

A Report by the National LGBT/HIV Criminal Justice Working Group¹

The Impact of the Trump Administration's Federal Criminal Justice Initiatives on LGBTQ People & Communities and Opportunities for Local Resistance

Richard Saenz, Lambda Legal, Kara Ingelhart, Lambda Legal, and
Andrea J. Ritchie, Barnard Center for Research on Women

INTRODUCTION AND BACKGROUND

This report offers an overview of the wide-ranging impacts of the Trump Administration's federal criminal justice initiatives on lesbian, gay, bisexual, transgender, and queer (LGBTQ) people and communities, with a particular focus on impacts on LGBTQ people of color and immigrants. Our hope is that this information will serve as a resource to support the work of advocates working at the state and local levels to resist, avoid, limit, or lessen the impacts of federal criminal justice initiatives that harm LGBTQ communities, and to inform broader federal criminal justice reform and police accountability efforts.

THE ADMINISTRATION AGENDA

Over the past year, the Trump Administration, predominantly through the Department of Justice ("DOJ"), has dramatically escalated the use of criminalization as both a primary mechanism and a justification for attacks on our communities on multiple fronts. On February 28, 2017, President Donald Trump signed a Presidential Executive Order to establish a Task Force on Crime Reduction and Public Safety under the direction of Attorney General Jeff Sessions.² The Executive Order states:

It shall be the policy of the executive branch to reduce crime in America. Many communities across the Nation are suffering from high rates of violent crime. A focus on law and order and the safety and security of the American people requires a commitment to enforcing the law and developing policies that comprehensively address illegal immigration, drug trafficking, and violent crime. The Department of Justice shall take the lead on Federal actions to support law enforcement efforts nationwide and to collaborate with State, tribal, and local jurisdictions to restore public safety to all of our communities.³

¹ The Report was produced by the National LGBT/HIV Criminal Justice Working Group, a network of over 50 organizations and individual stakeholders working to change the U.S. criminal legal system through research, education, and federal policy advocacy. The following members contributed to this report: Richard Saenz, Criminal Justice and Police Misconduct Strategist, Lambda Legal, Kara Ingelhart, Lambda Legal, Andrea J. Ritchie (Policing, Trafficking); Sharita Gruberg, Center for American Progress (Immigration); Meghan Maury, The National LGBTQ Task Force (Drug Policy); Kate D'Adamo (Trafficking); and Harper Jean Tobin and Kory Masen, National Center for Transgender Equality, Hayley Gorenberg, Lambda Legal, and Emily Waters, National Coalition of Anti-Violence Programs (Hate Crimes).

² Press Release, U.S. Dep't of Justice, Att'y Gen. Announces Crime Reduction and Public Safety Task Force (Feb. 28, 2017), available at <https://www.justice.gov/opa/pr/attorney-general-announces-crime-reduction-and-public-safety-task-force>.

³ Exec. Order No. 13776, 82 FR 10699, 2017 WL 568299, available at <https://www.whitehouse.gov/the-press-office/2017/02/09/presidential-executive-order-task-force-crime-reduction-and-public>.

Soon after, in an April 5, 2017 Memorandum, Attorney General Sessions announced the creation of a Task Force on Crime Reduction and Public Safety, and identified the Violent Crime Reduction Strategy Development Subcommittee and Hate Crimes Subcommittee as part of this Task Force. The April 5 Memo also described a review of existing policies in the areas of charging, sentencing, and marijuana; expanding the use of asset forfeiture; and prioritizing immigration enforcement and human trafficking as areas of focus for the subcommittees. Attorney General Sessions asked for initial recommendations from the Task Force by no later than July 27, 2017.⁴

On July 26, 2017, Attorney General Sessions released a statement indicating that no recommendations from the Task Force on Crime Reduction and Public Safety would be made public.⁵ This led Senator Ron Wyden (Oregon) to state, “The American people have a right to know the basis for enforcement policy changes made by the Department of Justice,” and demand the public release of the report’s recommendations.⁶ Instead of subjecting the recommendations to public comment and robust debate, Attorney General Sessions indicated that they would simply be implemented on a rolling basis.

Since then, we have seen the recommendations in action. The Trump Administration has continued to increase the criminalization and militarized policing of low-income communities and communities of color, while simultaneously intensifying immigration enforcement leading to increased collaboration between local law enforcement and immigration authorities. The Attorney General has explicitly instructed federal prosecutors to pursue the highest possible penalties regardless of circumstances, in the name of reducing a largely fictitious “violent crime wave.”⁷ Beyond the direct impacts of these federal initiatives, the rhetoric and policy priorities of the federal administration – including repeated attacks on the rights of transgender people⁸ – are having a growing impact on law enforcement approaches in some states.⁹

⁴ Memorandum from Att’y Gen. Jeff Sessions for Head of Department Components and U.S. Atty’s (Apr. 5, 2017), available at <https://www.justice.gov/opa/press-release/file/955476/download>.

⁵ Press Release, U.S. Dep’t of Justice, Statement by Att’y Gen. Jeff Sessions on Recommendations From the Task Force on Crime Reduction and Public Safety (July 26, 2017), <https://www.justice.gov/opa/pr/statement-attorney-general-jeff-sessions-recommendations-task-force-crime-reduction-and>.

⁶ Letter from Sen. Ron Wyden to Att’y Gen. Jeff Sessions (Aug. 1, 2017), available at <https://www.wyden.senate.gov/download/?id=4EA1FB77-9E23-4CFD-AD92-BE2F2E830F27&download=1>

⁷ Ames Grawert & James Cullen, *Criminal Justice One Year into the Trump Administration*, Brennan Center for Justice (Feb. 8, 2018), <https://www.brennancenter.org/publication/criminal-justice-one-year-trump-administration>; U.S. Dep’t of Justice, Memorandum from Att’y Gen. Jeff Sessions for All Federal Prosecutors (May 10, 2017), available at <https://www.justice.gov/opa/press-release/file/965896/download>; Att’y Gen. Jeff Sessions, *Opinion: Being Soft on Sentencing Means More Violent Crime. It’s Time to Get Tough Again*, Wash. Post, June 16, 2017, available at https://www.washingtonpost.com/opinions/jeff-sessions-being-soft-on-sentencing-means-more-violent-crime-its-time-to-get-tough-again/2017/06/16/618ef1fe-4a19-11e7-9669-250d0b15f83b_story.html?utm_term=.6f68c239def5.

⁸ See Chase Strangio, “Trump’s Attack on Transgender Health Care Is an Attack on Trans People’s Existence,” Slate.com, May 9, 2018, <https://slate.com/human-interest/2018/05/trumps-attack-on-transgender-health-care-is-an-attack-on-trans-peoples-existence.html>; American Civil Liberties Union, “Breaking Down Trump’s Trans Military Ban,” March 30, 2018, <https://www.aclu.org/blog/lgbt-rights/transgender-rights/breaking-down-trumps-trans-military-ban>

⁹ See Grawert & Cullen, *see also* Memorandum from Att’y Gen. Jeff Sessions for All Federal Prosecutors (May 10, 2017), available at <https://www.justice.gov/opa/press-release/file/965896/download>.

THE REPORT

The policing of gender and sexuality operates within the larger context of racial profiling, racially discriminatory policing, and targeting of homeless and low-income communities that pervades law enforcement, the operation of courts, and the penal system.¹⁰ As a result, increasing criminalization disproportionately affects LGBTQ people, and particularly LGBTQ people of color. LGBTQ people and HIV-affected people are significantly overrepresented in all aspects of the penal system, from police interactions, to prosecutions, to incarceration, experiencing discrimination both based on sexual orientation and gender identity and as members of immigrant and Muslim communities and communities of color. Because LGBTQ people come into contact with law enforcement at disproportionate rates, LGBTQ immigrants are also more likely to come to the attention of immigration authorities and be subject to immigration detention and deportation.

The Impact of the Trump Administration's Federal Criminal Justice Initiatives on LGBTQ People & Communities and Opportunities for Local Resistance Report examines the impact of current and anticipated federal criminal justice initiatives on LGBTQ people and communities. First, the report offers a review of publicly available information—including public statements by Attorney General Sessions, Department of Justice press releases, federal budget requests and justifications, and other sources relating to specific federal criminal justice initiatives—in the areas of **Policing, Immigration, Trafficking, Drug Policy, and Hate Crimes** that are likely to produce harm to LGBTQ and HIV-affected communities. Second, we identify potential opportunities for federal, state, and local action to reduce or avoid the harms identified.

¹⁰ See Movement Advancement Project and Center for American Progress, *Unjust: How the Broken Criminal Justice System Fails LGBT People*, 2016, available at: <http://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-poc>; Catherine Hanssens, Andrea J. Ritchie, Dean Spade and Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations Addressing the Criminalization of LGBT People and People Living With HIV* (May 2014), http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf; Joey L. Mogul, Andrea J. Ritchie and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States*, Beacon Press (2011).

POLICING

FEDERAL INITIATIVES

The Trump Administration is (1) doubling down on investments in policing, and immigration enforcement policies and practices that are harmful to communities of color, LGBTQ communities, and immigrant communities, (2) reversing policies of prior presidential administrations that were intended to reduce rights violations by law enforcement, and (3) creating new initiatives to expand the capacity of and protections for law enforcement.

