


An illustration featuring four hands in teal, orange, yellow, and purple, each holding a bundle of threads. These threads extend across the frame and intersect to form a grid pattern against a dark blue background. The central text is set within a white rectangular area.

BANNED FROM THE BALLOT BOX



**HUMAN
RIGHTS
CAMPAIGN
FOUNDATION**

**The Impact of Felony Disenfranchisement
Laws on LGBTQ Women of Color**



**BANNED FROM THE BALLOT BOX:
THE IMPACT OF FELONY
DISENFRANCHISEMENT LAWSON
LBTQ WOMEN OF COLOR**

**COURTNAY AVANT
*HUMAN RIGHTS CAMPAIGN***

OCTOBER 2020

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Executive Summary

Efforts to exclude marginalized communities from civic participation are at the root of the United States' troublesome history of felony disenfranchisement. Thinly veiled attempts to erase the voices of communities of color, women, and the lesbian, gay, bisexual, transgender and queer (LGBTQ) community have led to over-policing and mass incarceration.

HISTORIC DISENFRANCHISEMENT

From Black Codes to the Women's Suffrage Movement, the demand for the right to vote was met with efforts to perpetuate the cycle of racial and social injustice. After Reconstruction, broad disenfranchisement laws were imposed across the United States to restrict the right of Black people to vote and later expanded to include other historically disadvantaged communities.

LBTQ GIRLS AND WOMEN AND THE JUSTICE SYSTEM

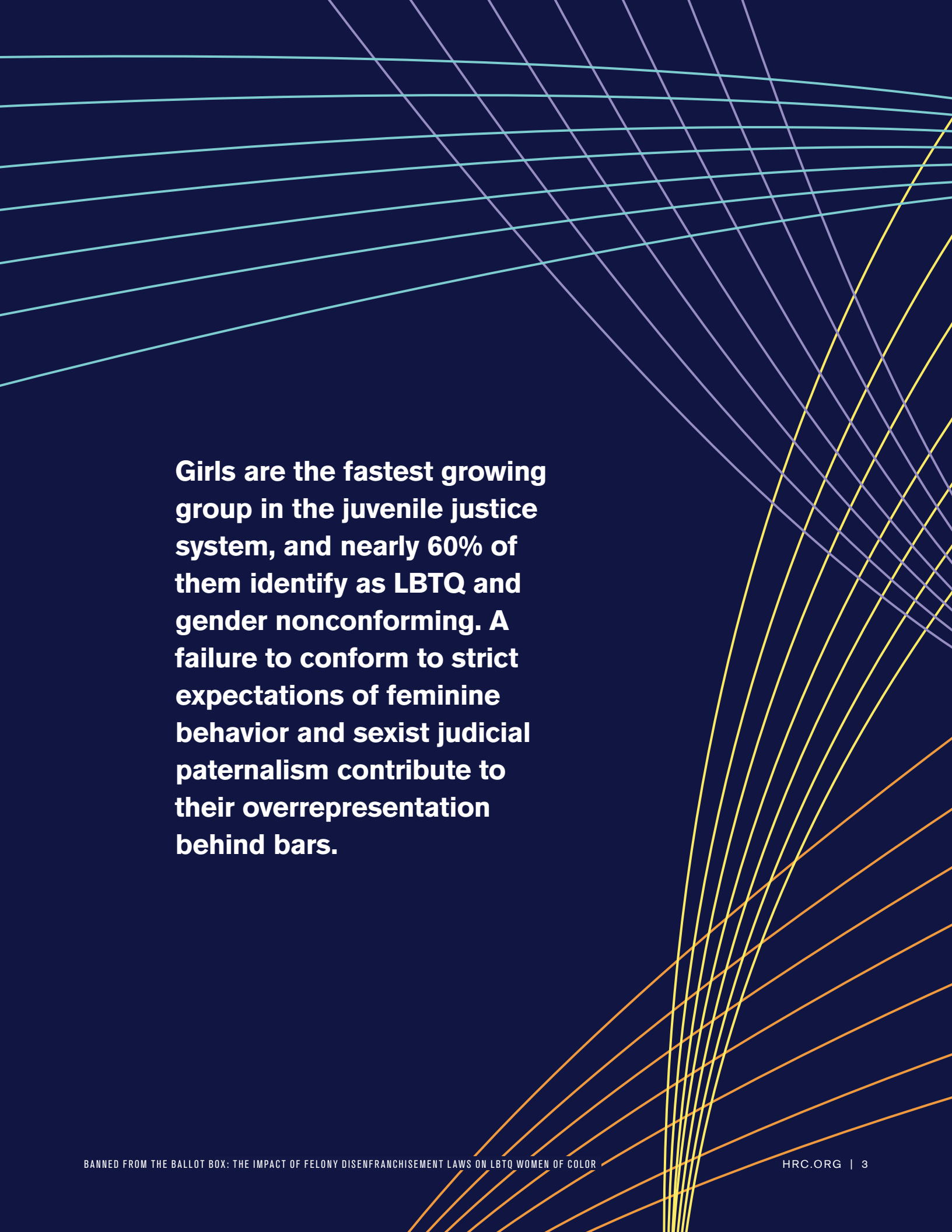
Girls are the fastest growing group in the juvenile justice system, and nearly 60% of them identify as LBTQ and gender nonconforming. A failure to conform to strict expectations of feminine behavior and sexist judicial paternalism contribute to their overrepresentation behind bars. LBTQ women of color are also at increased risk of arrest, incarceration and ultimately, disenfranchisement. Increased contact with law enforcement, judges, and jurors presents unique opportunities for racism, sexism, homophobia, and transphobia to occur. Disenfranchisement and alienation from civic life are often additional penalties that trail these women—in some cases for a lifetime.

