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## LGBT Rights in the Fields of Criminal Law and Law Enforcement

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# ESSAYS

## LGBTQ RIGHTS IN THE FIELDS OF CRIMINAL LAW AND LAW ENFORCEMENT

*Carrie L. Buist* \*

### INTRODUCTION

Although not the first time LGBTQ folks fought back against police authority,<sup>1</sup> the Stonewall Riots or Stonewall Rebellion, is commonly referred to as the genesis of the LGBTQ Pride movement in the United States. A lesser-known fact is that these riots were led by the transgender community—a community which today faces unheard of rates of violence, especially transgender women of color.<sup>2</sup> Transgender women of color are murdered in the United States at rates that continue to increase. This Essay will explore unprecedented violence against the transgender community and the LGBTQ+<sup>3</sup> community at large, especially as it relates to the action and inaction of the criminal legal system. In an attempt to move beyond mainstream activism and research, this Essay will examine queer criminology, which explores the experiences of the

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1. JOEY L. MOGUL ET AL., *QUEER INJUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (Michael Bronski ed., 2011); SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY'S REVOLUTION* 84–86 (2d ed. 2017).

2. HUMAN RIGHTS CAMPAIGN FOUND., *A NATIONAL EPIDEMIC: FATAL ANTI-TRANSGENDER VIOLENCE IN AMERICA IN 2018*, at 4, 39, 62, 65 (2018), [https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?\\_ga=2.8532021.1299981380.1574103351-1378797300.1574103351](https://assets2.hrc.org/files/assets/resources/AntiTransViolence-2018Report-Final.pdf?_ga=2.8532021.1299981380.1574103351-1378797300.1574103351) [https://perma.cc/Z6ZC-3FP9].

3. This Essay focuses on the LGBTQ+ community. However, portions of this Essay refer only to LGBT or LGBTQ. This is intentional to reflect the content of the source discussed in the text.

LGBTQ+ population as victims, offenders, and professionals in the criminal legal system both in the United States and abroad.<sup>4</sup>

In couching this discussion within the theoretical and practical application of queer criminology, this Essay will highlight the marginalization of LGBTQ+ folks and explore the impact that intersectionality has on the experiences of the LGBTQ+ community with special attention on law enforcement. For example, queer criminology studies the persistent distrust that the LGBTQ+ community has of police<sup>5</sup> as well as the experiences of LGBTQ+ identified police officers and other agents within the criminal legal system. Further, as the current Administration continues to roll back the rights and liberties of the LGBTQ+ community, there must be a focus on how past and present policies continue to negatively impact LGBTQ+ people at the micro and macro levels.<sup>6</sup> This Essay will also pay special attention to LGBTQ+ youth and transgender people of color.

Criminal law, as it relates to the rights and liberties of United States citizens, implies a great many things—perhaps the greatest of these is the assumption of equality in the eyes of the law or due process.<sup>7</sup> Criminology, or more specifically criminological theories that examine criminality through a critical lens, has highlighted the disconnect between criminal law and criminology.<sup>8</sup> In the 1960s, theoretical approaches related to crime began to focus on more institutional level issues primarily emphasizing class and issues of power.<sup>9</sup> While critical criminology expanded the previous

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4. For an in-depth discussion of the emerging field of queer criminology, see CARRIE L. BUIST & EMILY LENNING, *QUEER CRIMINOLOGY: NEW DIRECTIONS IN CRITICAL CRIMINOLOGY* (2016).

5. SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* 14–15, 185–89, 195 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.pdf> [<https://perma.cc/ARC4-6DKH>].

6. See, e.g., Dave Phillips, *New Rule for Transgender Troops: Stick to Your Birth Sex, or Leave*, N.Y. TIMES (Mar. 13, 2019), <https://www.nytimes.com/2019/03/13/us/transgender-troops-ban.html> (discussing changes in the Defense Department's policy on transgender troops under the Trump Administration) [<https://perma.cc/8XJH-M4XM>].

7. See U.S. CONST. amend. XIV, § 2; *Griffin v. Illinois*, 351 U.S. 12, 17 (1956) (“[O]ur own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons.”).

8. Gresham M. Sykes, *Criminology: The Rise of Critical Criminology*, 65 J. CRIM. L. & CRIMINOLOGY 206, 207–09 (1974).

9. *Id.* at 211–12; see also WALTER S. DEKESEREDY, *CONTEMPORARY CRITICAL CRIMINOLOGY* 7, 15–16 (2011); MICHAEL J. LYNCH & RAYMOND MICHALOWSKI, *PRIMER IN*

research, there was still a dearth of inquiry that focused primarily on gender; hence the development of the groundbreaking research in feminist criminology.<sup>10</sup> Later in this Essay, attention will be given to the work of Lindsay Kahle, who called for feminist criminology to include queer folks in its application.<sup>11</sup>

Not unlike much feminist theory in the first and second waves, feminist criminology focused on the experiences of white, middle-class women and girls. Feminist scholars soon demanded production of research from an intersectional frame of reference.<sup>12</sup> It is important to briefly highlight both critical and feminist criminologies as scholars have recognized that these approaches have been influential to the development of queer criminology.<sup>13</sup> There are surely other influencing factors that contributed to the advent of queer criminology in the United States, such as queer theory and cultural theorists and criminologists from the United Kingdom and Australia.<sup>14</sup> Queer criminology has been and may be applied theoretically and practically through examining the differences from the mainstream in the research itself, as well as examining the ex-

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RADICAL CRIMINOLOGY: CRITICAL PERSPECTIVES ON CRIME, POWER & IDENTITY (4th ed. 2006).

10. See FRED A ADLER, SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL 7–10, 12–13 (1975); JOANNE BELKNAP, THE INVISIBLE WOMAN: GENDER, CRIME, AND JUSTICE 4–6 (2d ed. 2001); CLAIRE M. RENZETTI, FEMINIST CRIMINOLOGY 5–9, 13 (2013); RITA JAMES SIMON, WOMEN AND CRIME 1–9 (1975); Kathleen Daly & Meda Chesney-Lind, *Feminism and Criminology*, 5 JUST. Q. 497, 498, 505, 507 (1988); Meda Chesney-Lind, *Patriarchy, Crime, and Justice: Feminist Criminology in an Era of Backlash*, 1 FEMINIST CRIMINOLOGY 6, 6–7 (2006); Meda Chesney-Lind, *Women and Crime: The Female Offender*, J. WOMEN CULTURE & SOC'Y, Autumn 1986, at 78, 82–86, 95–96.

11. See *infra* notes 89–91 and accompanying text.

12. HILLARY POTTER, INTERSECTIONALITY AND CRIMINOLOGY: DISRUPTING AND REVOLUTIONIZING STUDIES OF CRIME 7 (2015); Amanda Burgess-Proctor, *Intersections of Race, Class, Gender, and Crime: Future Directions for Feminist Criminology*, 1 FEMINIST CRIMINOLOGY 27, 28 (2006).

13. See BUIST & LENNING, *supra* note 4, at 7–8; Matthew Ball, *Queer Criminology, Critique, and the “Art of Not Being Governed”*, 22 CRITICAL CRIMINOLOGY 21, 22 (2014); Carrie L. Buist & Codie Stone, *Transgender Victims and Offenders: Failures of the United States Criminal Justice System and the Necessity of Queer Criminology*, 22 CRITICAL CRIMINOLOGY 35, 35–36 (2013); Jordan Blair Woods, *Queer Contestations and the Future of a Critical “Queer” Criminology*, 22 CRITICAL CRIMINOLOGY 5, 13–15 (2014).