Doubling Down on Policing and Criminalization

The Trump Administration has prioritized and is making significant investments in dramatically increased immigration enforcement at the border and in the interior. It has also intensified drug and gang policing through federal and local task forces, and promoted “community policing” initiatives such as “focused deterrence” which flood communities of color with police officers rather than resources to address the underlying drivers of crime, leading to increased criminalization rather than increased safety.¹¹

Abdicating Oversight of Local Law Enforcement

The Trump Administration has withdrawn from the enforcement of federal consent decrees mandating reforms of local law enforcement agencies, shut down the voluntary collaborative reform program of Community Oriented Policing Services (COPS), and made clear its intention to drastically limit federal oversight of local police departments.¹² Additionally, Attorney General Sessions has announced a return to asset forfeiture policies that incentivize local police departments to seize and sell assets on the grounds that the assets were procured or

¹¹ “Focused deterrence” is defined as: “A crime prevention program that targets a specified crime problem by applying a concentrated strategy or tactic within a specified high-crime-intensity area.” Nat’l Insts. for Justice, Gun Violence Prevention Strategy: Focused Deterrence (June 5, 2013), <https://nij.gov/topics/crime/gun-violence/prevention/Pages/focused-deterrence.aspx>; see U.S. Department of Justice Press Release, “Attorney General Sessions Delivers Remarks to the Gaitlinburg Law Enforcement Training Conference, (May 8, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-gaitlinburg-law-enforcement-training-conference>; Memorandum from Att’y Gen. Jeff Sessions for All Federal Prosecutors (Mar. 8, 2017), available at <https://www.justice.gov/opa/press-release/file/946771/download>.

¹² Memorandum from Att’y Gen. Jeff Sessions for Head of Department Components and U.S. Atty’s (Mar. 31, 2017), available at <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html>; see also Grawert & Cullen; Rob Arthur, Jeff Sessions is walking away from the best way to reduce police shootings, VICE News (Dec. 8, 2017), https://news.vice.com/en_us/article/kznagw/jeff-sessions-is-walking-away-from-the-best-way-to-reduce-police-shootings. On March 15, the Attorney General announced a “new” “Collaborative Reform” program. Unlike its predecessor, which was housed at the Department of Justice and employed both law enforcement and civil society experts to provide technical assistance to local law enforcement agencies, the new initiative consists of a \$7 million grant to a collaborative of law enforcement organizations including the Fraternal Order of Police, the International Association of Chiefs of Police, and the Major Cities Chiefs, to create a resource center and offer technical assistance to three local law enforcement agencies – Cedar Rapids, Iowa; Knoxville, Tennessee; and the police department serving the McNeese State University in Louisiana. Press Release, U.S. Dep’t of Justice, “Attorney General Sessions Provides Further Support for Local Law Enforcement with Launch of New Collaborative Reform Initiative Technical Assistance Center” (March 15, 2018). This represents a dramatically different structure and approach than the previous Collaborative Reform Initiative, funneling all resources to law enforcement.

involved in criminalized activity—even where there has been no conviction of any criminal activity—and to use the proceeds to fund local departments.¹³

Further, both the President and the Attorney General have expressed support for and promoted “broken windows” policing, which consists of aggressive enforcement of low-level, poverty- and survival-based offenses under the unproven theory that such policing practices will reduce future violent crime.¹⁴ Simultaneously, they have called for and have lauded intensified enforcement efforts targeting alleged gang members, referring to them as “savage,” and “animals.”¹⁵ The President has explicitly encouraged law enforcement officers to use violence,¹⁶ and has threatened the careers of law enforcement officers who do not comply with his agenda.¹⁷ In addition to these announcements and pronouncements, over the past year, the Department of Justice has also lifted restrictions on transfers of military equipment to local police departments.¹⁸

¹³ Press Release, U.S. Dep’t of Justice, “Att’y Gen. Jeff Sessions Issues Policy and Guidelines on Federal Adoptions of Assets Seized by State or Local Law Enforcement” (July 19, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-issues-policy-and-guidelines-federal-adoptions-assets-seized-state>; see also Christopher Ingraham, Jeff Sessions to increase US police powers to seize cash and property from suspects, *The Independent* (July 18, 2017) available at <http://www.independent.co.uk/news/world/americas/jeff-sessions-police-seizure-directive-cash-property-criminals-forfeitures-a7846441.html>.

¹⁴ Attorney General Jeff Sessions Delivers Remarks to the National District Attorneys Association, The Department of Justice (July 17, 2017) available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-national-district-attorneys-association>; Sessions praises ‘broken windows’ policing, *The Washington Post* (April 24, 2017) available at https://www.washingtonpost.com/video/national/sessions-praises-broken-windows-policing/2017/04/24/a9ee7f6a-2925-11e7-9081-f5405f56d3e4_video.html?utm_term=.32eb056fe18a; Donald Trump’s stop-and-frisk proposal raises questions, *PBS News Hour* (Sept. 22, 2016) available at <https://www.pbs.org/newshour/politics/donald-trumps-stop-frisk-proposal-raises-questions>; Louis Nelson, Trump calls for nationwide ‘stop-and-frisk’ policy, *Politico* (Sept. 21, 2016) available at <https://www.politico.com/story/2016/09/donald-trump-stop-and-frisk-228486>.

¹⁵ See, e.g., President Donald J. Trump, State of the Union Address (Jan. 30, 2018), transcript available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/>; Tal Kopan, Trump: ‘We’re going to destroy’ MS-13, *CNN* (July 28, 2017, 3:32 PM), <https://amp.cnn.com/cnn/2017/07/28/politics/donald-trump-ms-13/index.html>.

¹⁶ Cleve R. Wootson Jr. & Mark Berman, U.S. police chiefs blast Trump for endorsing ‘police brutality’, *Wash. Post*, (July 30, 2017), available at https://www.washingtonpost.com/news/post-nation/wp/2017/07/29/u-s-police-chiefs-blast-trump-for-endorsing-police-brutality/?utm_term=.0bb38165afa7.

¹⁷ See Aaron Blake, Trump’s continued, not-so-subtle suggestions of violence, *The Washington Post* (July 28, 2017), available at https://www.washingtonpost.com/news/the-fix/wp/2017/07/28/president-trump-encourages-violence-yet-again-this-time-by-police/?noredirect=on&utm_term=.207899436948; see also John Wagner, ‘We’ll destroy his career,’ Trump quips about a Texas state senator at odds with a county sheriff, *The Washington Post* (Feb. 7, 2017) available at https://www.washingtonpost.com/news/the-fix/wp/2017/07/28/president-trump-encourages-violence-yet-again-this-time-by-police/?noredirect=on&utm_term=.207899436948.

¹⁸ Press Release, U.S. Dep’t of Justice Att’y Gen. Sessions Delivers Remarks at the 63rd Biennial Conference of the National Fraternal Order of Police (Aug. 28, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-63rd-biennial-conference-national-fraternal>; Ryan Lucas, Trump Administration Lifts Limits on Military Hardware for Police, *Nat’l Pub. Radio* (Aug. 28, 2017), <https://www.npr.org/2017/08/28/546743742/trump-administration-lifts-limits-on-military-hardware-for-police>.

New Initiatives

- At the initiative of, and with the support of this Administration, Congress is considering legislation known as the “Protect and Serve Act” (S.2794) that would create offenses and increase penalties—up to 10 years and life imprisonment — for actual or attempted harm to anyone who is, or is perceived to be a federally funded local law enforcement agent (which includes the vast majority of state and local law enforcement agents), including probation officers.¹⁹
- The DOJ has also announced \$65 million in funds to Project Safe Neighborhoods (PSN), a program led by local U.S. Attorneys’ Offices that has historically emphasized federal enforcement and prosecution of gun and gang crimes through federal-local task forces. PSN evolved from Project Exile and other initiatives designed to increase federal prosecutions and sentences for gun and gang offenses.²⁰
- The DOJ has announced \$98 million in funds to hire additional local law enforcement officers, prioritizing funding to agencies that agree to collaborate with immigration enforcement efforts.²¹

IMPACTS ON LGBTQ PEOPLE AND COMMUNITIES

The DOJ, national organizations, and grassroots organizations and advocates across the country have documented widespread patterns and practices of police profiling and discriminatory and abusive treatment of LGBTQ people and people living with HIV, and particularly LGBTQ people of color, LGBTQ immigrants, transgender and gender nonconforming (“GNC”) people, and youth.²²

¹⁹ S. 1134, 115th Congress (2017-2018) and H.R. 2437, 115th Congress (2017-2018), the Back the Blue Act, creates new federal crimes for assaulting or killing federally funded law enforcement. In February 2017, the President issued Exec. Order No. 13774, 82 FR 10695, 2017 WL 568297, a Presidential Executive Order on Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers, *available at* <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-preventing-violence-federal-state-tribal-local-law-enforcement-officers/>; *see also* Press Release, U.S. Dep’t of Justice Att’y Gen. Sessions Delivers Remarks at the 63rd Biennial Conference of the National Fraternal Order of Police (Aug. 28, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-63rd-biennial-conference-national-fraternal>.

²⁰ Nat’l Insts. For Justice, Program Profile: Project Exile (May 4, 2015), <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=413>.

²¹ Press Release, U.S. Dep’t of Justice, Attorney General Sessions Announces \$98 Million To Hire Community Policing Officers (Nov. 20, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-98-million-hire-community-policing-officers>.

