

THE EQUALITY ACT & CRIMINAL JUSTICE REFORM

The United States holds just five percent of the world's population, but incarcerates twenty-five percent of people in prisons and jails – roughly 2.2 million adults. Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people – especially low-income and people of color – are disproportionately impacted by the criminal justice system. LGBTQ people face discrimination throughout the criminal system, including discriminatory police profiling, anti-LGBTQ bias on juries, and higher rates of conviction and harsher sentencing.

OVERVIEW OF EQUALITY ACT AND TITLE VI

Title VI of the Civil Rights Act of 1964 currently prohibits recipients of federal financial assistance, such as state courts, law enforcement agencies, and victim services programs, from discriminating in services against individuals based on race, color, and national origin. Its application extends to all activities of a recipient of federal financial assistance, not just the particular activities receiving assistance.

The Equality Act prohibits discrimination based on an individual's sexual orientation or gender identity in the context of employment, housing, credit, education, public accommodations, and jury service. It also amends Title VI to include discrimination prohibitions based on sex, sexual orientation, and gender identity in programs receiving federal financial assistance.

Ultimately, The Equality Act would provide individuals and advocates with an additional tool to hold federally funded law enforcement agencies, prisons, detention facilities, other criminal justice system recipients of federal financial assistance accountable for the fair and equitable treatment of LGBTQ people.

DISRUPTING THE DRIVERS OF INCARCERATION

LGBTQ individuals experience significantly higher rates of joblessness and poverty than the general population, leading many to turn to underground economies like sex work or drug sales for income. Additionally, the impact of schools' severe disciplinary policies, such as "zero tolerance," combined with discrimination, bullying, and harassment of LGBTQ students by their peers and school staff push more LGBTQ students out of schools and into the criminal legal system. Police bias, abuse and profiling of LGBTQ people—especially trans women of color—means more LGBTQ people are targeted by law enforcement. These factors, together with widespread discrimination and social marginalization, contribute to the significant overrepresentation of LGBTQ people in prisons and jails.

While incarcerated, LGBTQ prisoners are significantly more likely to be sexually assaulted, with 12% of gay and bisexual men and 40% of transgender people reporting a sexual assault in 2011. In a survey of LGBTQ inmates, 85% of respondents had been placed in solitary confinement—many purportedly for their own protection—and approximately half had spent two years or more in solitary. LGBTQ, and especially transgender inmates, are often denied needed medical care while incarcerated, including transition-related care, HIV-related care, and mental and behavioral health care.

In combination with existing legal protections, the Equality Act can reduce the impact of these drivers of incarceration for LGBTQ people by adding sex, sexual orientation, and gender identity to the protected classes under several federal civil rights laws. Enforcing these laws will decrease factors, like discrimination in employment and education settings, that result in LGBTQ people seeking underground economies or criminal activity to escape poverty, homelessness, and hunger.

FEDERAL FINANCIAL ASSISTANCE

By amending Title VI, the Equality Act would prohibit discrimination by criminal justice system recipients of federal financial assistance against LGBTQ detainees, prisoners, and others involved in the system.

Discrimination against LGBTQ detainees and prisoners housed in federally funded facilities includes failure to provide necessary medications, unsafe housing assignments, and overuse of solitary confinement. Title VI covers law enforcement and prisons receiving federal financial assistance. See, e.g., *See Jones v. Gusman*, 296 F.R.D. 416 (E.D. La. 2013); *United States v. Maricopa Cty.*, 915 F. Supp. 2d (D. Ariz. 2012) (enforcing Title VI to prohibit national origin discrimination by detention housing facilities). The Equality Act would ensure that these protections extend to LGBTQ individuals as well.

Additionally, the Equality Act would prohibit discrimination against LGBTQ people by law enforcement during stops, arrests, and other police encounters. Courts already enforce Title VI protections against local and state law enforcement agencies that receive federal funds. See, e.g., *United States v. Cty. Of Maricopa*, 889 F.3d 648 (9th Cir. 2018) (holding that Title VI prohibits a county sheriff's office from conducting racially discriminatory traffic stops). The Equality Act would extend these protections against discriminatory policies and practices to LGBTQ people as well.

JURY SERVICE

The right to a jury of one's peers is fundamental to the American criminal justice system. However, this right is denied to many LGBTQ people because most states still allow jurors to be dismissed because of their sexual orientation or gender identity. In a 2012 survey conducted by Lambda Legal, at least 19% of respondents reported hearing discriminatory comments about sexual orientation or gender identity in court. This discrimination deprives LGBTQ defendants of a fair trial, including in cases when the stakes are highest. The Equality Act is a significant step towards ensuring a fair trial in federal court by including sexual orientation and gender identity as protected characteristics under the Jury Selection and Services Act.


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