14. See, e.g., Derek Dalton, *Reflections on the Emergence, Efficacy, and Value of Queer Criminology*, in QUEERING CRIMINOLOGY 15, 17 (Angela Dwyer et al. eds., 2016) (Australian criminologists); Christopher Fox & Nicole L. Asquith, *Measuring the Tangible Fear of Heterosexual Violence*, 33 J. INTERPERSONAL VIOLENCE 980, 981 (2015) (Australian criminologists); Nic Groombridge, *Perverse Criminologies: The Closet of Doctor Lombroso*, 8 SOC. & LEGAL STUD. 531, 532 (1999) (U.K. criminologists).

periences of LGBTQ+ persons in the criminal legal system as victims, offenders, and professionals working in the fields that are typically related to police, courts, and corrections.<sup>15</sup>

### I. LGBTQ RIGHTS IN CRIMINAL LAW

In the broadest terms, criminal law relates to the laws used to punish folks who commit crimes. Our criminal legal system is made up of police, courts, and corrections, and all branches of the criminal legal system are responsible in part for achieving “justice.”<sup>16</sup> Crime prevention, investigation, apprehension, and so on are expected to be achieved in policing, while courts are the symbol of our due process and sentencing.<sup>17</sup> Finally, corrections is trusted to punish: typically to achieve retribution, to deter, and to rehabilitate, either separately or working with other approaches such as reintegration or restorative justice.<sup>18</sup> However, it is the role of law enforcement, whether they are directly involved as offenders or victims or merely as citizens that most people are familiar with. The ways in which police interact with the public and ultimately enforce laws have what could be devastating results for the individuals who come into contact with law enforcement. This is strikingly true for LGBTQ+ identified folks as queer people have historically and presently experienced the criminal legal system much differently than the majority, especially queer folks of color and/or queer folks living in poverty, queer youth, and specifically transgender individuals.

First, we have to ask if LGBTQ+ folks are committing a disproportionate amount of crime that would likely draw contact with law enforcement, and, if this is the case, what types of crimes queer folks are committing that would necessitate contact with the criminal legal system. We could draw from myriad research sources to

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15. See BUIST & LENNING, *supra* note 4, at 51–53, 57, 74, 93; Matthew Ball et al., *Introduction to the Special Issue on Queer/ing Criminology: New Directions and Frameworks*, 22 CRITICAL CRIMINOLOGY 1, 2 (2014); Ball, *supra* note 13, at 22–23; Woods, *supra* note 13, at 6; Jordan Blair Woods, “Queering Criminology”: Overview of the State of the Field, in HANDBOOK OF LGBT COMMUNITIES, CRIME, AND JUSTICE 15, 16–17 (Dana Peterson & Vanessa R. Panfil eds., 2014).

16. See *The Justice System*, BUREAU OF JUST. STAT., DEP’T JUST., <https://www.bjs.gov/content/justsys.cfm#contents> [<https://perma.cc/L884-LSB7>].

17. *Id.*

18. DORIS LAYTON MACKENZIE, SENTENCING AND CORRECTIONS IN THE 21ST CENTURY: SETTING THE STAGE FOR THE FUTURE 1, 33, 36 (2001).

attempt to answer these questions, but the reality is that official statistics of the crimes that queer people commit are unreliable (and we could argue that LGBTQ+ persons are most likely committing similar crimes as straight folks).<sup>19</sup> This is not to say that all research on the crimes committed by LGBTQ+ folks is unreliable, but it is to say that the information is incomplete because the way in which folks are processed in the criminal legal system is incomplete. Further, law enforcement interaction with LGBTQ+ youth and LGBTQ+ people of color is likely to be disproportionate, if for no other reason than the high rates of homelessness experienced in the LGBTQ+ youth and transgender populations. Research continues to highlight the high rates of homelessness experienced by LGBTQ+ youth across the United States, especially youth of color.<sup>20</sup> As reported by the Center for American Progress, ninety-nine percent of the queer youth it serviced in Detroit at the Ruth Ellis Center, which provides both short- and long-term housing and support for LGBTQ youth, are African American.<sup>21</sup> The report goes on to highlight what other research has continued to indicate as well: a high percentage of homeless LGBTQ youth often must resort to survival crimes, including survival sex, and are more likely to have contact with the police and ultimately the criminal legal system.<sup>22</sup> We also know that transgender people in particular more than likely will experience homelessness in their lives as The National Center for Transgender Equality has reported that

one in five transgender individuals have experienced homelessness at some point in their lives. Family rejection and discrimination and violence have contributed to a large number of transgender and other LGBQ-identified[sic] youth who are homeless in the United States—an estimated 20–40% of the more than 1.6 million homeless youth.<sup>23</sup>

Similar to all people experiencing homelessness, many LGBTQ+ folks, youth and adult alike, will commit survival crimes that can

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19. Jordan Blair Woods, *LGBT Identity and Crime*, 105 CALIF. L. REV. 667, 708 (2017).

20. CHAPIN HALL, UNIV. OF CHI., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA 12–13 (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf> [<https://perma.cc/FL8P-LLLT>].

21. ANDREW CRAY ET AL., CTR. FOR AM. PROGRESS, SEEKING SHELTER: THE EXPERIENCES AND UNMET NEEDS OF LGBT HOMELESS YOUTH 6 (2013), <https://www.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf> [<https://perma.cc/9TXA-2SGN>].

22. *Id.* at 15–16.

23. *Housing & Homelessness*, NAT'L CTR. FOR TRANSGENDER EQUAL., <https://transequality.org/issues/housing-homelessness> [<https://perma.cc/QG85-JL3Q>].

vary from prostitution to minor theft and everything in between that one might commit to survive on the streets.<sup>24</sup> Survival crimes have also been referred to as regulatory offenses,<sup>25</sup> but they are not one and the same. Some survival crimes may be considered more serious violations of the criminal code, while others may warrant a fine—i.e., the difference between stealing food from a grocery store versus loitering or sleeping on a park bench.

We continue to see the connection between homelessness and criminal legal system involvement: often times homelessness leads to incarceration, and release from prison often leads to homelessness.<sup>26</sup> Living without shelter increases one's interaction with law enforcement and increases the probability of victimization and offending. In addition to researching homeless youth, Hunt and Moodie-Mills have explored the disproportionate number of LGBT youth in the juvenile justice system and noted that “the system often does more harm by unfairly criminalizing these youth—imposing harsh school sanctions, labeling them as sex offenders, or detaining them for minor offenses—in addition to subjecting them to discriminatory and harmful treatment that deprives them of their basic civil rights.”<sup>27</sup>

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24. 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 INST. 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> [https://perma.cc/Q4B5-JDNG]; see also Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 107 n.45 (2019) (citing CHRISTOPHER MAYER & JESSICA REICHERT, ILL. CRIMINAL JUSTICE INFO. AUTH. & CTR. FOR JUSTICE RESEARCH & EVALUATION, *THE INTERSECTION OF HOMELESSNESS AND THE CRIMINAL JUSTICE SYSTEM* 7 (2018), [http://www.icjia.state.il.us/assets/articles/Homelessness\\_PDF.pdf](http://www.icjia.state.il.us/assets/articles/Homelessness_PDF.pdf) (“[T]he[] disproportionately high rates [of contact with law enforcement] are driven by homeless individuals who commit minor ‘survival crimes.’”)) [https://perma.cc/7KBA-JX73].