²² *See, e.g.* James E. Copple and Patricia M. Dunn, Gender, Sexuality and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community, U.S. Department of Justice Community Oriented Policing Service (2017); Solutions Not Punishment Coalition, The Most Dangerous Thing Out Here is the Police: Trans Voices on Abuse and Profiling in Atlanta, 2016, *available at* http://dev.rjactioncenter.org/wp-content/uploads/2016/12/DangerPolice-40pg_4Web.pdf; Movement Advancement Project, Unjust; National Center for Transgender Equality, Report of the 2015 U.S. Transgender Discrimination Survey, 2017, *available at* <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; Nat’l Ass’n for the Advancement of Colored People, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America

In a national community survey of LGBTQ people conducted by Lambda Legal, a quarter of respondents who had in-person contact with police reported at least one type of misconduct or harassment by the police officer, including profiling, false arrests, verbal or physical assault, or sexual harassment or assault.²³ LGBTQ people of color, LGBTQ youth, low-income LGBTQ people, and transgender people were much more likely to report an experience of at least one type of police misconduct or harassment.²⁴ Additionally, LGBTQ respondents of color were five times more likely to be asked about their immigration status by law enforcement than white survey respondents.²⁵

(Sept. 2014), available at https://action.naacp.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf; U.S. Dep't of Justice Civ. Rts. Div., *Investigation of the Baltimore Police Department*, (Aug. 10, 2016), available at <https://www.justice.gov/crt/file/883296/download>; BreakOUT!, *We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color* (2014), available at <https://web.archive.org/web/20160802135906/http://www.equityprojects.org/wp-content/uploads/2014/12/WE-DESERVE-BETTER-REPORT.pdf>; U.S. Dep't of Justice, Civ. Rts. Div. *Investigation of the Albuquerque Police Department* (Apr. 10, 2014), available at https://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf; U.S. Dep't of Justice, Civ. Rts. Div., *Investigation of the Cleveland Police Department* (Dec. 4., 2014), available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf; Frank H. Galvan & Mohsen Bazargen *Interactions of Latina Transgender Women with Law Enforcement*, *Bienstar* (2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>; Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* (2012), available at http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf; Kathryn E.W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 (1) *Pediatrics*, 49-57 (2011) (non-heterosexual youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior); Mogul, J. L., Ritchie, A. J., & Whitlock, K. *Queer (in)justice: The criminalization of LGBT people in the United States* (Beacon Press 2011); U.S. Department of Justice *Investigation of the New Orleans Police Department*, March 2011, available at https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf Nat'l Coalition of Anti-Violence Programs, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010* (2011), available at http://www.avp.org/storage/documents/Reports/2011_NCAVP_HV_Reports.pdf (finding law enforcement agents to be among the top three categories of perpetrators of homophobic and transphobic violence reported); Brett G. Stoudt, et al. "Growing Up Policed in the Age of Aggressive Policing Policies." 56 N.Y.L. Sch. L. Rev., 1331 (2011), (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months); U.S. Dep't of Justice, Civ. Rts. Div. *Investigation of the New Orleans Police Department* (Mar. 16, 2011), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf; U.S. Dep't of Justice, Civ. Rts. Div. *Investigation of the Puerto Rico Police Department* (Sept. 5, 2011), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/09/08/prpd_exec_summ.pdf; Amnesty Int'l, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (2005), available at <https://www.amnesty.org/download/Documents/84000/amr511222005en.pdf> (documenting multiple patterns of police profiling, misconduct and violence against LGBT people across the country).

²³ Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014), <https://www.lambdalegal.org/protected-and-served>.

²⁴ Lambda Legal, *supra* note 23.

²⁵ Lambda Legal, *supra* note 23.

Research conducted by national, state, and local organizations has found that, in the absence of policies prohibiting discrimination based on sexual orientation and gender identity, and the absence of clear policies governing the determination of gender for the purposes of arrest processing and protection of LGBTQ people in police custody, LGBTQ people experience: homophobic and transphobic discrimination and abuse; unlawful, unnecessary, and humiliating searches to assign gender; and unsafe placement in the custody of local law enforcement, including in police lock-ups.²⁶ Additionally, police routinely confiscate condoms and their possession (by transgender women, gender nonconforming people and gay men) is often cited as evidence of intent to engage in prostitution-related offenses.²⁷ Frequently, LGBTQ survivors of domestic violence are arrested along with their abusive partners if they reach out to the police for help.²⁸ And a 2014 report on intimate partner violence between LGBTQ people and people living with HIV (“PLHIV”) and their partners found that 57% of intimate partner violence survivors who called the police experienced police misconduct, including being unjustly arrested.²⁹ Finally, “gang policing” practices profile and target LGBTQ youth of color, and particularly lesbian, bisexual, trans and gender nonconforming women of color.³⁰

Additionally, although police departments and federal, state, and local governments do not currently collect data on sexual misconduct by police, available research (including media reports and court documents in criminal and civil cases) indicates that sexual harassment and assault of members of the public by police officers occurs with alarming frequency—and that transgender people, GNC people, and lesbian women are among those reporting the highest rates of sexual assault by police. One study found that an officer is caught in an act of sexual misconduct every five days, a figure researchers recognize is just the tip of the iceberg.³¹ Studies have found that young women of color, low-income women, lesbian, bisexual, and transgender women, and otherwise marginalized cisgender and transgender people, are particularly vulnerable to sexual misconduct by law enforcement.³² A survey of LGBTQ youth in New

²⁶ See, e.g. James E. Copple and Patricia M. Dunn, Gender, Sexuality and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community, U.S. Department of Justice Community Oriented Policing Service (2017); Movement Advancement Project, Unjust; Mogul et al., *supra* note 10; Nat’l Prison Rape Elimination Comm’n. Nat’l Prison Rape Elimination Comm’n Report (June 2009), available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>; Amnesty Int’l, *supra* note 22; Alex Coolman, et al. Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners, Stop Prisoner Rape and ACLU National Prison Project (2005), <http://www.justdetention.org/pdf/stillindanger.pdf>.

²⁷ Human Rights Watch., Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities, (2012), http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf.

²⁸ Emily Waters, et al., Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015, Nat’l Coalition of Anti-Violence Programs (2016), https://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf.

²⁹ Osman Ahmed et al., Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2014, National Coalition of Anti-Violence Programs (2015), https://avp.org/wp-content/uploads/2017/04/2014_HV_Report-Final.pdf.

³⁰ See Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color (Beacon Press 2017).; Mogul, et al., *supra* note 10.

³¹ Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color (Beacon Press 2017).

³² Carrie Abner, et al., Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide, Int’l Ass’n of Chiefs of Police (June 2011), <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Jamie M. Grant, et al. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,

Orleans found that 59% of trans youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBTQ youth.³³ LGBTQ youth in a New York City survey were more than twice as likely to report negative sexual contact with police in the prior six months, compared to non-LGBTQ youth.³⁴ Among Latina transgender women in Los Angeles County, 24% report being sexually assaulted by law enforcement.³⁵ Yet, the vast majority of police departments have no policies or training in place explicitly addressing this issue.³⁶

Flooding communities of color and low-income communities with police officers, aggressive “gang policing” initiatives and databases, and the “broken windows” policing practices touted by the current administration have documented discriminatory impacts on LGBTQ youth of color, transgender and GNC people, and LGBTQ homeless people, including high rates of stops, searches, arrests, and physical and sexual violence by police officers. Such policies also facilitate racialized policing of gender and sexuality, including policing of the use of public accommodations, such as restrooms, by transgender and GNC people, and the violations of the rights of LGBTQ people once in police custody.

OPPORTUNITIES FOR LOCAL RESISTANCE

State and local advocates can deploy a number of strategies to protect targeted communities from the impacts of these federal administrative and legislative initiatives, including:

- Advocating for adoption and effective enforcement of strong and comprehensive bans on profiling and other discriminatory law enforcement tactics inclusive of bans on profiling and discriminatory policing based on gender, gender identity, and sexual orientation;³⁷
- Advocating for the decriminalization and de-prioritization of enforcement of minor and “broken windows” offenses;
- Advocating for pre-arrest diversion programs for drug-, alcohol-, and poverty-related offenses;

National Center for Transgender Equality and National Gay and Lesbian Task Force (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf; Michelle Fine, et al., Anything can happen with police around: Urban youth evaluate strategies of surveillance in public places, 59 J. of Soc. Issues, 141-58 (2003); Peter B. Kraska & Victor E. Kappeler, To serve and pursue: Exploring police sexual violence against women, 12:1 Justice Q., 85-112 (2006); Lambda Legal, *supra* note 23; Philip M. Stinson, et al. Police sexual misconduct: A national scale study of arrested officers 30 Crim. Justice Fac. Publ'ns (2014), available at https://scholarworks.bgsu.edu/crim_just_pub/30.

³³ BreakOUT! We Deserve Better!

³⁴ Stoudt, *supra* note 22 at 30.

³⁵ Galvan, *supra* note 22 at 6.

³⁶ The Cato Institute's National Police Misconduct Reporting Project, 2010 Annual Report, (2011), available at <https://www.policemisconduct.net/statistics/2010-annual-report/>; Stinson et al., *supra*, note 32; Int'l Ass'ns of Chiefs of Police, *supra*, note 32; Samuel Walker & Dawn Irlbeck, Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female' Dep't of Crim. Justice Police Professionalism Initiative (June 2003), available at <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>; Samuel Walker & Dawn Irlbeck, Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female' Dep't of Crim. Justice Police Professionalism Initiative (June 2003), available at <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>.