WE MUST DO BETTER

Systemic change at every level is necessary to reconstruct the current landscape of criminal disenfranchisement. Currently, LBTQ women of color who have been convicted of felonies are forced to live under a convoluted patchwork of state laws, leaving them uncertain about their eligibility to vote and unfairly removed from the electoral process. In order to protect their suffrage and the suffrage of millions of Americans who are currently disenfranchised as a result of their criminal histories, the federal government must pass comprehensive legislation that automatically restores the right to vote after the completion of one's sentence.

Rights restoration efforts across the country have resulted in the re-enfranchisement of millions.

The federal government should consider legislation that mirrors recent developments in states such as Florida, whose recent constitutional amendment restored the right to vote for almost 1.5 million Floridians. Importantly, while these widespread efforts will help expand suffrage to LBTQ women of color, these reforms will benefit all LGBTQ people, people of color, and women whose lives have been disrupted by the consequences of felony disenfranchisement.



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Introduction

Though penalties for felony convictions vary nationwide, all but two states currently restrict the right to vote as a punishment for committing a felony.

These policies impact more than 19 million Americans who currently have a felony conviction on their criminal record.¹ For the millions of LBTQ women of color who have found themselves in contact with the criminal justice system, the collateral consequences of having a criminal history can be devastating.

These types of disenfranchisement policies strip thousands of Americans of one of our nation's most sacred rights—the right to vote—some for years, many for a lifetime.

Access to the ballot has always been a mark of equal citizenship—while racist disenfranchisement is a dark signal of this nation's refusal to recognize the equal rights and dignity of all of its citizens. The persistence of these policies erases select citizens from civic participation and has a dramatic and immutable effect on elections and the future of the political landscape. Social stigma and discrimination act as stumbling blocks for marginalized people. For LBTQ women of color who are living at the intersection of racism, sexism, transphobia, and homophobia, the impacts of felony disenfranchisement are felt even more acutely.

A combination of racist, sexist, and anti-LGBTQ laws and policies

have ensured that the people most likely to be ensnared in the criminal justice system are also the most vulnerable.

From disparities in the enforcement of facially-neutral laws to the implicit biases of agents of the justice system, the lives and freedom of LBTQ women of color are in a perpetual state of jeopardy.

The effects of systemic and structural discrimination mean that LBTQ women of color are at an increased risk of arrest, incarceration, and ultimately, disenfranchisement. Their absence at the polls evinces a concerted effort to erase the voices of our most diverse electorate from the broader discussions of public life and to exclude them from the political process.