25. See *Legal Perils of Homelessness*, VERA INST. JUST., <http://humantoloffail.vera.org/legal-perils-of-homelessness/> [https://perma.cc/463N-CBB7]; see also TRISTIA BAUMAN ET AL., NAT'L CTR. ON HOMELESSNESS & POVERTY, *NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* 16–29 (2014) (describing the criminalization of “life-sustaining behaviors of homeless people” in various ordinances and laws).

26. Lucius Couloute, *Nowhere To Go: Homelessness Among Formerly Incarcerated People*, PRISON POLY INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [https://perma.cc/9PFL-U4RH].

27. Jerome Hunt & Aisha Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth*, CTR. FOR AM. PROGRESS (June 29, 2012), <https://www.americanprogress.org/issues/lgbt/reports/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/> [https://perma.cc/HY3E-9DBX].

The importance of topics such as homelessness and the connection it has to the criminal legal system should not be ignored. The impact of criminal law and how certain populations are policed is integral in any discussion regarding LGBTQ+ folks and the criminal legal system. Police are well aware of the populations that are most visible or most likely to be in any particular area or location in which they patrol, and police discretion can have a powerful impact on queer folks of any age, race, or identity, in either a powerfully positive way or a dreadfully negative way, with the latter, potentially contributing to the disproportionately high rates of incarcerated sexual minorities (“SM”).<sup>28</sup> As the Williams Institute reports, lesbian, gay, and bisexual Americans are three times more likely to be incarcerated than the general United States population.<sup>29</sup>

Often, we focus on the over-policing of the LGBTQ+ community; however, we would be remiss not to include discussion of the lack of policing in some areas. For instance, research continues to tell us that intimate partner violence (“IPV”) is just as prevalent if not more prevalent in same-sex relationships, yet the enforcement of criminal law regarding arrests of such offenders is limited.<sup>30</sup> Studies have shown that officers have difficulty assessing same-sex IPV as such.<sup>31</sup> This difficulty is perhaps an example of the need for additional training and policy implementation in law enforcement that could assist officers not only to recognize the victims and offenders of IPV, but also to recognize that value judgments should not be a part of police work.<sup>32</sup> Yet research continues to show us

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28. See Naomi G. Goldberg et al., *Police and the Criminalization of LGBT People*, in THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES 374, 377 (Tamara Rice Lave & Eric J. Miller eds., 2019) (discussing the “quality-of-life policing [that] grants extensive discretion to individual law enforcement officers”).

29. Ilan H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012*, 107 AM. J. PUB. HEALTH RES. 267, 267 (2017).

30. See ADAM M. MESSINGER, LGBTQ INTIMATE PARTNER VIOLENCE: LESSONS FOR POLICY, PRACTICE, AND RESEARCH 5 (2017); CLAIR M. RENZETTI, VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS 18–19 (1992); Luca Rollè et al., *When Intimate Partner Violence Meets Same Sex Couples: A Review of Same Sex Intimate Partner Violence*, 9 FRONTIERS PSYCHOL. 50, 50 (2018).

31. Christina DeJong et al., *Police Officer Perceptions of Intimate Partner Violence: An Analysis of Observational Data*, 23 VIOLENCE & VICTIMS 683, 693 (2008).

32. *Id.* at 692–93.



that officers are more likely to take heterosexual IPV more seriously and see straight male offenders as the more serious perpetrators.<sup>33</sup> Additional research has found that

when IPV involved an SM couple, officers were less likely to make an arrest, despite victim willingness to cooperate. Given pervading heteronormative assumptions surrounding IPV, police training would benefit from a continued focus on dismantling misinformation surrounding SM IPV and addressing the durability of heteronormative IPV myths.<sup>34</sup>

While the support for the LGBTQ+ population has increased in recent years,<sup>35</sup> the criminal legal system in particular continues to be dominated by straight, white, working- to middle-class males, who value traditional masculinity and whose organizational culture is rooted in patriarchal paramilitary design.<sup>36</sup> This hegemonic masculinity may be problematic when addressing the needs of minority groups with regards to IPV, as exemplified above. As Part II will discuss, the culture of policing does not foster community relationships but rather distrust and suspicion, especially with vulnerable populations, among them law enforcement agents who identify as members of the LGBTQ+ community.

## II. LGBTQ RIGHTS IN LAW ENFORCEMENT

Research continues to show us that law enforcement has a history of discriminatory practices towards people of color and other minority and marginalized populations, such as the LGBTQ+ population. One recent research study by Owen and colleagues sampled nearly 800 LGBT and heterosexual respondents measuring perceptions of police fairness, quality, outcomes, and interactions with LGBT communities and unsurprisingly found that LGBT

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33. Brenda Russell, *Police Perceptions in Intimate Partner Violence Cases: The Influence of Gender and Sexual Orientation*, 41 J. CRIME & JUST. 193, 195, 201–02 (2018).

34. Courtney A. Franklin et al., *Intimate Partner Violence Among Sexual Minorities: Predicting Police Officer Arrest Decisions*, 46 CRIM. JUST. & BEHAV. 1181, 1195 (2019).

35. *Gay and Lesbian Rights*, GALLUP, <https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx> [<https://perma.cc/34R5-DG4J>].

36. See Allison T. Chappell & Lonn Lanza-Kaduce, *Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization*, 39 J. CONTEMP. ETHNOGRAPHY 187, 188–90 (2010); Meda Chesney-Lind & Merry Morash, *Transformative Feminist Criminology: A Critical Re-thinking of a Discipline*, 21 CRITICAL CRIMINOLOGY 287, 291 (2013).

community perceptions of the police were significantly more negative.<sup>37</sup> The researchers also highlighted the impact of other factors such as race, class, and location<sup>38</sup>—these considerations are invaluable in considering the impact of intersectionality experienced by queer folks in the criminal legal system.

Although limited in scope, existing studies both in the United States and abroad continue to reveal queer folks' distrust of police and in turn polices' distrust of queer folks.<sup>39</sup> Law enforcement, in general, is taught, either intentionally or via police socialization, to distrust and be suspicious of the public. This suspicion and distrust can save an officer's life; however, one must examine the persistent distrust that law enforcement has of marginalized populations as related to historically significant stereotypes and archetypes that, while antiquated, persist today either overtly or covertly and contribute to bias both explicitly and implicitly.

For example, consider anti-cross-dressing laws. In 1848, Columbus, Ohio's anti-cross-dressing law stated that individuals were prohibited from being in public places "in a dress not belonging to his or her sex."<sup>40</sup> In 1944, Detroit, Michigan, banned men from being "dress[ed] of the opposite sex" in public or private spaces.<sup>41</sup> In the United States, these ordinances for the most part have been amended or overturned, but their history has a lasting impact on LGBTQ+ folks, especially transgender people who continue to be brutally victimized. These impersonation or masquerade laws have contributed to the lie that queer folks, again, especially transgender folks, are deceptive by nature and not to be trusted, which in turn exacerbates the distrust between law enforcement

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37. Stephen S. Owen et al., *Perceptions of the Police by LGBT Communities*, 43 AM. J. CRIM. JUST. 668, 686, 689 (2018). Some research uses the term SM.

38. *Id.* at 686, 688.

39. See, e.g., LAMBDA LEGAL, PROTECTED AND SERVED? 4–7, 11 (2015), [https://www.lambdalegal.org/sites/default/files/publications/downloads/ps\\_executive-summary.pdf](https://www.lambdalegal.org/sites/default/files/publications/downloads/ps_executive-summary.pdf) (detailing results of U.S. survey examining police accountability in LGBTQ communities) [<https://perma.cc/R557-Z3PU>]; Angela Dwyer, *'It's Not Like We're Going To Jump Them': How Transgressing Heteronormativity Shapes Police Interactions with LGBT Young People*, 11 YOUTH JUST. 203, 216 (2011) (analyzing queer folks' perceptions of police interactions in Queensland, Australia).