³⁷ See, e.g. model anti-profiling policy contained in National Association for the Advancement of Colored People, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America at Appendix III.

- Calling for increased oversight of local “gang” and “drug” task forces, including public disclosure of departmental memoranda of understanding, and elimination of “gang databases”;³⁸
- Advocating for removal of police officers from schools;³⁹
- Calling for an end to mandatory arrest policies in domestic violence cases and for development of alternative responses to domestic violence and mental health calls that do not involve police and the risk of arrest of survivors of violence;
- Resisting efforts to pass laws that would enhance penalties for offenses against law enforcement officers (“Blue Lives Matter” or “Back the Blue” laws);⁴⁰ and
- Requesting the intervention of state Attorneys General or the appointment of independent monitors to enforce Department of Justice consent decrees in the DOJ’s absence.⁴¹

Additionally, Campaigns for Expanded Sanctuary⁴² and Freedom Cities represent opportunities for LGBTQ groups to join with immigrant rights, racial justice, and police accountability organizations to combat the Administration’s intensifying criminalization of communities of color, including LGBTQ people of color and immigrants.⁴³ Demands of such campaigns include the elimination of “gang databases” a tool of “gang policing” which allows individuals to be labeled as “gang members” based solely on subjective factors such as clothing (including gender nonconforming appearance of young women of color), association with others labeled as “gang members” and other factors rooted in racial and gender profiling. They also include abandonment of broken windows policing practices and decriminalization of poverty- including survival-based offenses such as laws criminalizing sitting, sleeping or lying in public places, panhandling, prostitution-related offenses, street vending offenses.

³⁸ See, e.g. <http://erasethedatabase.com>.

³⁹ See, e.g. <http://www.dignityinschools.org>.

⁴⁰ For a summary of why these laws can lead to increased criminalization of LGBTQ people and HIV- affected people, see Auditi Guha, *Advocates: ‘Blue Lives Matter’ Group Pushes Dangerous Narratives*, Rewire.News (July 27, 2017), <https://rewire.news/article/2017/07/27/advocates-blue-lives-matter-group-pushes-dangerous-narratives/>

⁴¹ See, e.g. Press Release, Illinois Att’y Gen., Atty’ Gen. Madigan Launches Website on Chicago Police Dep’t Consent Decree (Jan. 29, 2018), available at http://illinoisattorneygeneral.gov/pressroom/2018_01/20180129.html; Kevin Rector, Judge appoints Baltimore consent decree monitor proposed by city and DOJ, Balt. Sun (Oct. 3, 2017), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bs-md-ci-consent-decree-monitor-appointed-20171003-story.html>

⁴² Mijente, Defy, Defend, Expand, Sanctuary Campaign: Expanding Sanctuary Policy Solutions – a Crowdsourced Guide, (Feb. 2017), available at <https://mijente.net/2017/02/16/sanctuary-policies/>

⁴³ Andrea J. Ritchie and Monique W. M. Morris, Ed.D., *Centering Black Women and Girls in Campaigns for Expanded Sanctuary and Freedom Cities*, National Black Women’s Justice Institute (Sept. 2017), available at <https://forwomen.org/resources/sanctuary-city-report/>

IMMIGRATION

FEDERAL INITIATIVES

The Trump Administration is (1) prioritizing removal of unauthorized immigrants, (2) increasing entanglement of police and immigration enforcement, and (3) increasing Immigration and Customs Enforcement (“ICE”) arrests.

Prioritizing Removal

Within days of taking office, President Trump issued an executive order making all unauthorized immigrants in the United States a priority for removal, ushering in a new reign of terror against immigrant communities.⁴⁴

Police and Immigration Enforcement Entanglement

Formal 287(g) agreements, which require collaboration between local law enforcement and ICE, have increased by 24% by March 2018 compared to the previous year.⁴⁵ These agreements, and efforts to use funding requirements to compel local law enforcement agencies to honor ICE detainers, which require local law enforcement to hold individuals for Immigration and Customs Enforcement to pick up, put immigrants at risk of detention and deportation and even further erode community trust in law enforcement.⁴⁶ Additionally, increasing police entanglement with immigration enforcement puts LGBTQ immigrants at risk of deportation to countries where their safety, and even their lives, are in jeopardy.⁴⁷

Increasing ICE Arrests

Immigration and Customs Enforcement arrests rose over 40% in the first eight months of 2017 compared to the same period in the previous year.⁴⁸ Not only did arrests rise, arrests in homes and in the community rose 55% in the first 135 days of the Trump Administration compared to the same time period in 2016.⁴⁹ Arrests of immigrants with no criminal convictions

⁴⁴ Exec. Order No. 13768, 82 Fed. Reg. 8799, 2017 WL 388889 (Jan. 25, 2018), *available at* <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

⁴⁵ Laura Muñoz Lopez, *How 287(g) Agreements Harm Public Safety*, Ctr. for Am. Progress (May 8, 2018), <https://www.americanprogress.org/issues/immigration/news/2018/05/08/450439/287g-agreements-harm-public-safety/>; Mica Rosenberg & Reade Levinson, *Police in Trump-supporting towns aid immigration officials in crackdown*, Reuters (Nov. 27, 2017), *available at* <https://www.reuters.com/article/us-trump-effect-immigration-police/police-in-trump-supporting-towns-aid-immigration-officials-in-crackdown-idUSKBN1DR169>; Danyelle Solomon, et al., *The Negative Consequences of Entangling Local Policing and Immigration Enforcement*, Ctr. for Am. Progress (Mar. 21, 2017), *available at* <https://www.americanprogress.org/issues/immigration/reports/2017/03/21/428776/negative-consequences-entangling-local-policing-immigration-enforcement/>.

⁴⁶ Rosenberg & Levinson, *supra* note 45.

⁴⁷ Sharita Gruberg, *How Police Entanglement with Immigration Enforcement Puts LGBTQ Lives at Risk*, Ctr. for Am. Progress (Apr. 12, 2017) <https://www.americanprogress.org/issues/lgbt/reports/2017/04/12/430325/police-entanglement-immigration-enforcement-puts-lgbtq-lives-risk/>.

⁴⁸ Randy Capps, et al., *Revving Up the Deportation Machinery: Enforcement and Pushback under Trump*, Migration Policy Inst. (May 2018), *available at* <https://www.migrationpolicy.org/sites/default/files/publications/ImmigrationEnforcement-FullReport-FINAL-WEB.pdf>.

⁴⁹ *Id.*

rose 147% between FY 2016 and FY 2017.⁵⁰ In one raid, 70% of immigrants arrested by ICE were collateral arrests, in other words not even people ICE was targeting.⁵¹ The vast majority of immigrants with criminal convictions apprehended by ICE were convicted of minor offenses.

Although the number of deportations is not as high as it was in 2012 under President Obama, the lack of enforcement priorities, increased entanglement of immigration enforcement with local law enforcement, and willingness of ICE officials to seek out and arrest people in locations that were previously deemed “sensitive” and largely off limits to immigration enforcement such as courthouses,⁵² hospitals,⁵³ ambulances,⁵⁴ or school drop-offs⁵⁵ creates a pervasive climate of fear.

At the same time as the Trump Administration is increasing arrests of unauthorized immigrants, they are rendering increasing numbers of immigrants “unauthorized” by eliminating temporary protections such as Deferred Action for Childhood Arrivals and Temporary Protected Status and Deferred Enforced Departure designations.⁵⁶ Additionally, immigration authorities are placing an increasing number of immigrants, who had previously been granted withholding of removal provided they complied with periodic check-ins with immigration authorities into deportation proceedings, and particularly targeting immigrant rights activists.⁵⁷ These measures put over a million more people – including hundreds of thousands who have lived in this country lawfully for decades - at risk of deportation.⁵⁸

⁵⁰ See Capps et al., *supra* note 48.

⁵¹ Dara Lind, What John Kelly's final ICE raid tells us about Trump's new chief of staff, Vox (Aug. 2, 2017, 8:30 AM), available at <https://www.vox.com/2017/8/2/16076742/ice-raid-immigration>.

⁵² Katie Mettler, ‘This is really unprecedented’: ICE detains woman seeking domestic abuse protection at Texas courthouse, Wash. Post (Feb. 16, 2017), available at https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.2a4b67e676be; César Cuauhtémoc García Hernández, Opinion: ICE’s Courthouse Arrests Undercut Democracy, N.Y. Times (Nov. 26, 2017), available at <https://www.nytimes.com/2017/11/26/opinion/immigration-ice-courthouse-trump.html>.

⁵³ Shannon Dooling, American Medical Association Takes Stance Against ICE Patrolling Inside Hospitals, WBUR News (Nov. 15, 2017), available at <http://www.wbur.org/news/2017/11/15/ama-stand-ice-in-hospitals>; Brandon Carter, Immigration agents release 10-year-old girl with cerebral palsy after ACLU lawsuit, The Hill (Nov. 3, 2017, 6:57 PM), available at <http://thehill.com/homenews/news/358732-immigration-agents-release-10-year-old-girl-with-cerebral-palsy-after-aclu>.

⁵⁴ Marwa Eltagouri, A 10-year-old immigrant was rushed to the hospital in an ambulance. She was detained on the way, Wash. Post (Oct. 27, 2012), available at https://www.washingtonpost.com/news/post-nation/wp/2017/10/26/a-10-year-old-immigrant-was-rushed-to-the-hospital-in-an-ambulance-she-was-detained-on-the-way/?utm_term=.9f79102aaa05.