Felony Disenfranchisement Policies: Reconstruction, Suffrage, and Stonewall

RECONSTRUCTION AND VOTING IN THE JIM CROW SOUTH

Felony disenfranchisement laws disproportionately affect people of color. 1 in every 13 Black citizens of voting age is unable to vote as a result of a felony conviction—a rate more than four times greater than all other Americans.

Of the 6.1 million citizens who have been stripped of their right to vote, a staggering 2.2 million are Black. In other words, Black Americans make up over 36 percent of the disenfranchised, though they make up only 13 percent of the overall population.

Today's felony disenfranchisement laws are merely the modern machination of centuries-old attempts to perpetuate racial and social injustice at the ballot box. In the post-Reconstruction Era, laws removing an individual's right to vote as punishment for a felony conviction were passed in record numbers. Recognizing the power of these policies to dilute the political power of newly freed Black people, states quickly adopted disenfranchisement for offenses most likely to be committed by non-whites, such as burglary or arson. Meanwhile, crimes more or equally likely to be committed by whites, like murder and robbery, did not disenfranchise the offender. By the early 20th century, over 3/4 of states had imposed broad disenfranchisement laws that mandated the loss of one's right to vote indefinitely.²

This biased targeting trend persists today and is best exemplified by the so-called "War on Drugs," a disastrous government-led initiative that spurred massive increases in arrests and incarceration for nonviolent drug offenses. The statutory penalties imposed on users and possessors of crack cocaine, who are more likely to be people of color, are disproportionately more severe than those levied upon users and possessors of cocaine in its powder form.³

THE SUFFRAGE MOVEMENT AND THE EXCLUSION OF WOMEN OF COLOR

For centuries, women in the United States were excluded from political and economic participation as a result of sexism, legal discrimination, and gender stereotyping. With rare exceptions, women were prohibited from independently owning property, signing contracts, serving on juries, and voting in elections. Without direct influence over representatives, legislation addressing the interests of women was rarely sponsored or considered. For well over half of our nation's history, women were formally blocked from the ballot box.

In 1920, the women's suffrage movement culminated in the ratification of the 19th Amendment. Though white and Black women had worked side by side to obtain the right to vote, northern white women's accommodation of southern suffragists in the movement ultimately fractured the groups in two. Persistent racism within the suffrage movement and racially restrictive laws severely limited the impact of the 19th Amendment on the rights of Black women to actually exercise the right to vote.⁴

Black women organized themselves in women's clubs at the local and national level, and these clubs became central to the reform and support of women's right to vote. The National Association of Colored Women (NACW) and the Equal Suffrage League are examples of organizations that mobilized these clubs to support full suffrage.⁵

CRIMINALIZATION OF LGBTQ IDENTITY, STONEWALL AND BEYOND

For much of American history, the LGBTQ community has been the target of draconian laws and policies that criminalize our identities.