40. *Arresting Dress: A Timeline of Anti-Cross-Dressing Laws in the United States*, PBS (May 31, 2015, 12:36 PM EST), <https://www.pbs.org/newshour/nation/arresting-dress-timeline-anti-cross-dressing-laws-u-s> [<https://perma.cc/UXT9-MFWY>].

41. *Id.*

and the queer community.<sup>42</sup> This distrust has far-reaching repercussions as it relates not only to the victimization of queer people, but also to the increased surveillance that LGBTQ+ folks often experience, such as the phenomenon of walking while transgender. As indicated by Chase Strangio:

In Phoenix, Arizona, you can be arrested for repeatedly stopping and engaging a passerby in conversation. This may, under Phoenix law, be evidence that you are “manifesting” an intent to engage in prostitution. Of course, this could also be evidence that you are lost or canvassing for a political group or simply talking about the weather. The difference between “innocent” and “criminal” behavior often comes down to how a person looks.<sup>43</sup>

The case most associated with this law is that of Monica Jones, a student at Arizona State University who identifies as a black transgender woman.<sup>44</sup> After Jones was arrested in May of 2014, she stated that she had been repeatedly harassed by police and suspected of solicitation on four occasions, including while walking to the grocery store and talking with a friend on the sidewalk.<sup>45</sup>

It is important to remember that the Stonewall Rebellion responded to over-policing of the LGBTQ+ community, and as previously mentioned, it has become the most well-known activist moment in our history—however, activism was not a new phenomenon in the queer landscape before, during, or after Stonewall.<sup>46</sup> Police have long-viewed the queer community not as a group in need of understanding and support, but in need of surveillance and punishment.<sup>47</sup> Take into consideration the little-known story of James Clay Jr. as retold by Timothy Stewart-Winter:

In November 1970, after a lengthy foot chase, two Chicago police officers apprehended James Clay Jr., a twenty-four-year-old African American man, and fired eight shots into his back, killing him. Clay, who was wearing women’s clothing when police encountered him, had

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42. See BUIST & LENNING, *supra* note 4, at 36–38, 40, 47–48, 51.

43. Chase Strangio, *Arrested for Walking While Trans: An Interview with Monica Jones*, ACLU CRIM. L. REFORM BLOG (Apr. 2, 2014, 11:19 AM), <https://www.aclu.org/blog/criminal-law-reform/arrested-walking-while-trans-interview-monica-jones> [https://perma.cc/E5PJ-5E55].

44. *See id.*

45. *See id.*

46. See Timothy Stewart-Winter, *Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States*, 102 J. AM. HIST. 61, 63–64 (2015).

47. *See id.*

a long arrest record that included charges for impersonating the opposite sex and solicitation to commit prostitution.<sup>48</sup>

Roughly two years after Stonewall, queer folks marched in Chicago streets in memory of Clay Jr. This is another example, although less well known than the Stonewall Rebellion, that highlighted not only the injustice experienced by James Clay Jr., but also the injustices experienced in the queer community.<sup>49</sup> More specifically, the injustices experienced by queer people of color illustrate the decades-long battle to draw attention to the need to recognize the impact of intersecting identities and how those intersections impact people on multiple levels within the criminal legal system.<sup>50</sup>

When examining the experiences of Monica Jones, James Clay Jr., the community of activists at Stonewall, and the general history of the criminalization of queerness, it is important to recognize the lasting impact that the concept of deception continues to have on the LGBTQ+ community as related to law enforcement's perception of and tactics against queer folks.<sup>51</sup>

These assumptions of gender and sexual minorities as deceptive, untrustworthy, sexually deviant, immoral people have persisted throughout history, having a major impact on LGBTQ+ citizens and the criminal legal system.<sup>52</sup> This impact has been highlighted thus far, but what also must be addressed is the impact these assumptions have for queer folks who work within the system as well, especially law enforcement. LGBTQ+ police officers, particularly gay, male officers and transgender, male-to-female officers, continue to report experiencing harassment and discrimination on the job.<sup>53</sup> These issues are not limited to law enforcement but also

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48. *Id.* at 61.

49. *See id.* at 61, 63.

50. *See* BUIST & LENNING, *supra* note 4, at 18, 46–49; POTTER, *supra* note 12, at 24–25; Buist & Stone, *supra* note 13, at 36, 38, 43; Stewart-Winter, *supra* note 46, at 61–62, 65.

51. *See* BUIST & LENNING, *supra* note 4, at 11–12, 36–38, 46–47.

52. *See id.* at 1–2, 35–38, 47–48; Buist & Stone, *supra* note 13, at 35–36, 38, 42–44.

53. *See, e.g.*, Kristin Lam, *LGBT Police Officers Say They've Faced Horrible Discrimination, and Now They're Suing*, USA TODAY (Feb. 8, 2019, 5:25 AM), <https://www.usatoday.com/story/news/2019/02/08/lgbt-law-enforcement-officers-sue-over-workplace-discrimination/2404755002/> (describing queer police officers' experiences of harassment and discrimination by fellow officers) [<https://perma.cc/823Z-39QK>].

corrections officers who report similar experiences.<sup>54</sup> These incidents often lead to fear that the queer officers will not receive the support they need from their coworkers, especially backup when responding to calls in the field or in the prison.<sup>55</sup>

As previously mentioned, the culture of policing continues to value masculinity and gender-role performance that aligns with one's biological sex; therefore it was of no surprise when one participant in research this Author conducted on the experiences of LGBTQ+ criminal-legal professionals told me that, before she transitioned on the job from male-to-female, she was seen as "one of the guys."<sup>56</sup> But once she began reporting to duty as a woman, instead of embracing the person her cisgender male colleagues knew and supported, she was quickly harassed or completely ignored.<sup>57</sup> One evening when leaving work, one of her male colleagues, someone she once called a close friend, physically attacked her in a parking garage.<sup>58</sup>

Other studies have found that gay, male officers experience more discrimination on the job than lesbian officers and that officers expressed concerns over their well-being and safety of gay, male officers on the job.<sup>59</sup> As recently as late October 2019, a white, gay, male police officer in Missouri won a \$19 million lawsuit against St. Louis County.<sup>60</sup> The officer, Keith Wildhaber, stated that he lost

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54. See, e.g., Katie Benner, *Barr Orders Investigations of Discrimination at F.B.I. and Bureau of Prisons*, N.Y. TIMES (Apr. 5, 2019), <https://www.nytimes.com/2019/04/05/us/politics/barr-justice-department-gay-lesbian-transgender-employees.html> (explaining U.S. Attorney General's response to a letter from DOJ Pride accusing the FBI and Bureau of Prisons of discriminating against workers based on sex, sexual orientation, and gender identity) [<https://perma.cc/CE7L-RWK7>].

55. See, e.g., Lam, *supra* note 53 ("It didn't matter whether Jay Brome called for backup during high-speed stolen car pursuits, intense vehicle impoundments or hit-and-run investigations. His fellow officers at the California Highway Patrol would not respond even when situation required him to hold his gun out, putting his life at risk . . . . Some officers tied hangers in the shape of penises around his locker. They routinely flung homophobic slurs and once carved his name off an award plaque . . . . Brome filed numerous internal complaints, but nothing happened. Supervisors allowed the hostile treatment to continue, Brome surmised, because he was a gay man.")

56. Carrie Buist, *The Experiences of LGBTQ+ Criminal Legal Professionals in the United States* (forthcoming) (on file with the author).