⁵⁵ Andrea Castillo, Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood, L.A. Times (Mar. 3, 2017, 4:10 PM), available at <http://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html>.

⁵⁶ Miriam Jordan, Trump Administration Ends Temporary Protection for Haitians, N.Y. Times (Nov. 20, 2017), available at <https://www.nytimes.com/2017/11/20/us/haitians-temporary-status.html>.

⁵⁷ Nick Pinto, Ice Is Targeting Political Opponents For Deportation, Ravi Ragbir And Rights Groups Say In Court, The Intercept (February 9, 2018), available at <https://theintercept.com/2018/02/09/ravi-ragbir-ice-immigration-deportation/>.

⁵⁸ Nicole Prchal Svajlenka, et al., TPS Holders Are Integral Members of the U.S. Economy and Society, Ctr. for Am. Progress (Oct. 20, 2017, 9:01 AM), available at <https://www.americanprogress.org/issues/immigration/news/2017/10/20/440400/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>; Tom Jawetz & Nicole Prchal Svajlenka, Thousands of DACA Recipients Are

IMPACTS ON LGBTQ PEOPLE AND COMMUNITIES

Even before the Trump Administration, once taken into ICE custody, 90% of all LGBTQ individuals in immigration proceedings were held in detention pending deportation proceedings, as were 88% of immigrants who were not subject to mandatory detention.⁵⁹ While detention is harmful for all people, it is particularly dangerous for LGBTQ immigrants who face high risks of abuse in confinement. The Bureau of Justice Statistics found that non-heterosexual inmates in prisons are ten times more likely to be sexually victimized by other incarcerated people and over twice as likely to be sexually victimized by staff.⁶⁰ Although similar data does not exist for immigration detention, one in four substantiated incidents of sexual abuse in immigration detention involves a transgender victim.⁶¹ In addition to the vulnerability to abuse LGBTQ immigrants face in detention, detention also decreases peoples' chances of winning their immigration cases.⁶² For LGBTQ immigrants in particular, deportation could mean being sent to a country where their safety or even their lives are in jeopardy.⁶³

Additionally, like other survivors or witness to violence, increased collaboration between law enforcement and immigration enforcement makes LGBTQ survivors of violence less likely to seek assistance. As a result, despite the fact that homophobic and transphobic violence against unauthorized LGBTQ immigrants is rising, when local law enforcement collaborates with immigration enforcement, LGBTQ immigrants are less likely to seek assistance from law enforcement.⁶⁴

OPPORTUNITIES FOR LOCAL RESISTANCE

State and local advocates can deploy a number of strategies to protect targeted communities from the impacts of these federal administrative and legislative initiatives, including:

- Calling for cities to refuse to enter into or rescind 287(g) agreements;

Already Losing Their Protection From Deportation, Ctr. for Am. Progress (Nov. 9, 2017, 6:00 AM), *available at* <https://www.americanprogress.org/issues/immigration/news/2017/11/09/442502/thousands-daca-recipients-already-losing-protection-deportation/>.

⁵⁹ Sharita Gruberg, ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants, Ctr. for Am. Progress (Oct. 26, 2016 11:20 AM), *available at* <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

⁶⁰ Allen J. Beck, et al. Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, Bureau of Justice Stats. (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁶¹ U.S. Gov't Accountability Off., Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse (Nov. 2013), *available at* <http://www.gao.gov/assets/660/659145.pdf>.

⁶² Sharita Gruberg & Rachel West, Humanitarian Diplomacy, Ctr. for Am. Progress (June 18, 2015), *available at* <https://www.americanprogress.org/issues/lgbt/reports/2015/06/18/115370/humanitarian-diplomacy/>.

⁶³ Aengus Carroll & Lucas Ramon Mendos, State-Sponsored Homophobia, ILGA (May 2017), https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

⁶⁴ See Waters, et al., *supra* note 28; Sharita Gruberg, LGBT Undocumented Immigrants Face an Increased Risk of Hate Violence, Ctr. for Am. Progress (June 10, 2014, 8:53 AM), *available at* <https://www.americanprogress.org/issues/immigration/news/2014/06/10/91233/lgbt-undocumented-immigrants-face-an-increased-risk-of-hate-violence>.

- Advocating for policies that prohibit law enforcement from profiling and discriminatory enforcement based on actual or perceived immigration status, asking about immigration status, and refusing to comply with detainer requests;⁶⁵
- Calling for cities and states to refuse to allow ICE access to courthouses, hospitals, schools, childcare facilities, and other sensitive locations;⁶⁶
- Advocating for de-criminalizing minor offenses, which can reduce contact some immigrants have with law enforcement and immigration enforcement;⁶⁷
- Advocating for the funding of legal representation for immigrants in removal proceedings. A recent study found 12 times more immigrants won their cases when they had lawyers.⁶⁸ A dozen cities, including Chicago, Oakland, and Atlanta are currently providing lawyers to immigrants in removal proceedings;⁶⁹
- Advocating for legislation on profiling by local law enforcement that prohibits discriminatory profiling, including profiling based on national origin, gender, sexual orientation, housing, immigration status, or physical appearance;⁷⁰
- Calling for local and county jails to refuse to rent beds to the Department of Homeland Security that will be used for immigration detention purposes; and
- Working with local immigrant rights organizations and advocates to help to protect vulnerable members of the LGBTQ community.⁷¹

⁶⁵ Andrea J. Ritchie and Monique W. M. Morris, Ed.D., Centering Black Women and Girls in Campaigns for Expanded Sanctuary and Freedom Cities, National Black Women's Justice Institute (Sept. 2017), *available at* <https://forwomen.org/resources/sanctuary-city-report/>

⁶⁶ Letter from David Douglas to Deputy Superintendent Danny Murphy, Compliance Bureau, New Orleans Police Dep't (Sept. 22, 2016), *available at* <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-6-1-Immigration-Status-approval.pdf/>.

⁶⁷ Tania A. Unzueta, Expanding Sanctuary: What Makes a Sanctuary City Now?, Mijente (Jan. 2017), *available at* <https://mijente.net/2017/01/27/sanctuary-report/>.

⁶⁸ Dara Lind, A New York courtroom gave every detained immigrant a lawyer. The results were staggering. Vox (Nov. 9, 2017), *available at* <https://www.vox.com/policy-and-politics/2017/11/9/16623906/immigration-court-lawyer>.

⁶⁹ Press Release, Vera Inst. of Justice, SAFE Cities Network Launches: 11 Communities United to Provide Public Defense to Immigrants Facing Deportation (Nov. 9, 2017), *available at* <https://www.vera.org/newsroom/press-releases/safe-cities-network-launches-11-communities-united-to-provide-public-defense-to-immigrants-facing-deportation>.

⁷⁰ Nat'l Ass'n for the Advancement of Colored People, Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America (Sept. 2014), *available at* https://action.naACP.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf.

⁷¹ Transgender Law Ctr., 10 Things You Can Do to Help Protect the Most Vulnerable Members of the LGBT Community, *available at* <https://tlcenter.app.box.com/s/z7ujftuyn4crwb3tamjj7852arsksgr>.

TRAFFICKING

FEDERAL INITIATIVES

The Trump Administration is focusing on investigation and prosecution to address human trafficking by (1) erecting barriers to safer sex trade, (2) increase enforcement of existing anti-prostitution and anti-trafficking laws, (3) maintain or even decrease resources for support services that address poverty -- the root cause of human trafficking, and (4) enact new laws to expand the definitions of trafficking.

Attorney General Sessions identified human trafficking as one of the Trump Administration's priorities,⁷² and anti-trafficking initiatives are part of Senior Advisor Ivanka Trump's portfolio.⁷³ The Administration's remarks on trafficking have focused almost entirely on the sex industry, both domestic and international, with little to no reference to labor and other forms of trafficking.

Erecting Barriers to Safer Sex Trade

Federal efforts to criminalize the technological mechanisms used by sex workers, including internet platforms, are gaining momentum, with predictable impacts on LGBTQ people. On April 11, 2018, President Trump signed the "Allow States and Victims to Fight Online Sex Trafficking Act" (FOSTA), expanding civil liability for entities that host advertisements for sexual services, while giving no clarity as to what constitutes "facilitation" of trafficking. Its passage has resulted in the closure of numerous internet sites that sex workers used to advertise and find clients,⁷⁴ reducing their vulnerability to violence, HIV/STI transmission, and exploitation.

Increased Enforcement of Existing Criminal Laws

Advocates anticipate that the passage of FOSTA will lead to an increase in the enforcement of existing anti-prostitution and anti-trafficking laws and an increase in funding for policing and prosecution purposes.

Insufficient Funding for Sex Trafficking Victims Support

State and local budgets that prioritize funding for aggressive enforcement of prostitution and trafficking laws fail to provide funding for supports and services that are proven to address the root causes of human trafficking such as poverty. There is little oversight and little input from the community members most affected by trafficking over initiatives and resources deployed in their name. Often, funding goes to local police departments and district attorney offices that prioritize enforcement, rather than local community-based organizations that provide services, support, and create peer-based safety. In some communities, local organizations are

⁷² Press Release, U.S. Dep't of Justice, Att'y Gen. Sessions Delivers Remarks at the Department of Justice's Human Trafficking Summit (Feb. 2, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-human-trafficking-summit>.

