gender fluid.

Gender Identity: A personal, internal perception of one’s own gender, most commonly as either “male” or “female,” but may also include other gender identities. While most people may feel a congruence with the sex they were assigned at birth based on anatomical features, others may not. Gender identity is not to be confused with sexual orientation; people with a similar personal sense of gender identity may nevertheless be sexually attracted to different people, including different genders.

Intersex: An umbrella term used to describe a diversity of people whose bodies do not follow a strict binary classification of “male” or “female.” Intersex people may have, for example, atypical variations in chromosomes or elements of both male and female sex organs.

LGBTQ: An umbrella acronym that includes people who are not (or not fully) heterosexual or cis-gender. Although the initials refer to Lesbian, Gay, Bisexual, Transgender and Queer (or Questioning), the term is intended to be inclusive of all people who differ from a strict heterosexual or cis-gender identity. Because the potential list of letters to identify this diverse range of people and identities can be long, some people use the term LGBTQ+.

Non-binary: A term used to describe people who do not identify with the paradigm of “male” or “female.” Some non-binary people identify as having, for example, more than one gender, having no gender, or shifting between gender identities. Instead of the pronouns “he/him” or “she/her,” many non-binary people prefer the terms “they” and “their.”

Queer: This originally derogatory term used to describe gay and lesbian people has more recently been claimed by some in the LGBTQ community. While some LGBTQ people may use the term to describe themselves or other LGBTQ people, it is not considered appropriate for people who are not part of that community to use the term.

Questioning: Someone who is unsure of, or considering manifestations of, their sexual orientation and/or gender identity.

Sexual orientation: The feelings of sexual and/or romantic attraction to members of the other sex, one’s own sex or both sexes (i.e., in more formal terms, heterosexual, homosexual, or bisexual).

Transgender: Gender-diverse people whose gender identity or expression crosses or blurs societal norms for the sex they were assigned at birth, based on anatomical appearances. This umbrella term includes transsexuals and cross-dressers, among others. While transgender is generally used as an inclusive umbrella term, the differences in personal identities, behaviors and desired outcomes under the transgender umbrella can vary widely.

Transitioning: This refers to any portion of the process that a transgender person undertakes to create greater congruence, or alignment, between their physical body or external expression and their internal gender identity. Transitioning is not a one-step process, and ordinarily it occurs over months, years, or even a lifetime. Although many people most frequently think of transitioning only in connection with gender confirmation surgery, it also involves personal, legal and diverse medical steps, such as “coming out” to one’s family or friends (that is, openly sharing one’s gender identity), wearing clothes or other forms of expression commonly associated with the person’s gender identity, or name changes.

Transphobia: Refers to a range of negative feelings or prejudices towards transgender people. Those feelings may develop for numerous reasons including fear, religious

intolerance, or personal insecurities. Transphobia is most commonly expressed by verbal abuse; intolerant teachings; discrimination in employment, housing and medical care; restrictive laws and regulations; and physical or sexual violence.

Transsexual: People who feel a strong desire to change their body to match their gender identity. Such people may have already taken steps in that process, including gender confirmation surgery, or may currently only have the wish to do so.

Two Spirit: A contemporary term used by some Native Americans to describe others in their community who exhibit both a male and female spirit or gender. Historically, Two-Spirit people held a special place of esteem in Native American culture and religious ceremonies.