57. *Id.*

58. *Id.*

59. RODDRICK A. COLVIN, GAY AND LESBIAN COPS: DIVERSITY AND EFFECTIVE POLICING (2012); Annelise Mennicke, *Workplace Experiences of Gay and Lesbian Criminal Justice Officers in the United States*, 28 POLICING & SOC'Y 712, 724–25 (2018).

60. See Allyson Chiu, *A Cop Was Told To 'Tone Down Your Gayness.' Now, He Could*

multiple promotions even though he had positive performance evaluations and reported that John Saracino of the county's Board of Police Commissioners told him, "if you ever want to see a white shirt (i.e., get a promotion), you should tone down your gayness."<sup>61</sup> In addition to the Wildhaber case in Missouri, California State Highway Patrol Officer Jay Brome is currently suing his department for what he says is twenty years of harassment and discrimination on the job.<sup>62</sup> Brome told reporter Kristin Lam that he was unlikely to receive backup on calls, was called homophobic epithets, and that the harassment began at the beginning of his career when a fellow academy officer threatened his life while holding a gun to his head because of his suspected sexuality.<sup>63</sup> According to Lam, there are eleven other LGBTQ+ officers who have filed lawsuits for discrimination based on sexuality.<sup>64</sup>

Certainly, the information we know is dependent on a great many things, such as the size and location of the department and perhaps even the training and policies required and enacted in the departments. Larger departments serving a more diverse community may be more open and accepting of minority populations while smaller departments in rural areas may not. However, research continues to indicate that discrimination on the job is commonplace among queer officers.<sup>65</sup> Robin Buhrke stated in 1996, "[o]fficers all too often are not accepted by their police community because they are gay and lesbian, and because they are cops, they are rejected by the lesbian and gay community."<sup>66</sup> This Author believes that the research supports that this statement could be taken further to include the entire LGBTQ+ community. If an officer is not out on the job and later comes out or is outed, then they are often seen as someone who has been secretive or dishonest to their law

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*Get Nearly \$20 Million, Jury Says.*, WASH. POST (Oct. 28, 2019, 7:09 AM EDT), <https://www.washingtonpost.com/nation/2019/10/28/st-louis-cop-told-tone-down-gayness-awarded-millions-by-jury/> [<https://perma.cc/BTX3-DVRY>].

61. N'dea Yancey-Bragg, *Missouri Police Officer Awarded \$19M in Discrimination Suit After Being Told To Tone Down His 'Gayness'*, USA TODAY, <https://www.usatoday.com/story/news/nation/2019/10/28/missouri-cop-19-m-anti-gay-discrimination-suit/2487196001/> (last updated Oct. 28, 2019, 8:48 PM) [<https://perma.cc/VR86-AHL7>].

62. Lam, *supra* note 53.

63. *Id.*

64. *Id.*

65. See Mennicke, *supra* note 59, at 723–25.

66. ROBIN A. BUHRKE ET AL., A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 2 (1996).

enforcement family; this view is intensified when an officer comes out as transgender.

Just as training and policies must be effectively implemented (and this is never a guarantee) for law enforcement regarding their treatment of the LGBTQ+ community, these same lessons must be applied to how law enforcement agents treat each other. For example, Tania Israel and colleagues explored the use of what they referred to as “LGBTQ-Affirming Policing.”<sup>67</sup> Their discussion reiterates the problematic history between LGBTQ+ people and law enforcement, including the events that took place at Stonewall in 1969.<sup>68</sup> The research study used role playing and group discussion to introduce effective working strategies with the LGBTQ+ community.<sup>69</sup> The results were mixed, but perhaps somewhat surprisingly so given previous research, as many of the law enforcement responses were LGBTQ-affirming. Therefore, this research could be developed into an approach that the criminal legal system would be encouraged to implement.<sup>70</sup>

In another study, Israel and colleagues assessed the perceptions that law enforcement officers had of LGBTQ training.<sup>71</sup> They found that officers are both receptive and resistant to LGBTQ diversity training. Among the resistance themes found by the researchers, law enforcement participants conveyed questions about the research on law enforcement’s interaction with LGBTQ populations, doubting the accuracy of the research.<sup>72</sup> Officers also felt as though they already treat all populations equally, and that they do not have personal bias but maintained concern about how they are perceived by the public. Further, the research found that the law enforcement participants held a variety of beliefs about LGBTQ people including that they use discrimination allegations to get out of trouble, want special treatment, do not understand the police, and that accusing officers of bias can be detrimental.<sup>73</sup> They also felt as

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67. Tania Israel et al., *LGBTQ-Affirming Policing: Tactics Generated by Law Enforcement Personnel*, 31 J. POLICE & CRIM. PSYCHOL. 173 (2016).

68. *Id.* at 173.

69. *Id.* at 175–77.

70. *Id.* at 177–79.

71. Tania Israel et al., *Reactions of Law Enforcement to LGBTQ Diversity Training*, 28 HUM. RESOURCE DEV. Q. 197, 197–98 (2017).

72. *Id.* at 206–08.

73. *Id.* at 208–09, 216–17.

though LGBTQ people took language too seriously and that because there is greater acceptance of LGBTQ people, the overall concerns of LGBTQ people regarding law enforcement were no longer of issue.<sup>74</sup> Finally, among the resistance findings, the law enforcement officers were hesitant to intervene in concerns stating that intervention could do more harm than good and “prioritized the interests of the parents over those of LGBTQ youth.”<sup>75</sup> The researchers also noted that law enforcement participants showed discomfort during the training and would laugh and joke or be disengaged.<sup>76</sup> In sum, the researchers found four themes regarding officer resistance to LGBTQ diversity training and twenty sub-themes related to the resistance themes.<sup>77</sup> Conversely, the authors found five receptiveness themes with seventeen subthemes that were positive and affirming of the training.<sup>78</sup>

The mixed results in the responses from law enforcement regarding LGBTQ+ training would presumably speak volumes to LGBTQ+ officers who may also find themselves participating in these research studies or departmental mandated trainings. Officers who may not be out on the job may certainly hesitate to ever be out on the job if they observe the behavior of their fellow officers who may be questioning the legitimacy of LGBTQ+ concerns, the need for training, or the facts that are presented to them about LGBTQ+ issues at the macro and micro levels. This certainly speaks to the experiences of officers like Jay Brome and Keith Wildhaber. Yet, officers who identify as LGBTQ+ often still persist on the job, even when encountering discrimination, harassment, and even physical threats or violence. This speaks to their commitment to their roles in law enforcement and mirrors the historical discrimination that women have experienced in law enforcement and in other professions that are male dominated and heteronormative.

As we focus on the impact that the Stonewall Rebellion has had on the law as it relates to the LGBTQ+ community, it is imperative

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74. *Id.* at 209.

75. *Id.* at 210.

76. *Id.* at 211. The study acknowledged that these behaviors could be “nonverbalized forms of resistance” or a “way to cope with the discomfort of discussing the difficult subject matter.” *Id.*

77. *Id.* at 205–06.