⁷³ Betsy Klein, [Ivanka Trump delivers anti-human trafficking speech at UN](https://www.cnn.com/2017/09/19/politics/ivanka-trump-united-nations-human-trafficking/index.html), CNN (Sept. 19, 2017 7:00PM), <https://www.cnn.com/2017/09/19/politics/ivanka-trump-united-nations-human-trafficking/index.html>.

⁷⁴ Tom Jackman, Trump signs 'FOSTA' bill targeting online sex trafficking, enables states and victims to pursue websites, Wash. Post (Apr. 11, 2018), available at https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm_term=.4d9b3766c3e4

able to better support people who are vulnerable, identify victims of trafficking, and receive people back into their communities after a coercive experience.

Expanding the Definition of Trafficking

The Trump Administration also supports the enactment of new laws expanding definitions of trafficking to reach non-participatory actors, especially clients and third-party websites, and increased enforcement of immigration laws through efforts described as trafficking investigations.⁷⁵ Available evidence indicates that such increased enforcement efforts, which often conflate all prostitution with trafficking while simultaneously ignoring labor trafficking and the sexual violence routinely associated with it, will not have an appreciable effect on the prevalence of human trafficking.⁷⁶

Tactics that primarily rely on law enforcement, be it criminal or civil, increase vulnerability to violence and exploitation for those who trade sex, including trafficking victims.⁷⁷ These efforts fail to address the root causes of trafficking, such as economic instability, lack of competent resources and services, harsh immigration enforcement and border control, and highly restrictive immigration policies and instead focus on increasing resources to law enforcement for “raid and rescue” of sex workers. The result is increased isolation of people involved in the sex trade, compromising outreach and harm reduction efforts, and exacerbating the rift between victims and the justice system.

IMPACTS ON LGBTQ PEOPLE AND COMMUNITIES

In the United States, the LGBTQ community faces a disproportionate level of gender and sexuality based profiling and policing for prostitution-related crimes. Numerous factors, including economic instability and a lack of support services, lead many LGBTQ people to rely on informal and criminalized economies such as sex work to meet their basic survival needs. A national survey of transgender people reported that 11% of respondents had, at some point,

⁷⁵ Lisa Fernandez, *Oakland mayor supports cutting off all ties to ICE after no human trafficking convictions: report*, KTVU (Nov. 22, 2017 9:14 AM), <http://www.ktvu.com/news/oakland-mayor-supports-cutting-off-all-ties-to-ice-after-no-human-trafficking-cases-found-report>.

⁷⁶ Prostitution is the exchange of sexual services for resources by a consenting adult. Under the federal definition, sex trafficking occurs when someone is involved in the commercial sex trade through force, fraud, or coercion for the purpose of exploitation, or the person involved in commercial sex trade is under the age of 18. Trafficking Victims Protection Act, 22 USC § 7102 (2015); See Svati P. Shah, *Trafficking and the Conflation with Sex Work: Implications for HIV Prevention and Control* (Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law, Working Paper, July 2011).

⁷⁷ Global Alliance Against Trafficking in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World* (2007), available at https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf; Global Alliance Against Trafficking in Women, *Moving Beyond “Supply” and “Demand” Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches to Trafficking*, 44-46 (2011), available at http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf; The Sex Workers Project, *The Use of Raids to Fight Trafficking in Persons* (2009), available at: <http://www.nswp.org/sites/nswp.org/files/swp-2009-raids-and-trafficking-report.pdf>.

engaged in some form of sex work.⁷⁸ One study notes that homeless LGBTQ youth were seven times more likely to trade sex for a place to stay compared to their heterosexual peers.⁷⁹

Transgender women across the country report frequent profiling and harassment under laws that prohibit loitering for the purposes of prostitution.⁸⁰ LGBTQ youth are also highly policed under these laws in the context of the “broken windows” policing being promoted by the current administration.⁸¹ In some jurisdictions, law enforcement officers use the possession or presence of condoms to profile LGBTQ people or to support a charge of prostitution. This practice deters vulnerable populations from carrying and sharing condoms, and deters traffickers from making condoms available to the people they exploit.⁸²

Intensified policing of prostitution and trafficking not only exposes LGBTQ people to greater levels of profiling and discriminatory enforcement, it also exposes them to heightened violence, including sexual violence, at the hands of police. Additionally, LGBTQ people who are arrested on prostitution-related charges are more likely to carry the long-term effects of a criminal record, creating another barrier to housing, services and the formal economy.

Criminalization and targeting of internet-based, third-party advertisers used by LGBTQ people such as Rentboy.com has widespread consequences beyond arrest and prosecution of LGBTQ people involved in the sex trades and attendant harms.⁸³ By allowing sex workers and trafficking victims to screen and negotiate with potential clients, these sites reduce vulnerability to violence that may not be available to those engaging in street-based sex work.⁸⁴ Additionally, using an online platform creates an electronic “footprint” which can be essential to the investigation of trafficking by law enforcement. When law enforcement practices criminalize this “footprint”, sex workers and traffickers move the communication underground, using means that are less traceable.⁸⁵ Finally, eliminating such websites, which often serve as hubs of harm reduction information for LGBTQ people trading sex, including public health information about

⁷⁸ Erin Fitzgerald, et al. Meaningful Work: Transgender Experiences in the Sex Trade (Dec. 2015), http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf.

⁷⁹ Lance Freeman, & Darrick Hamilton, A Count of Homeless Youth in New York City (2008), <https://shnny.org/images/uploads/Youth-Count-Results.pdf>

⁸⁰ Stonewalled, *supra* note 22.

⁸¹ Meredith Dank, et al., Locked in: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM and YWSW who Engage in Survival Sex Urban Institute, 8 (Sept. 2015), <https://www.urban.org/sites/default/files/publication/71446/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf>.

⁸² Human Rights Watch, *supra* note 27 at 3.

⁸³ Press Release, Transgender Law Center, LGBT Rights Organizations Join Amnesty Int’l in Call to Decriminalize Sex Work (Aug. 20, 2015), <https://transgenderlawcenter.org/archives/11885>
“Sex Workers Project Statement on the Indictment of Rentboy.com,” *Sex Workers Project*, 28 Jan, 2016, <http://sexworkersproject.org/downloads/2016/20160128-swp-statement-on-rentboy-indictments.pdf>. Accessed 13 Oct 2016.

⁸⁴ Noah Berlatsky, Female homicide rate dropped after Craigslist launched its erotic services platform, ThinkProgress, (Oct. 20, 2017), available at <https://thinkprogress.org/craigslist-erotic-services-platform-3eab46092717/>.

⁸⁵ Freedom Network USA, Freedom Network Urges Caution in Reforming the CDA, available at <https://www.eff.org/files/2017/09/18/sestahearing-freedomnetwork.pdf>.

STIs, including HIV, reduces access to critical and potentially life-saving information for people in the sex trades.⁸⁶

OPPORTUNITIES FOR LOCAL RESISTANCE

State and local advocates can deploy a number of strategies to protect targeted communities from the impacts of these federal administrative and legislative initiatives, including:

- Addressing violence and stigma against people in the sex trade by diverting resources away from criminal-legal responses to prostitution and toward meeting the basic survival needs that render individuals, including LGBTQ youth and adults, vulnerable to trafficking and violence in the sex trades;
- Working with state and local agencies to focus on non-law enforcement-based, proactive anti-trafficking efforts;
- Advocating for budget re-allocation of anti-trafficking funds to affordable housing, employment, health care, and anti-poverty initiatives as an effective and important form of prevention of human trafficking;
- Advocating for funding for providers or community-based organizations instead of directly funding police departments or District Attorney Offices;
- Calling for impact assessments of anti-trafficking legislation prior to a vote on the legislation, and for effective oversight of local and state-based anti-trafficking efforts, including evaluations of the impact and effectiveness of current state and local law enforcement stings and anti-trafficking operations such as Operation Cross Country, in addressing the needs of trafficking survivors and people in the sex trades;⁸⁷ and
- Calling for state-level administrative bodies to deprioritize enforcement efforts targeting third-party internet advertising platforms and instead facilitate partnerships with these operators as resources to connect with populations who may not feel comfortable seeking out law enforcement to report victimization.

⁸⁶ Michael Rodriguez, Here's How Sex Work Changed After the Government Shut Down Rentboy.com, Mic (Dec. 4, 2015), <https://mic.com/articles/129355/here-s-how-sex-work-changed-after-the-government-shut-this-male-escort-website-down#.kU6cciyEy>.

⁸⁷ Such an evaluation should include information regarding the number of state trafficking prosecutions, the number of prostitution-related charges that stem from these operations and the disposition of these cases; the number of minor and adult victims connected with services; the number of individuals placed in deportation proceedings; how long-term success is assessed; the number of people who are not trafficking victims but are arrested for prostitution-related crimes, including loitering for the purposes of prostitution, patronizing, and promoting prostitution; and annual budget information for state-based anti-trafficking efforts.

DRUG POLICY

FEDERAL INITIATIVES

The Trump Administration is (1) increasing funding for criminal legal responses to drug use, (2) decreasing funding for drug treatment and prevention, and (3) increasing prosecution of drug offenses.