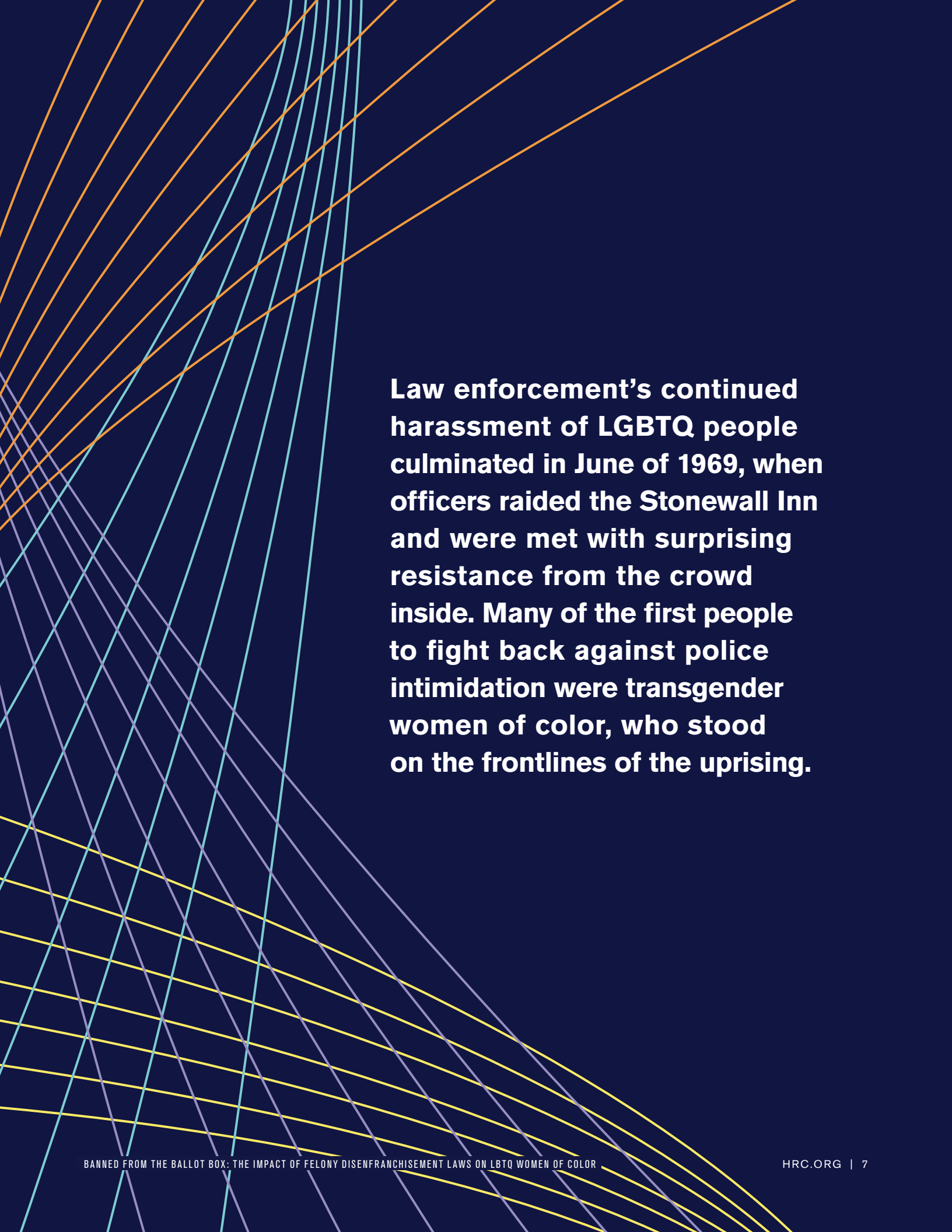
In the mid-20th century, courts and police began using anti-sodomy laws to criminalize same-sex behavior.⁶ These laws categorized same-sex conduct as “sexual misconduct” and “deviant sexual intercourse.”⁷ Individuals arrested for violating anti-sodomy laws not only faced imprisonment and fines, but also public humiliation, proliferating a culture of stigma and violence against LGBTQ people. These convictions were also accompanied by disenfranchisement as they were categorized alongside sexual abuse and assault.⁸ The Supreme Court finally ruled these harmful laws unconstitutional in 2003.⁹

In addition to criminalizing same-sex sexual activity, states enforced strict dress codes, criminalizing dressing in ways traditionally associated with the opposite sex.¹⁰ These “masquerade laws” overwhelmingly targeted transgender and gender nonconforming people and led to their subsequent

arrest and incarceration.¹¹ In practice, these laws policed transgender women for dressing in accordance with their gender identity and gender nonconforming women—many of whom identified as lesbians—for wearing men’s clothing. Police used these laws as cover to raid bars that were heavily frequented by LGBTQ people, arresting transgender women simply for wearing women’s clothes.¹²

Law enforcement’s continued harassment of LGBTQ people culminated in June of 1969, when officers raided the Stonewall Inn and were met with surprising resistance from the crowd inside.¹³ Many of the first people to fight back against police intimidation were transgender women of color, who stood on the frontlines of the uprising. As one of the most visible incidences of police brutality against the community, the Stonewall Riots helped move the LGBTQ rights movement into the public eye.

Today, decades after those historic riots, LGBTQ people—particularly transgender women of color—continue to be unfairly targeted by law enforcement.