78. *Id.* at 205–07.



to remind ourselves that this riot was in response to abuse of power from law enforcement and indeed, when looking at the many examples of activism in the LGBTQ+ community, these actions were often *reactions* to unjust laws, regulations, and misuse of power by actors of the state. Although activism was taking root decades before the 1960s, much of our attention is given to this decade as the civil rights movement, women's rights movement, and queer rights movement rightfully garnered more attention in popular media, courtrooms, and classrooms across the country.<sup>79</sup> This was true for criminology students at the University of Berkeley, as they are often cited as a leading force behind the radical and eventually critical criminology movements in the United States.<sup>80</sup> These folks, along with other criminologists and sociologists, argued for the importance of and implementation of research that focused on the roles of the powerful, ruling classes in the United States and in doing so influenced the work of feminist scholars who called for a gender-centered criminology.<sup>81</sup> Today, with the influence of critical and feminist criminologies, the concepts and the scholars who have championed them, and the influence of scholars in the United Kingdom and global South, queer criminology has come to the United States and focuses on creating change and shifting attention from the straight-stream and mainstream to queering the world of criminology and in doing so centering populations that have often been ignored.<sup>82</sup>

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79. See generally Kenneth R. Janken, *The Civil Rights Movement: 1919–1960s*, NAT'L HUMAN. CTR., <https://nationalhumanitiescenter.org/tserve/freedom/1917beyond/essays/crm.htm> (Civil Rights Movement) [<https://perma.cc/UN5T-G7L6>]; Linda Napikoski, *The Women's Movement and Feminist Activism in the 1960s*, THOUGHTCO., <https://www.thoughtco.com/1960s-feminist-activities-3529000> (last updated Mar. 13, 2019) (Women's Rights Movement) [<https://perma.cc/QX97-RWHC>]; David Pettinicchio & Jennifer Carlson, *The Gay Rights Movement Could Take on the NRA—and Actually Win*, WASH. POST (June 17, 2016, 12:52 PM EDT), <https://www.washingtonpost.com/posteverything/wp/2016/06/17/the-orlando-shooting-could-actually-lead-to-meaningful-gun-reform-heres-why/> (Queer Rights Movement) [<https://perma.cc/PLD6-FVTH>].

80. See generally *Berkeley's School of Criminology, 1950–1976*, Editorial, 40 SOC. JUST. 131 (2014) (detailing the rise of radical criminology at the Berkeley School of Criminology and the role of its students in the movement); David Stein, *A Spectre Is Haunting Law and Society: Revisiting Radical Criminology at UC Berkeley*, 40 SOC. JUST. 172 (2014) (describing the themes and theories of radical criminology that arose from the UC Berkeley movement in the 1960s).

81. Dana M. Britton, *Feminism in Criminology: Engendering the Outlaw*, 571 AM. ACAD. POL. & SOC. SCI. 57, 57–58, 73 (2000).

82. See generally BUIST & LENNING, *supra* note 4 (highlighting the queer experience in multiple aspects of the criminal justice system); Kerry Carrington et al., *Southern Crimi-*

### III. THE IMPORTANCE OF THE APPLICATION OF QUEER CRIMINOLOGY

Queer criminology can be defined in several different ways, but what we most often see are definitions associated with its theoretical application related to the importance of doing criminological research differently and moving beyond the mainstream theories that persistently research only straight men, to a more practical application that seeks to highlight the experiences of LGBTQ+ folks as victims, offenders, and professionals working in the criminal legal system.<sup>83</sup> These general definitions are important to consider as we continue to strive to shed light on the ways in which queer folks experience not only the world in which we live but specifically the ways in which we experience the criminal legal system, and how queer folks are often treated with distrust, disrespect, or are outright ignored in all branches of the system as previously highlighted.

Queer criminology calls for criminologists to move outside of their mainstream boxes and include queer folks at the center of research, not just as victims, which is of course important but does not tell the entire story.<sup>84</sup> For instance, Vanessa Panfil, in her in-depth qualitative and ethnographic work on gay, male gang members, highlights that queer folks can also be participants in crime, noting that unlike “much of existing criminological research . . . male gang members and active offenders are [not] exclusively heterosexual.”<sup>85</sup> Jordan Blair Woods has used his much cited research on homosexual deviancy theory to call attention to previous research failings that focused only on what he refers to as the deviance-centered element, which assumed that all queer folks were deviant and the invisibility element that posits research on queer

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*nology*, 56 BRIT. J. CRIM. 1, 3, 15 (2016) (distinguishing the experience of southern criminology from mainstream criminology research which focuses on the global North).

83. Dana Peterson & Vanessa R. Panfil, *Introduction: Reducing the Invisibility of Sexual and Gender Identities in Criminology and Criminal Justice*, in THE HANDBOOK OF LGBTQ COMMUNITIES, CRIME, AND JUSTICE 3, 6–7 (Dana Peterson & Vanessa R. Panfil eds., 2014).

84. See Jeffrey P. Dennis, *The LGBT Offender*, in THE HANDBOOK OF LGBTQ COMMUNITIES, CRIME, AND JUSTICE 87, 94–95 (Dana Peterson & Vanessa R. Panfil eds., 2014) (flagging the lack of research on LGBTQ persons as offenders).

85. See VANESSA R. PANFIL, *THE GANG’S ALL QUEER: THE LIVES OF GAY GANG MEMBERS* 1–18 (2017) (explaining the purpose of the study: to focus on and fill in the lack of research on gay male offenders).

people, sexual orientation, and gender identity virtually disappeared from the research particularly after the 1970s.<sup>86</sup>

Queer criminology, as mentioned, centers on marginalized populations not only in the United States but abroad and continues to draw attention to the real issues that queer folks experience within the criminal legal system and beyond. It has the ability to foster activism that has been missing in the field of criminology for so long. After all, as scholars who immerse themselves in developing pedagogy, research, and a variety of methodologies to add to the depth and breadth of knowledge we feel we should all have regarding the criminal legal system and how folks are affected by the criminal legal system, scholars should be on the front of the battle lines leading the charge for change! As noted by Matthew Ball, “it is clear that queer criminology involves scholarship and activism that seeks to achieve the related goals of responding to social and criminal injustices in LGBTIQ lives, and addressing the oversights and misrepresentations of those lives within criminology.”<sup>87</sup> Further, as noted earlier, LGBTQ+ youth are arguably the most vulnerable population today, and when viewing their experiences through an intersectional lens that argument is strengthened.<sup>88</sup> Therefore, there is an undeniable need to address issues that these youth are experiencing and work towards breaking the cycle of violence and victimization they will no doubt face in their adult lives as they enter and exit the criminal legal system. The influence of feminist criminology cannot be ignored. For instance, Lindsay Kahle extends the work of feminist scholars Daly and Chesney-Lind,<sup>89</sup> who outlined five elements of feminist criminology, to include queer criminology concepts—Kahle’s additions are italicized:

1. Gender is not a natural fact but a complex social, historical, and cultural product *that is intertwined with sexual orientation and is a source of heteronormative power.*
2. *Gender and sexual orientation* order social life and become institutionalized in fundamental ways that create and reproduce matrices of *heterosexual power.*

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86. Woods, *supra* note 15, at 17.

87. Matthew Ball, *Queer Criminology as Activism*, 24 *CRITICAL CRIMINOLOGY* 473, 474 (2016).

88. See Sarah Mountz, *Revolving Doors: LGBTQ Youth at the Interface of the Child Welfare and Juvenile Justice Systems*, 1 *LGBTQ POL’Y J.* 29, 29, 38–39, 41–42 (2010–2011).

