



Law enforcement and criminal justice personnel interactions with transgender people in the United States: A literature review



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ABSTRACT

This literature review examines research exploring the interactions between transgender people and law enforcement and criminal justice (LECJ) personnel in the U.S. to better understand the experiences of transgender people who come into contact with the criminal justice system. A search of existing academic literature, public health reports, and advocacy group publications revealed 33 studies that contained information about transgender people's interactions with LECJ personnel. Results highlight how large percentages of transgender people experience arrest and incarceration, unjustified stops and arrest, disrespect and poor case handling, and abuse and violence from LECJ personnel while in their communities. Large percentages of transgender people in institutional settings also reported abuse committed by criminal justice personnel, including harassment, assault, and a lack of protection from other inmates. This review also highlights evidence of discriminatory and abusive treatment when transgender victims seek assistance from the legal system. Taken together, this study suggests a need for further work to de-stigmatize the legal and criminal justice systems.

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1. Introduction

Transgender people experience many forms of discrimination and violence in the United States. Documented issues include employment discrimination (Badgett, Lau, Sears, & Ho, 2007; Dietert & Dentice,

2009), discrimination in housing (Grant et al., 2011; Herman, 2013), and bias-motivated violence (Stotzer, 2009), among others. There is also evidence of discriminatory and violent behaviors among those who should be offering assistance and support, such as among social and health service providers (Stotzer, Silverschanz, & Wilson, 2013). An additional area of concern that has been less well documented is the discrimination and violence perpetrated against transgender people by law enforcement and criminal justice (LECJ) personnel.

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Mogul, Ritchie, and Whitlock (2011) argued that there is evidence of very little justice in the criminal justice system for lesbian, gay, bisexual, and transgender (LGBT) people. However, empirical evidence has lagged behind advocacy groups' claims of high rates of unjustified arrest, discrimination in case handling, and violence perpetrated by LECJ personnel among transgender adults (e.g. Amnesty International, USA, 2005; Bassichis, 2009) and youth (Majd, Marksamer, & Reyes, 2009). Estimates of prevalence and rates of negative encounters with LECJ personnel have been collected from a variety of public health studies, community needs assessments, and academic studies. This review focuses on the available empirical evidence on the interactions between transgender people and LECJ personnel in the United States, to more clearly describe experiences when transgender people a) are interacting with LECJ personnel as potential criminal suspects, b) are incarcerated or otherwise detained by LECJ personnel, and c) come to law enforcement personnel looking for assistance.

2. Background

“Transgender” is a contested term that is defined differently by medical professional, advocates, social scientists, and among transgender people. However, it is most commonly used as “an umbrella term for people whose gender identity and/or gender expression differs from their assigned sex at birth” (Fenway Health, 2010, p. 13–14). This term includes many subgroups of people (e.g., transsexuals, people with intersex conditions or some disorders of sexual development, dragkings/queens, cross-dressers, genderqueers, gender non-conforming people) and can include people who may or may not identify themselves as transgender but may present in ways that are not consistent with their gender. In contrast to the transgender umbrella, the term “cisgender” has entered the lexicon to denote those people whose biological sex match their gender identity/expression, or “non-transgender” people.

Although research is sparse, existing evidence suggests that LGBT adults (e.g., Mogul et al., 2011) and youth (e.g., Hunt & Moodie-Mills, 2012) are overrepresented and/or receive unequal treatment in the criminal justice system. For example, the 2007 National Inmate Survey, gay men were found to be 2.3% of the inmate population (but 6% of the overall U.S. population) and lesbian women were 11.7% of the inmate population (but 5% of the general U.S. population; Dennis, 2014). It is also estimated that although LGBT youth make up 5–7% of the general U. S. population, they make up 15–17% of the youth involved with the juvenile justice system (Hunt & Moodie-Mills, 2012). In fact, for most of the 20th Century in the U.S. sexual “deviance” (being LGBT) was presumed to indicate overall perversion, sexually predatory behavior, being “sex criminals,” and being diseased (Dennis, 2014; Noga-Styron, Reasons, & Peacock, 2012). Not until the late 20th Century did the concept of LGBT victims began to compete with the idea of LGBT perpetrators (Dennis, 2014).