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The Impact of Persistent Disenfranchisement Policies on LGBTQ Women of Color

OVER-POLICING AND TARGETING OF COMMUNITIES OF COLOR

Today, women of color and LGBTQ people are overrepresented in the American criminal justice system. Black people are incarcerated at a rate five times higher than that of whites, accounting for over one-third of the current prison population.¹⁵ Latinx communities comprise nearly twenty percent.¹⁶ A recent study by the Williams Institute indicated that sexual minorities are more than three times more likely to be imprisoned or jailed than heterosexual people.¹⁷ In fact, while women identifying as LBTQ comprise just 5.1% of the general adult population,¹⁸ over 40% of incarcerated women were sexual minorities.¹⁹

These disparities in incarceration rates are alarming, but not surprising. Discrimination, profiling, and over-policing of people of color and LGBTQ people by law enforcement all lead to increased contact with the criminal justice system. Over-policing of marginalized communities is supported by unchecked racism, homophobia, and transphobia in law enforcement agencies.

Women of color are significantly overrepresented behind bars, with Black women comprising 29 percent of the female inmate population.²⁰

The racial disparities are especially pronounced for Native women.²¹ According to a report by the Lakota People's Law Project, Native women are more than six times more likely to be incarcerated than white women. Black and Latinx women are twice as likely as white women to be incarcerated.²² Additionally, Native women are charged

and convicted of more serious crimes at a higher rate than their white peers, leading to harsher sentences.²³

Nearly one in six transgender Americans have been to prison.²⁴ For Black transgender people, the number is roughly one in two.²⁵

Transphobic biases pervasive in the criminal justice system contribute to this high statistic. For transgender women, police interactions are fraught with concern for their safety and their freedom with good reason. According to the 2015 U.S. Transgender Survey, 58% of respondents reported experiencing some form of harassment, assault, or misgendering during interactions with police because they were transgender.²⁶ This mistreatment can occur even if they are the victim. When CeCe McDonald, a Black transgender woman, defended herself after being physically assaulted outside of a bar in Minneapolis, she was swiftly arrested and interrogated by police officers. Despite being the victim of a hate crime, prosecutors offered McDonald a plea bargain reducing her charges to second-degree manslaughter. McDonald spent the remainder of her sentence in an adult male facility.²⁷

Laws criminalizing sex work disproportionately affect LGBTQ people and communities of color. Transgender women are also more likely to be stopped by the police, profiled as sex workers, charged with sex work-related offenses, and experience harassment by law enforcement.²⁸ Anti-LGBTQ discrimination and racism work in conjunction to push marginalized communities to the fringes of society, and for many, sex work is the only viable option left after they have been unable to find other work. One side-effect of this is increased exposure to HIV/AIDS, which affects around 1.1 million Americans today.²⁹

Laws criminalizing transmission of the HIV ignore the serious impacts of social stigma and the barriers surrounding access to affordable healthcare and health insurance, which leave many unaware of their HIV/AIDS status or unable to treat it.³⁰ Living with HIV/AIDS increases the odds of police contact. A 2014 national report of LGBTQ people and people living with HIV found that 73% of those surveyed had interacted face-to-face with police officers within the past five years.³¹ In many states, those convicted of intentionally spreading the virus may face life in prison.³²

Discriminatory police tactics and policies ensure that the most vulnerable communities remain entangled in the system. Coordination between law enforcement agencies and Immigration and Customs Enforcement (ICE) targets immigrant communities and their families.

With an estimated one million LGBTQ immigrants living in the United States, the social impact of these actions cannot be understated.³³ Both documented and undocumented immigrants are at risk of deportation for criminal convictions, in large part due to increased contact with law enforcement.³⁴

This was the case for Naomi Ramirez Rosales, an undocumented trans woman who was arrested at an Arizona light rail station after stopping on the platform for a drink of water. When transit authorities realized she stepped into the fare zone without a ticket, they ran a background check and discovered an outstanding warrant for her arrest.³⁶ At the jail, Ramirez Rosales was interrogated by ICE agents and taken into custody. She was sent to an all-male private prison and is currently at risk of deportation.³⁷