89. Daly & Chesney-Lind, *supra* note 10, at 504.

3. Gender relations *and constructs of masculinity and femininity* are not symmetrical but are based on an organizing principle of *heterosexual* and *cisgender* men's superiority and social, political, and economic dominance over *nonheterosexual and noncisgender men* and women.
4. Systems of knowledge reflect *cisgender* men's views of the natural and social world; the production of knowledge is gendered *and sexualized* and was perpetuated during the "masculinity turn" within feminist criminology.
5. (W)omen, *gender nonconforming, and nonheterosexual individuals* should be at the center of intellectual inquiry, not peripheral, invisible appendages to *heterosexual cisgender men*.<sup>90</sup>

These additions, if implemented beyond theory and employed through practical application, could impact policy as it is related to the queer community, including LGBTQ+ youth who are an underserved population amongst the underserved. When we look at these issues through an activist lens, youth are often times left without voice in the choices they have and without agency in the criminal legal system.<sup>91</sup> That is not to say that youth are completely without advocates, but those advocates must be fully versed in the unique and intersectional experiences of queer youth. Oftentimes, youth are treated as if they have no decision-making skills, they have yet to develop their identities, or they are unaware of their sexual orientation.<sup>92</sup> The longer we continue to silence our youth the more devastated they will be by the inaction or action of the criminal legal system and beyond. Those with power and authority over them will ultimately do them a disservice if they are not aware of issues such as the high percentages of LGBTQ+ youth who experience homelessness as previously discussed.<sup>93</sup> Many of these youth do not choose to leave their homes to live on the streets without shelter, without support, and with the strain they experience that contributes to their offending, but often once they come out to their family members they are kicked out of their homes.<sup>94</sup>

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90. Lindsay Kahle, *Feminist and Queer Criminology: A Vital Place for Theorizing LGBTQ Youth*, SOC. COMPASS, Mar. 2018, at 1, 5.

91. Sarah E. Valentine, *Queer Kids: A Comprehensive Annotated Legal Bibliography on Lesbian, Gay, Bisexual, Transgender and Questioning Youth*, Bibliography, 19 YALE J.L. & FEMINISM 449, 453 (2008).

92. See Sarah E. Valentine, *Traditional Advocacy for Nontraditional Youth: Rethinking Best Interest for the Queer Child*, 2008 MICH. ST. L. REV. 1053, 1097–99.

93. See *supra* notes 19–27 and accompanying text.

94. See Daiana Griffith, *LGBTQ Youth Are at Greater Risk of Homelessness and Incarceration*, PRISON POLY INITIATIVE (Jan. 22, 2019), [https://www.prisonpolicy.org/blog/2019/01/22/lgbtq\\_youth/](https://www.prisonpolicy.org/blog/2019/01/22/lgbtq_youth/) (noting that LGBTQ youth often end up homeless due to leaving their homes to "fleeing abuse and lack of acceptance at home because of their sexual orientation")

While it is key for adults working in the criminal legal system in a myriad of ways to support our youth, we should also highlight a new generation of LGBTQ+ activists like Sameer Jha who at the age of fourteen started The Empathy Alliance and noted, “I want people to understand the importance of LGBTQ+ identities and make sure students are protected, included, and have safe spaces.”<sup>95</sup> Or Kian Tortorello-Allen who began their school activism at sixteen and continues to work with GLSEN, an organization that works with teachers and students throughout the United States to end LGBTQ+ discrimination in schools.<sup>96</sup> Looking through GLSEN’s work, finding youth activists is not difficult, and indeed, this is work that is imperative as related to the criminal legal system and the disproportionate contact many LGBTQ+ youth have with law enforcement. Stricter school policies and increased discipline in schools have been found to have various negative results for minority students, among them LGBTQ+ students. The school-to-prison pipeline theory argues that because of strict policies and discipline, minority students are often driven into the criminal legal system.<sup>97</sup> Research supports that these policies contribute to increased discipline of students with disabilities and students of color as well as LGBTQ+ youth, who are overrepresented in the criminal legal system.<sup>98</sup> Additionally, the school-to-prison pipeline is further evidence of the juxtaposition of both the under- and over-policing of the LGBTQ+ community.

The Stonewall Rebellion was led by gender nonconforming people of color; we see the same thing happening today if we take the time to look and listen closely enough to our queer youth. Let us

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[<https://perma.cc/R2R3-NC5R>].

95. *Our Work*, EMPATHY ALL., <https://www.theempathyalliance.org/our-work> [<https://perma.cc/75L9-B5J9>].

96. *About Us*, GLSEN, <https://www.glsen.org/about-us> [<https://perma.cc/HPE6-UPXC>]; Lindsay Geller, *Meet the Activist Who’s Empowering LGBT Youth All over the Word—and Hasn’t Graduated High School Yet*, A PLUS (June 11, 2017), [https://articles.aplus.com/lgbtq-pride-month/kian-tortorello-allen-teen-lgbt-activist?no\\_monetization=true](https://articles.aplus.com/lgbtq-pride-month/kian-tortorello-allen-teen-lgbt-activist?no_monetization=true) [<https://perma.cc/6F7U-97BC>]; Brian Prowse-Gany and Joyzel Acevedo, *Rise Up: Celebrating Young Leader Activists—Kian Tortorello-Allen, Age 17*, YAHOO! NEWS (Nov. 1, 2018), <https://www.yahoo.com/news/rise-celebrating-young-leader-activists-kian-tortorello-allen-age-17-232319576.html> [<https://perma.cc/WR5S-75X4>].

97. *See, e.g., School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (describing the impact of zero-tolerance policies on the school-to-prison pipeline) [<https://perma.cc/ELL4-K6T4>].

98. GLSEN, EDUCATIONAL EXCLUSION: DROP OUT, PUSH OUT, AND THE SCHOOL-TO-PRISON PIPELINE AMONG LGBTQ YOUTH 11, 13–14 (2016); Shannon D. Snapp et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. ADOLESCENT RES. 57, 58–59 (2014); *School-to-Prison Pipeline*, *supra* note 97.

not forget that Sylvia Rivera was seventeen years old at Stonewall.<sup>99</sup> As we have seen throughout history, activism has many faces and often comes from places where the state least expects it, not unlike the faces of the many activists at Stonewall. Ian Palmquist and Thena Robinson-Mock remind us, “the fact remains that in the early years of the LGBT movement, police violence was arguably our most central concern, and LGBT people of color were often the ones on the front lines of the resistance.”<sup>100</sup>

Another modern-day activist is CeCe McDonald, a black transgender woman who was convicted of second-degree manslaughter after stabbing a white male who yelled racist, sexist, and transphobic slurs at her and her friends as they walked past a Minneapolis bar.<sup>101</sup> McDonald was also physically assaulted: she was hit in the face with a glass, which required stitches, and her hair was ripped out.<sup>102</sup> Prosecutors rejected her self-defense plea and sentenced McDonald to forty-one months in a male prison.<sup>103</sup> Her conviction garnered outrage from people across the country and drew the attention of Laverne Cox, who produced the documentary *Free CeCe* that followed the case.<sup>104</sup> In the documentary, McDonald discussed the hostility and hatred that she felt not only that fateful evening, but throughout her life, and the lack of resources that LGBTQ+ folks have, especially transgender people of color (who, by the way, continue to experience violence at a disproportionate rate and are the victims of especially brutal murders in this

99. *Sylvia Rivera Biography*, BIOGRAPHY (June 16, 2019), <https://www.biography.com/activist/sylvia-rivera> [<https://perma.cc/S4UB-F6KK>].

100. Ian Palmquist & Thena Robinson-Mock, *Helping Queer Youth Affected by the School-to-Prison Pipeline*, ADVOCATE (Sep. 18, 2015, 11:51 AM EDT), <https://www.advocate.com/commentary/2015/9/18/helping-queer-youth-affected-school-prison-pipeline> [<https://perma.cc/DXB6-9WXX>].

101. Nicole Pasulka, *The Case of CeCe McDonald: Murder—or Self-Defense Against a Hate Crime?*, MOTHER JONES (May 22, 2012), <https://www.motherjones.com/politics/2012/05/cece-mcdonald-transgender-hate-crime-murder/> [<https://perma.cc/3KB5-D4EL>].