The Trump Administration has identified drug law enforcement and combating drug trafficking as top criminal justice priorities.⁸⁸ Yet, criminalization has proven to increase violence associated with the drug trade and to be ineffective in addressing the conditions and crises of drug misuse and addiction, mental illness, poverty and homelessness, which are more effectively addressed through treatment and education.⁸⁹ Public health research shows the value of education, treatment, and healthcare in improving these conditions, which criminalization and detention fail to do.⁹⁰

Increasing Funding for Law Enforcement

The White House's most recent budget request further underscores the Administration's move toward mass incarceration for drug use and away from treatment and prevention options. The current budget proposal, like the FY17 budget, increases funding for a number of the DOJ agencies responsible for criminal legal responses to drug use, such as the Drug Enforcement Agency (DEA).

Decreasing Funding for Treatment and Prevention

The White House's budget proposal also decreases funding for government agencies focused on treatment and prevention, such as the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office of National Drug Control Policy (ONDCP).⁹¹

Increasing Prosecution of Drug Offenses & Reversing Progressive Reforms

In an April 2016 Senate drug hearing then-Senator Sessions famously claimed, "Good people don't smoke marijuana."⁹² Attorney General Sessions is now calling for an increase in prosecutions of drug crimes, including marijuana-related offenses. After a White House

⁸⁸ Greg Allen, Trump Says He Will Focus On Opioid Law Enforcement, Not Treatment, Nat'l Pub. Radio (Feb. 7, 2018, 4:22PM), <https://www.npr.org/sections/health-shots/2018/02/07/584059938/trump-says-he-will-focus-on-opioid-law-enforcement-not-treatment>.

⁸⁹ Redonna K. Chandler et al., Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety, 301(2) J. of Am. Med., 183-190 (Jan 14, 2009), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2681083/>.

⁹⁰ Nat'l Inst. on Drug Abuse, Understanding Drug Abuse and Addiction: What Science Says (Feb. 2016), <https://www.drugabuse.gov/publications/teaching-packets/understanding-drug-abuse-addiction/section-iv/4-effectiveness-treatment>.

⁹¹ Press Release, Drug Pol'y Alliance, Trump Budget Doubles Down on Drug War (Feb. 12, 2018), <http://www.drugpolicy.org/press-release/2018/02/trump-budget-doubles-down-drug-war>; Michael Collins, Just Say No to Trump's Drug War Budget, Drug Pol'y Alliance (Feb. 16, 2018) <http://www.drugpolicy.org/blog/just-say-no-trumps-drug-war-budget>.

⁹² Christopher Ingraham, Trump's pick for attorney general: 'Good people don't smoke marijuana', Wash. Post (Nov. 18, 2016), available at https://www.washingtonpost.com/news/wonk/wp/2016/11/18/trumps-pick-for-attorney-general-good-people-dont-smoke-marijuana/?utm_term=.8160f16efc74.

announcement that it would be cracking down on recreational marijuana use, Attorney General Sessions sent a letter to members of Congress asking them to lift rules prohibiting him from enforcing federal law in states that have legalized medical marijuana use. And in January 2018, Attorney General Sessions ended the policy that deprioritized enforcement of federal anti-marijuana laws in states that legalized sale and consumption of marijuana.⁹³

In his May 10, 2017 Memo to federal prosecutors, Attorney General Sessions instructed prosecutors to “charge and pursue the most serious, readily provable offense,” clarifying that the most serious offenses are “those that carry the most substantial guidelines sentence, including mandatory minimum sentences.”⁹⁴ Though Attorney General Sessions did not explicitly reference drug crimes in this memo, most mandatory minimum sentences apply to drug offenses.

In August 2017, Attorney General Sessions announced the formation of the “Opioid Fraud and Abuse Detection Unit,” which provides additional funding and staff dedicated to the prosecution of “health care fraud related to prescription opioids.” In his speech announcing the new Opioid Fraud and Abuse Detection Unit, Attorney General Sessions said,

“In recent years, some of the government officials in this country have sent mixed messages about the harmfulness of drugs. We must not capitulate intellectually or morally to drug use. We must create a culture that is hostile to drug abuse.”

Underscoring his misunderstanding of a “prevention” model, Attorney General Sessions exclaimed, “Prevention is what we at the Department do every day – because enforcement is prevention.”⁹⁵

The DOJ’s approach to drug enforcement has intensified over the last year. In March 2018, President Trump announced that the Department of Justice would seek the death penalty in drug trafficking cases. Attorney General Sessions followed the President’s announcement by ensuring federal prosecutors that there is a legal basis for seeking the death penalty in drug trafficking cases.⁹⁶

Additionally, international bodies such as the United Nations Office on Drugs and Crime have recognized that criminalization does not deter drug use and that such punitive policies actually harm the health and well-being of people who inject drugs (PWID).⁹⁷ A 2017 global review of 106 studies on the relationship between HIV and criminalization of drug use showed

⁹³ Charlie Savage & Jack Healy, Trump Administration Takes Step That Could Threaten Marijuana Legalization Movement, N.Y. Times (Jan. 4, 2018), available at https://www.nytimes.com/2018/01/04/us/politics/marijuana-legalization-justice-department-prosecutions.html?_r=0.

⁹⁴ U.S. Dep’t of Justice, *supra* note 7.

⁹⁵ U.S. Dep’t of Justice, Remarks by Att’y Gen. Sessions to Law Enforcement About the Opioid Epidemic (Sept. 22, 2017), <https://www.justice.gov/opa/speech/remarks-attorney-general-sessions-law-enforcement-about-opioid-epidemic>.

⁹⁶ Vann R. Newkirk II, The People Trump’s War on Drugs Will Actually Punish, The Atlantic (Mar. 26, 2018), <https://www.theatlantic.com/politics/archive/2018/03/killing-drug-dealers-opioid-epidemic/555782/>.

⁹⁷ United Nations Office on Drugs and Crime, World Drug Report 2016 (United Nations publication, Sales No. E.16.XI.7), available at <https://www.sciencedirect.com/science/article/pii/S2352301817300735>.

that criminalizing drug use harms HIV prevention and treatment efforts among PWID.⁹⁸ Nevertheless, all U.S. states and the federal government still criminalize drug possession, and police officers around the country make more arrests for drug charges than for any other crime.

IMPACTS ON LGBTQ PEOPLE AND COMMUNITIES

Higher rates of drug use and disproportionately high rates of police contact mean that LGBTQ people are particularly likely to be swept up in the Administration's efforts to return to the failed "war on drugs." Numerous studies show that LGBTQ people are more vulnerable to problematic substance use due to factors including minority stress, higher rates of mental health disabilities, and a lower likelihood of strong family or community support.

A recent study showed that nearly 40% of sexual minorities used illicit drugs in the past, compared to 17% of the public.⁹⁹ Nearly 30% of transgender and gender nonconforming respondents to the 2015 U.S. Transgender Survey also report past use of illicit drugs.¹⁰⁰

Barriers to health care for transgender people can also lead to increased vulnerability to self-medication, which can be charged and prosecuted as a criminalized offense. In the 2015 U.S. Transgender Survey, 25% of respondents reported being denied coverage for transition-related hormone replacement therapy (HRT), and 33% of respondents reported avoiding healthcare services that they needed due to fear of being discriminated against by providers.¹⁰¹ When prescription HRT is out of reach, some transgender people turn to non-prescribed "street" hormones. A person using hormones may also be arrested and charged for possession of "drug" paraphernalia or unauthorized use of prescription medication.¹⁰²

Rates of police contact are exponentially higher for LGBTQ people of color, who are profiled both on the basis of their race or ethnicity and their sexual orientation, gender identity or expression. The risk of criminalization is compounded by the fact that transgender people, and particularly transgender people of color, disproportionately experience homelessness and poverty and are frequently targeted by law enforcement.¹⁰³ For example, homeless youth—an estimated 40% of whom identify as LGBTQ—may rely on selling and trading drugs and sex in order to

⁹⁸ DeBeck, Kora, et al. "HIV and the criminalisation of drug use among people who inject drugs: a systematic review." *The Lancet HIV* 4.8 (2017): e357-e374, available at https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf.

⁹⁹ Grace Medley, et al., Sexual Orientation and Estimates of Adult Substance Use and Mental Health: Results from the 2015 National Survey on Drug Use and Health, Substance Abuse and Mental Health Servs. Admin. (Oct. 2016), available at [https://www.samhsa.gov/data/sites/default/files/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015.htm](https://www.samhsa.gov/data/sites/default/files/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015.htm).

¹⁰⁰ Sandy E. James, et al., The Report of the 2015 U.S. Transgender Survey, Nat'l. Ctr. for Transgender Equal, 115 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁰¹ *Id.* at 5.

¹⁰² Ctr. for HIV L. and Pol. & Nat'l LGBTQ Task Force, The Intersections of Syringe Use and HIV Criminalization: An Advocate's Toolkit (2017), http://www.thetaskforce.org/wp-content/uploads/2014/09/Syringe-Use-Toolkit-Final-R2_0.pdf.

¹⁰³ Hanssens, et. al., *supra* note 10.

survive.¹⁰⁴ One study of people living with HIV who inject drugs found that more than half of the respondents reported being homeless, and 30% of respondents reported prior incarceration.¹⁰⁵

OPPORTUNITIES FOR LOCAL RESISTANCE

State and local advocates can deploy a number of strategies to protect targeted communities from the impacts of these federal administrative and legislative initiatives, including:

- Advocating for local federal U.S. attorneys to fully exercise their discretion to not pursue the highest possible charge in the maximum number of cases, and to consider alternatives to prosecution of drug offenses;
- Working with local legislators to resist enforcement of federal marijuana laws in local and state jurisdictions;
- Advocating for drug decriminalization at the local, state, and county levels;
- Advocating for the decriminalization of syringes and other drug paraphernalia.
- Connecting with state and local harm reduction organizations who make up the national Harm Reduction Coalition;¹⁰⁶ and
- Calling for effective oversight of drug enforcement task forces, and particularly those operating in counties receiving High Intensity Drug Trafficking Areas funding, and calling for an assessment on the impact on the use of funds on communities.¹⁰⁷

¹⁰⁴ The Palette Fund, True Colors Fund & The Williams Inst., Serving Our Youth: Findings from a Nat'l Survey of Serv. Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or at Risk of Becoming Homeless (July 2012), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf> ; *See also* Dank *supra* note 81.