RISK OF INCARCERATION FOR LGBTQ GIRLS

LBTQ women of color also experience disproportionate contact with law enforcement. LBTQ girls and young women are more likely than their straight peers to be arrested before turning eighteen, to have a juvenile or adult conviction, and to be stopped by police.³⁸

Over the past several decades, girls have experienced increased rates of arrest, detention, and probation, while data suggests that the opposite is true for boys.³⁹

The over criminalization of low-level and status crimes exacerbates this imbalance. Girls are more likely to be arrested and incarcerated for noncriminal acts—acts that are considered unlawful as a result of the offender’s status as a minor—such as truancy violations, missing curfew, or running away.⁴⁰

The increase of girls’ contact with the criminal justice system is also attributable to judicial paternalism, where juvenile court judges believe they must intervene on behalf of girls in order to protect them. These attitudes have contributed to higher conviction and detention rates among girls.⁴¹ Judicial paternalism relies on sexism and gender stereotyping in evaluating the conduct of female offenders in ways that penalize them for their lack of adherence to traditional notions of gender and sexuality.

This is especially troubling for LBTQ girls, whose sexual orientation and gender identity may depart from gender norms. They are punished for their resistance to strict adherence to the gender binary. For example, girls who

are transgender and gender nonconforming are too often targeted by law enforcement resulting in a stark over representation of these youth in the criminal justice system.⁴² The disproportionate confinement of LBTQ and gender nonconforming girls serves as a pipeline to adult correctional facilities, where they are three times more likely to be incarcerated.⁴³

COURTROOM BIAS

Holding over one-fifth of the world's prison population, the United States is no stranger to mass incarceration.⁴⁴

The imposition of harsh sentences and mandatory minimums for even non-violent offenses has drastically increased the number of people behind bars.⁴⁵ Given the country's long history of racial animus, sexism, and anti-LGBTQ discrimination, it is no surprise that women of color and members of the LGBTQ community are more likely to be convicted of a felony and as a result, lose the right to vote.⁴⁶

LBTQ women of color are at a substantial disadvantage in the courtroom—too often faced with bias on the part of jurors, attorneys, and judges. In an extensive analysis of criminal cases in Wisconsin, researchers found significant racial disparities in the plea-bargaining process attributable in great part to the implicit biases of prosecutors.⁴⁷

The common—though unconstitutional—striking of jurors based on race is a tactic still employed by some prosecutors to ensure a desired racial makeup of a jury.⁴⁸ Removing jurors based on their backgrounds has a devastating effect on defendants of color who cannot be judged by a jury of their peers.

Additionally, studies have shown that anti-LGBTQ bias still persists within jury pools. In one such study, one out of every six jurors surveyed admitted that they would be unable to exercise impartiality against a party who was LGBTQ.⁴⁹ Combined with existing gender-based biases, juror attitudes towards race, sexual orientation, and gender identity present additional hurdles for queer women of color to clear.

At each phase of the journey, from the initial police encounter to sentencing, LBTQ women of color are exposed to discriminatory bias that increases their probability of conviction and incarceration.

The New Poll Tax: Wealth Based Penal Disenfranchisement

After the passage of the 15th Amendment granting newly freed Black men the right to vote, Southern states adopted poll taxes, requiring residents to pay a fee before casting a ballot. Unable to pay the taxes, Black men were virtually excluded from exercising their newly won right to vote in federal elections until the abolishment of poll taxes under the 24th Amendment in 1964.

Nothing was said of state elections until 1966, when the Supreme Court ruled the ongoing imposition of the tax unconstitutional nationwide.⁵⁰

Today, states have enacted similar measures that exclude people with felony convictions from voting by conditioning suffrage on their ability to pay off incurred legal debt.⁵¹ This is true even if the person has completed their prison sentence and satisfied the non-monetary terms of their parole or probation. With the added obstacles of finding work with a criminal history and growing legal debt, many formerly incarcerated people will never regain the right to vote. Currently, more than 10 million people are prohibited from casting a ballot because of their inability to pay their legal financial obligations.⁵²

The prevalence of economic insecurity among LGBTQ people and communities of color leaves them especially vulnerable to

wealth-based penal disenfranchisement.