102. *Id.*; Sabrina Rubin Elderly, *The Transgender Crucible*, ROLLING STONE (July 20, 2014, 2:00 PM ET), <https://www.rollingstone.com/culture/culture-news/the-transgender-crucible-114095/> [<https://perma.cc/G7VV-HBKA>].

103. Pasulka, *supra* note 101; Elderly, *supra* note 102.

104. James Nichols, *Laverne Cox Producing ‘Free CeCe,’ Documentary About Transgender Woman CeCe McDonald*, HUFFPOST (Jan. 3, 2014, 1:58 PM ET), [https://www.huffpost.com/entry/laverne-cox-free-cece\\_n\\_4537625?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAIz7Ws1R5\\_DZFQzEJt60sZdMbebB8Nr11Gu-BLbUvODxig1AzetqYV3Ti46\\_NqFn1S-QGB8i4T3RR7OutJraMqeFhJorWZyFqMQBqIU5aQ-pOFvg--0QJYn4Oka2wOrv8TObVOoz4xCx3D92qvipAgwh0j6300PBNws82CzEKLR](https://www.huffpost.com/entry/laverne-cox-free-cece_n_4537625?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAIz7Ws1R5_DZFQzEJt60sZdMbebB8Nr11Gu-BLbUvODxig1AzetqYV3Ti46_NqFn1S-QGB8i4T3RR7OutJraMqeFhJorWZyFqMQBqIU5aQ-pOFvg--0QJYn4Oka2wOrv8TObVOoz4xCx3D92qvipAgwh0j6300PBNws82CzEKLR) [<https://perma.cc/R2J2-8GAE>].

country).<sup>105</sup> In 2017, at least twenty-nine transgender people were murdered; in 2018, the number was nearly the same, and in 2019, eighteen murders have been recorded thus far.<sup>106</sup> One participant in the documentary stated that we must work to understand what is happening to queer folks, again primarily transwomen of color on institutional, ideological, and interpersonal levels.<sup>107</sup> This is an important point to make seeing as we must take these same levels under consideration when investigating the criminal legal system. The ways in which we conduct research and apply research is also impacted at the institutional, ideological, and interpersonal levels as well.

Scholars who work with and for the LGBTQ+ population and practice different approaches to the application of a queer criminology may disagree on its most accurate definition,<sup>108</sup> but most would agree that bringing these issues to light is imperative and drives the research and ultimately the application of the work, which may indeed be one of the most effective ways to implement change within the criminal legal system, at all levels. Beginning, however, with law enforcement is key. As indicated, most people are aware of law enforcement; even if one does not come into direct contact with the criminal legal system in their lives, the authority of the police is seen nearly every day of our lives. Rightly or wrongly, law enforcement will often be the first representatives of state authority that civilians look to for assistance or to blame when things malfunction.<sup>109</sup> Many of us still maintain a need for police authority in our lives and on a societal level as well, and even though this may be true, this does not mean that we should not be able to analyze and discuss the role of law enforcement through a critical lens. Regardless of the personal level of doubt that some may have regarding the performance of law enforcement in our

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105. Samantha Cowan, *Laverne Cox and CeCe McDonald Discuss the Epidemic of Violence Against Trans Women*, TAKEPART (June 23, 2016), <http://www.takepart.com/article/2016/06/03/free-cece/> [https://perma.cc/CK2F-9A5U].

106. *Violence Against the Transgender Community in 2017*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2017> [https://perma.cc/YY2P-RDJM]; *Violence Against the Transgender Community in 2018*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2018> [https://perma.cc/AGD4-YF9X]; *Violence Against the Transgender Community in 2019*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019> [https://perma.cc/3L9Y-FBPJ].

107. *Free CeCe!* (Jac Gares Media Sept. 14, 2018).

108. *Supra* note 83 and accompanying text.

109. *See The Justice System*, *supra* note 16 (assigning law enforcement as the mode of citizens' "entry to the [criminal justice] system").

communities, a history of racist, homophobic policing tactics cannot be denied when examining the facts.<sup>110</sup> No, this does not mean that all members of law enforcement are corrupt, but they are operating within a fallible system and a structure that produces these problems.<sup>111</sup> We can make a call for training and policy reform but there will be little transformative change until the culture of policing changes: a culture of hegemonic masculinity, wrapped in patriarchal, heteronormative, white-washed values that fails to implement community involvement that produces any semblance of respect or compliance from the locations to which they are assigned.

### CONCLUSION

Has there been change? Yes, most certainly, and the research provided here gives some hope that LGBTQ-affirming tactics work and continue to develop. Police departments throughout the United States continue to assign their departments LGBTQ+ liaison officers to build bridges between the queer community and law enforcement.<sup>112</sup> Queer criminology has already explored and drawn attention to the former invisibility of LGBTQ+ people in criminological research, but there still remains a much needed move to apply the theoretical concepts and the research that has already been done. Also, the discussion should broaden to include different disciplines outside of criminology—this suggestion is perhaps easier to accomplish than the criminal legal system applying the empirical knowledge rooted in queer criminology. Conversely, queer criminologists, along with the entire field, should take into consideration the professional experiences and knowledge of criminal legal and other social service providers as their knowledge is integral to increasing the research pool and impacting the lives of marginalized populations such as the LGBTQ+ community.

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110. Andrea J. Ritchie & Delores Jones-Brown, *Policing Race, Gender, and Sex: A Review of Law Enforcement Policies*, 27 *WOMEN & CRIM. JUST.* 21, 25–26 (2017).

111. Lisa M. Dario et al., *Assessing LGBT People's Perceptions of Police Legitimacy*, *J. HOMOSEXUALITY* 7–8 (forthcoming 2020), [https://www.researchgate.net/publication/330326762\\_Assessing\\_LGBT\\_LGBT\\_People's\\_Perceptions\\_of\\_Police\\_Legitimacy](https://www.researchgate.net/publication/330326762_Assessing_LGBT_LGBT_People's_Perceptions_of_Police_Legitimacy).

112. See, e.g., *LGBT Liaison Officers Appointed at Police Departments in All Seven Hampton Roads Cities*, HAMPTON ROADS PRIDE, <http://www.hamptonroadspride.org/lgbt-liaison-officers-appointed-at-police-departments-in-all-seven-hampton-roads-cities/> (celebrating the appointment of a seventh LGBT liaison officer in the Hampton Roads area of Virginia) [<https://perma.cc/W9GB-P4WY>].



As we have seen throughout history, change is often slow to come, and the frustrations of those delays often lead to rebellion, especially in communities that feel as though they have either been over- or under-policed in times of great need. It is important to pay attention to the work being done around the country. As we witness the youngest generations following in the activist footsteps of those before them, continuing the work is imperative, especially when we examine the extraordinarily high rates of violence against transgender people, especially transgender women of color. It is essential for us to continue the work that so many others have begun, to stand on the shoulders of these activist giants if you will, and create change, big and small, personal and political. As Lourdes Ashley Hunter of the Trans Women of Color Collective proclaims, “every breath a Black trans woman takes is an act of revolution.”<sup>113</sup>

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113. Lourdes Ashley Hunter, *Every Breath a Black Trans Woman Takes Is an Act of Revolution*, HUFFPOST (Apr. 8, 2015), [https://www.huffpost.com/entry/every-breath-a-black-tran\\_b\\_6631124](https://www.huffpost.com/entry/every-breath-a-black-tran_b_6631124) [<https://perma.cc/MZC3-CRKW>].