¹⁰⁵ CDC, HIV and Injection Drug Use (Nov. 2017), available at <https://www.cdc.gov/hiv/pdf/risk/cdc-hiv-idu-fact-sheet.pdf>.

¹⁰⁶ Harm Reduction Coal., <http://harmreduction.org/>.

¹⁰⁷ U.S. Drug Enforcement Admin, DEA Programs: High Intensity Drug Trafficking Areas, available at <https://www.dea.gov/ops/hidta.shtml>.

HATE CRIMES

FEDERAL INITIATIVES

LGBTQ people experience high rates of homophobic and transphobic violence, with serious emotional, physical, financial, and social impacts. The Trump Administration has (1) instituted discriminatory policies towards Muslim people, undocumented people, and people of color through the DOJ hate crime task force and (2) affirmatively eliminated protections against discrimination for LGBTQ people, and affirmatively seeking out opportunities to block the development of laws to protect LGBTQ people; thus, increasing the likelihood of violence against the community.

Since the beginning of Trump Administration, the country has witnessed an escalation of violence targeting marginalized communities. According to the National Coalition of Anti-Violence Programs' "Crisis of Hate" report, 2017 was the deadliest year in recent history for LGBTQ+ people in the United States.¹⁰⁸ Hate violence is generally understood to include any violent act motivated partially or solely by one or more of the target's actual or perceived identities.¹⁰⁹ At the federal level, the FBI defines, for statistical purposes, a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."¹¹⁰ At the state level, a number of states have enacted hate crime legislation that includes enhanced penalties.¹¹¹ After receiving pressure from Congress¹¹² and the public,¹¹³ the DOJ created a Hate Crimes Subcommittee, responsible for developing recommendations for addressing hate crimes as part of the Task Force on Crime Reduction and Public Safety.

Misuse of the DOJ Hate Crimes Subcommittee

The Trump Administration has instituted discriminatory policies towards Muslim people, undocumented people, and people of color. Through the Task Force on Crime Reduction and Public Safety and its Hate Crimes Subcommittee, Attorney General Sessions will continue to implement the Administration's agenda to increase policing and criminalization of our communities, and to undermine the civil rights and safety of LGBTQ people.¹¹⁴

¹⁰⁸ Emily Waters et al. A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender and Queer Hate Violent Homicides in 2017, Nat'l Coalition of Anti-Violence Programs (2018), <http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf>.

¹⁰⁹ Kan. City Anti-Violence Proj., Hate Crimes, <http://www.kcavp.org/home/services/hate-crimes>.

¹¹⁰ FBI, Hate Crimes, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

¹¹¹ For more information about statewide hate crime legislation, go to http://www.lgbtmap.org/equality-maps/hate_crime_laws.

¹¹² Letter from Sen. Baldwin et al. to Atty' Gen. Jeff Sessions (Mar. 2, 2017), available at <https://www.baldwin.senate.gov/imo/media/doc/030217%20Letter%20to%20AG%20Sessions%20re%20Hate%20Crimes.pdf>.

¹¹³ Press Release, The Leadership Conf. on Civ. and Human Rts., 156 Civil and Human Rights Groups Call for Stronger Response to Hate Incidents (Mar. 10, 2017) available at <http://civilrights.org/156-civil-and-human-rights-groups-call-for-stronger-response-to-hate-incidents/>.

¹¹⁴ See *supra* Policing Section

Affirmative Steps to Inhibit Protections of LGBTQ People

Through its actions, the Trump Administration continues to be openly hostile toward LGBT people by eliminating civil rights protections,¹¹⁵ and by affirmatively seeking out opportunities to block the development of laws to protect LGBTQ people.¹¹⁶ These efforts are likely to fuel, rather than deter, homophobic and transphobic violence. The DOJ must acknowledge, document, and denounce the high rates of bias-motivated violence against LGBTQ and other marginalized communities—including by law enforcement officers, school resource officers, guards and other penal officials. Focusing on prosecutions and enhanced penalties rather than working to increase civil rights protections in response to violence, while simultaneously promoting discrimination against LGBTQ people, and particularly transgender individuals, is misguided and not in line with what LGBTQ communities and advocates demand.

IMPACTS ON LGBTQ PEOPLE AND COMMUNITIES

Even in states where legislation exists which explicitly addresses homophobic and transphobic violence and is inclusive of sexual orientation and gender identity, many LGBTQ people, particularly LGBTQ people of color, immigrants, and transgender people, do not feel comfortable interacting with law enforcement for fear of experiencing further discrimination and violence. Research shows that when LGBTQ people do report violence to police, they have experienced discriminatory treatment, hostility, and in some instances, physical violence.¹¹⁷ Because of this, for some LGBTQ people who have experienced homophobic or transphobic violence, the criminal legal system is not a safe or viable option. For example, according to the 2015 US Transgender Survey, a majority (57%) of transgender respondents said that they would not be comfortable calling the police for help.¹¹⁸

¹¹⁵ Sandhya Somashekhar et al., Trump administration rolls back protections for transgender students, Wash. Post (Feb. 22, 2017), available at https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01-d47f8cf9b643_story.html?utm_term=.be09a11a5af7.

¹¹⁶ See Mark Joseph Stern, Department of Wackadoodle, The DOJ's new anti-gay legal posture just got shut down in federal court, Slate (Sept. 26, 2017), available at http://www.slate.com/articles/news_and_politics/jurisprudence/2017/09/the_doj_s_new_anti_gay_legal_posture_just_got_shut_down_in_federal_court.html (“The Equal Employment Opportunity Commission decided in 2015 that Title VII’s ban on sex discrimination *does* protect gay employees. Under President Barack Obama, the Justice Department took no position on this question. But in late July, Attorney General Jeff Sessions’ DOJ unexpectedly filed an amicus brief in *Zarda* arguing that Title VII does *not* protect gay people.”) (emphasis in original); see also Mark Joseph Stern, Cake Wreck, The Trump administration’s brief in the Supreme Court’s anti-gay baker case is cynical, dishonest, and embarrassing, Slate (Sept. 8, 2017), available at http://www.slate.com/articles/news_and_politics/jurisprudence/2017/09/doj_s_cynical_embarrassing_brief_in_the_supreme_court_s_anti_gay_baker_case.html (“Carving out a First Amendment exception to nondiscrimination laws would blow a hole through the modern civil rights regime, fatally undermining legal protections for all minority groups.”).

¹¹⁷ Osman Ahmed & Chai Jindasurat, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013, Nat’l Coal. of Anti-Violence Programs, (2014), https://avp.org/wp-content/uploads/2017/04/2013_ncavp_hvreport_final.pdf.

¹¹⁸ Sandy E. James, et al., The Report of the 2015 U.S. Transgender Survey: Executive Summary, Nat’l. Ctr. for Transgender Equal, 115 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf>.

Many advocates who work on violence against LGBTQ and HIV affected communities take the position that hate crimes laws have more of a negative than a positive impact, particularly on communities of color. They call instead for resources that offer community solutions to violence. These solutions do not include policing, or require engagement with the criminal legal system. “Hate crime prevention” plans that focus exclusively on increasing resources to law enforcement without any attempt to acknowledge, let alone address, violence and biases against marginalized communities within the criminal legal system merely perpetuate systemic inequities while doing little to prevent harm or support victims.

OPPORTUNITIES FOR LOCAL RESISTANCE

State and local advocates can deploy a number of strategies to protect targeted communities from the impacts of these federal administrative and legislative initiatives, including:

- Educating community members on civil rights protections and enforcing civil rights protections to prevent homophobic and transphobic violence;
- Measuring progress on reducing homophobic and transphobic violence based on the resources available to communities for prevention, increased protections and efforts to enforce protections in employment, education, housing, and public accommodations;
- Advocating for the development and implementation of alternative accountability mechanisms that do not rely on the participation of law enforcement; and
- Investing in bystander intervention programs and other community safety models that will allow communities to intervene and respond to violence effectively. Individuals and groups trained to use these models not only effectively intervene when violence is happening, but also cause a cultural shift by having communities take responsibility for biases that exist within that community.

CONCLUSION

The Trump Administration’s federal criminal justice initiatives will have a devastating impact on LGBTQ people and communities, and particularly LGBTQ communities of color and LGBTQ immigrants, as well as on larger efforts to reduce mass incarceration and criminalization. We see President Trump and Attorney General Sessions’ increased immigration enforcement, support for militarized police enforcement, and criminalization of LGBT people, immigrants, and people of color for what they are - attacks on LGBTQ people and the communities we are a part of. We hope that LGBTQ organizations not already on the front lines of struggles to challenge profiling, discriminatory policing, police violence, mass criminalization and incarceration, and intensified immigration enforcement will join in and support efforts to resist and limit the harms of these federal initiatives at the local level.