Both communities are disproportionately low-income and report higher rates of poverty and food insecurity. Upon reentry into society, people of color and LGBTQ people are also more likely to experience homelessness and unemployment. These challenges are especially pronounced for LGBTQ women, who are more vulnerable to financial insecurity as a result of stigma, discrimination in hiring and firing, and the gender wage gap. A recent study by the Williams Institute showed that LGBTQ and cisgender straight women had higher rates of poverty than cisgender straight men and cisgender gay men.⁵³

Together, these hardships make it difficult for LGBTQ women to pay off legal financial obligations; particularly when there are more pressing financial commitments they must make to ensure their well-being and that of their families.

The Absence of LGBTQ Women of Color at the Ballot Box

Felony disenfranchisement is a powerful tool used well beyond the ballot box, dismantling communities and the lives of those who live within them.

The disenfranchisement of millions of Americans based upon their criminal histories preserves the harmful racial, cisnormative and heteronormative hierarchies that led to the erasure of the voices of queer women of color in the first place.

The campaign to eliminate diversity at the polls has been largely successful. A 2002 study found that allowing people convicted of felonies to vote may have changed the outcome in the 2000 presidential election.⁵⁴ A similar study also found that the restrictions on voting provided Republican candidates with “a small but clear advantage... in every presidential and senatorial election from 1972 to 2000”.⁵⁵ Given the contemporary trends

in political affiliation among women and people of color, their absence at the polls may be more keenly felt by Democratic candidates.⁵⁶

An absence of voter participation prevents mass civic engagement and affects representation at every level.

Elected officials are not incentivized to address areas of interest affecting LGBTQ women of color because of their lack of political power. This is especially significant for those who have been incarcerated, as they are more likely to face adverse-socioeconomic conditions after returning to their communities, both as a result of their felony convictions and their intersecting identities. Unable to vote, their voices are diluted, and in many ways, erased from the political conversation altogether.

Next Steps

STATE LEVEL REFORM

The road to fairer access to the ballot includes addressing the patchwork of anti-democratic state felony disenfranchisement laws.

In recent years, states have enacted reforms to loosen restrictions for voting rights restoration. In 2018, Florida voters passed a constitutional amendment restoring the right to vote for nearly 1.5 million Floridians with felony convictions. In 2019, several states updated their felony disenfranchisement laws to include more progressive measures. These states include Colorado, where one may now vote while serving parole, and New Jersey, where nearly 80,000 formerly incarcerated individuals have had their voting rights restored.

What this shows is a national trend toward broadening voting rights for those who have been previously disenfranchised as a result of their criminal backgrounds. State reform will include a comprehensive look at current progressive state policies and ballot measures in order to build model legislation moving forward.

PROVIDE INTERSECTIONAL AND INCLUSIVE TRAINING AND RESOURCES

Importantly, institutional biases and a lack of cultural competency across the board funnel LGBTQ girls and women of color into the criminal justice system at an alarming rate.

Professionals at all levels of the system, including judges, district attorneys, and law enforcement, must receive comprehensive cultural competency training and resources that are inclusive of all experiences.

DIVEST FROM POLICE AND INVEST IN COMMUNITIES

Reform must focus on efforts to reduce negative police contact and invest resources in marginalized communities. This includes divestment from police budgets to fund after school programs, provide for more mental healthcare professionals, and increase support for social services. In addition, first responder responsibilities should be shifted away from police to social service experts.

DISMANTLE THE SCHOOL-TO-PRISON-PIPELINE

It is important to address the use of restorative justice measures in our school systems. Students, teachers, and administrators must be empowered to resolve conflicts without the use of law enforcement or harsh punishments that remove children from school and funnel them into the criminal justice system. Police do not belong on school campuses. Additionally, students should not be arrested or incarcerated for disruptive behavior or as a result of school disciplinary actions.

PASS FEDERAL LEGISLATION

While many states have taken a closer look at their felony disenfranchisement laws, passage of federal legislation that automatically restores the right to vote in federal elections after the completion of one's sentence is essential to increasing access.

Advancements in justice cannot occur if the communities most affected by racism, homophobia, transphobia, and sexism have no voice in which to address them.