Contact between LGBT people and LECJ personnel is often dictated by a systematic need to reinforce what is normative, such as in police raids of gay bars, prosecuting same-sex public sexual contact while dismissing heterosexual public sexual contact, illegal stops of people who are “deceiving” others by wearing clothes different than their natal sex would indicate is appropriate, etc. Inequality based on sexual orientation or gender identity in the criminal justice system has also been documented in terms of discriminatory treatment in child custody decisions (Erich, Tittsworth, Meier, & Lerman, 2010; Grant et al., 2011), upholding exclusions from civil protections (Currah & Minter, 2000), and blocking youth from taking steps toward transition (Kennedy, 2008). As stated by Mogul et al. (2011), “The policing of queer sexualities has been arguably the most visible and recognized point of contact between LGBT people and the criminal legal system” (p. 47). For transgender people, contact with law enforcement may be exacerbated by decreased opportunities for employment, housing, and well-being,

which leads a disproportionate number of transgender people to engage in the “shadow economy” of sex work and drug sales and other survival crimes (e.g., Bassichis, 2009; Weinberg et al., 1999).

Empirical evidence of transgender people's experiences with law enforcement and criminal justice systems has been understudied. Advocacy groups have made valiant strides in bringing attention to the issue of discrimination and violence in the legal system from theoretical and anecdotal perspectives as well as by interviewing the experiences of trans-advocates and trans-supportive legal personnel (e.g., Amnesty International, USA, 2005; Bassichis, 2009) rather than empirical approaches that directly survey transgender people. Similarly, many legal scholars have examined the constitutionality of frequently problematic policies instituted by jails and prisons in regard to how they handle transgender inmates' safety (Sumner & Jenness, 2014). Despite the importance of this body of work, these law review articles do not offer empirical evidence of the treatment of transgender people during incarceration. In empirical studies exploring LECJ personnel interactions with LGBT people, transgender people have frequently been collapsed together with lesbians, gay men, and bisexual men and women in most reports (e.g., Wolff & Cokely, 2007), when, in fact, these groups may face unique interactions with the law. This methodological issue creates challenges to identify, and thus address the needs of, transgender people. To address these limitations, this literature review examines available research on transgender people's interactions with LECJ personnel in order to provide estimates on the scope of the problem, and to gain a better understanding of how and when transgender people are at further risk of discrimination and violence when interacting with the legal and criminal justice systems.

3. Methods

Multiple steps were utilized to gather studies for this literature review given the scarcity of empirical studies related to transgender people and criminal justice-related topics. First, primary academic databases were searched, using combinations of words related to gender identity, such as “gender identity,” “transgender,” “transsexual,” “gender nonconforming” etc. paired with LECJ-related words, such as “arrest,” “incarceration,” “police,” “law enforcement,” etc. Primary academic databases that focused on social science and legal/criminal justice were utilized, including Academic Search Premier, Google Scholar, and JSTOR. Second, given that many studies that have focused on transgender people have been developed and implemented by advocates and social service organizations, including departments of health in many cities, Google web search was also used with the related search terms to uncover community reports and other nonacademic publications. In addition to the wide search in academic and public reports, extensive reference mining was also utilized by examining all the references in relevant articles for clues to additional references that may be out of print or not on the web (e.g., McGowan, 1999). Authors were contacted when possible to get access to resources not available in electronic format. This search recovered over 300 studies. From these, further exclusion criteria were applied. Studies that were exclusively case studies, were based on expert opinions, or were primarily theoretical (such as law review articles) were excluded. Last, studies that lacked clear empirical quantitative evidence of interactions with LECJ personnel were excluded.

Due to the fact that most research on transgender populations has been funded through health mechanisms (e.g., HIV/AIDS funds, substance abuse funds), available research has asked little about experiences with law enforcement and criminal justice. However, 33 studies met the inclusion criteria (see Table 1). In some cases, a single study has produced multiple publications and products, including peer reviewed and public and/or governmental briefings, reports, and fact sheets. However, the products from any given study that specifically discuss variables related to law enforcement and criminal justice are

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