Systemic change at every level is necessary to dismantle the United States' shameful legacy of discrimination.

The School-to-Prison Pipeline: What is It and Why It Matters for Voting Rights

Rachel Marshall, Esq.

Federal Policy Counsel, Campaign for Youth Justice

WHAT IS THE SCHOOL-TO-PRISON PIPELINE

Starting in the early 2000s and stemming from high-profile school shootings like Columbine, schools began to incorporate zero-tolerance policies and increase police presence in schools.⁵⁷

While initially intended to address gun violence in school, these zero-tolerance policies quickly lead to students being suspended or expelled for less serious offenses.⁵⁸ Not only have schools expanded their zero-tolerance policies, but some state laws now require schools to report certain infractions to law enforcement agencies.⁵⁹ While these laws are primarily intended to target criminal conduct, some jurisdictions actually criminalized nonviolent and nonthreatening behavior in schools, including disrupting class and truancy.⁶⁰

HOW THE SCHOOL-TO-PRISON PIPELINE IMPACTS MINORITY YOUTH

Research has shown time and again that youth of color are no more likely to misbehave than white youth.⁶¹ However, over 70 percent of students involved in school related arrests or referred to law enforcement are Black or Latinx.⁶² Given that so many students of color are funneled to the justice system for school-based behavior, it is not surprising to learn that, while the U.S. has significantly reduced the rate of incarcerated youth over the past decade, the racial and ethnic disparities for incarcerated youth have grown. In fact, Native American youth are three times more likely to

be incarcerated than their white peers, and Black youth are five times more likely than white youth to be incarcerated.⁶³ Latinx youth are 65 percent more likely to be detained or committed than white youth.⁶⁴

These zero-tolerance policies have an even greater effect on students with disabilities, particularly those students with depression, autism, and behavioral disorders.⁶⁵ Students with these types of disabilities often have a harder time sitting still and struggle with social interactions. When teachers are not properly trained to work with these students, it often results in these children being removed from the classroom, and ultimately, suspended or expelled. It is estimated that an astonishing “70 percent of youth who enter the justice system have a mental health, sensory or learning disability, and anywhere between 28 percent and 43 percent of detained or incarcerated youth have special education needs.”⁶⁶ The outcomes are even worse for students of color with a disability. Data from the Department of Education revealed that more than one in four Black boys and one in five Black girls with disabilities will be suspended each school year.⁶⁷

According to studies, these policies also disproportionately impact LGBTQ and gender nonconforming youth.

A study published in 2010 in the medical journal *Pediatrics* revealed that gay and transgender youth, particularly gender nonconforming girls, are up to three times more likely to experience harsh disciplinary treatment by school administrators than their heterosexual counterparts.⁶⁸

HOW THE SCHOOL-TO-PRISON PIPELINE RESULTS IN ADULT CHARGES FOR YOUTH AND IMPACTS VOTING

Perhaps one of the most troubling aspects of the school-to-prison pipeline is that it not only funnels students into the juvenile justice system, but also into the adult system. In Missouri, for example, a statute went into effect in January 2017 that will charge students who get into fights with felonies.⁶⁹ Students who get into fights in school or on school buses may wind up spending up to four years in prison, paying fines, or be subjected to adult probation. Statutes like these likely increase the chances of youth ending up in the adult criminal justice system. Further, given we know that Black youth are “more likely to be transferred to adult facilities for detention,” these laws will disproportionately

impact youth of color.⁷⁰ Currently, state laws bar more than six million citizens convicted of felonies from casting a ballot, including youth prosecuted in the adult criminal justice system who lose the right to vote before they even turn 18.⁷¹

Appendix begins on page 21

About the Author

Courtney Avant serves as legislative counsel at the Human Rights Campaign, focusing on federal and state advocacy. She handles a range of issues, including those related to criminal justice, voting rights, and LGBTQ youth. Courtney received her bachelor's degree from Virginia Polytechnic Institute and law degree from the George Mason University School of Law. Courtney is admitted to the D.C. Bar.

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Appendix

The School to Prison Pipeline: What Is It and Why It Matters for Voting Rights

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