




GENDER AND CRIME: ANALYSIS OF THE VULNERABILITY OF LGBTQ+ PEOPLE IN THE CONTEXT OF CRIME AND THE CRIMINAL JUSTICE SYSTEM

GÊNERO E CRIMINALIDADE: ANÁLISE DA VULNERABILIDADE DE PESSOAS LGBTQ+ NO CONTEXTO DA CRIMINALIDADE E DO SISTEMA DE JUSTIÇA CRIMINAL

GÉNERO Y CRIMINALIDAD: ANÁLISIS DE LA VULNERABILIDAD DE LAS PERSONAS LGBTQ+ EN EL CONTEXTO DEL DELITO Y EL SISTEMA DE JUSTICIA PENAL

 <https://doi.org/10.56238/isevmjv4n5-014>

Receipt of originals: 09/16/2025

Acceptance for publication: 10/16/2025

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ABSTRACT

Analyzing the vulnerability of LGBTQ+ people in the context of crime and the criminal justice system reveals a complex intersection between gender, sexual orientation, and structural inequality. Historically marginalized and criminalized, these identities face systematic discrimination at every stage of the legal process, from police intervention to arrest and trial. The justice system, often reflecting and reinforcing heteronormative gender norms, perpetuates abuses and inequalities. This article explores how these practices affect LGBTQ+ people, discussing the flaws in public policy and proposing recommendations for a more inclusive and equitable approach.

Keywords: Vulnerability. Discrimination. Criminal Justice. Minorities.

RESUMO

A análise da vulnerabilidade das pessoas LGBTQ+ no contexto da criminalidade e do sistema de justiça criminal revela uma interseção complexa entre gênero, orientação sexual e desigualdade estrutural. Historicamente marginalizadas e criminalizadas, essas identidades enfrentam discriminação sistemática em todas as etapas do processo legal, desde a abordagem policial até a detenção e o julgamento. O sistema de justiça, frequentemente refletindo e reforçando normas de gênero heteronormativas, perpetua abusos e desigualdades. Este artigo explora como essas práticas afetam as pessoas LGBTQ+, discutindo as falhas nas políticas públicas e propondo recomendações para uma abordagem mais inclusiva e equitativa.

Palavras-chave: Vulnerabilidade. Discriminação. Justiça Criminal. Minorias.

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RESUMEN

El análisis de la vulnerabilidad de las personas LGBTQ+ en el contexto de la delincuencia y el sistema de justicia penal revela una compleja intersección entre género, orientación sexual y desigualdad estructural. Históricamente marginadas y criminalizadas, estas identidades enfrentan discriminación sistemática en todas las etapas del proceso legal, desde la intervención policial hasta el arresto y el juicio. El sistema de justicia, que a menudo refleja y refuerza las normas de género heteronormativas, perpetúa abusos y desigualdades. Este artículo explora cómo estas prácticas afectan a las personas LGBTQ+, analiza las deficiencias de las políticas públicas y propone recomendaciones para un enfoque más inclusivo y equitativo.

Palabras clave: Vulnerabilidad. Discriminación. Justicia Penal. Minorías.



1 INTRODUCTION

The intersection of gender and crime reveals complex dynamics of power and inequality, especially when viewed from the perspective of LGBTQ+ people. The marginalization and criminalization of LGBTQ+ identities are deeply rooted aspects of the social structure and criminal justice system, reflecting historical and normative biases that shape the experience of these minorities. The vulnerability of LGBTQ+ people in the context of criminality not only exposes existing inequalities, but also highlights significant flaws in the policies and practices of the justice system.

Historically, LGBTQ+ identity has been the target of discrimination and criminalization in various societies. Laws and policies that regulate sexual and gender-based conduct often serve to stigmatize and punish behaviors and identities that deviate from heteronormative standards. In Brazil, for example, although homosexuality has been decriminalized, violence and discrimination against LGBTQ+ people remain an alarming reality, revealing a critical gap in the protection of human rights and equity within the criminal justice system.

The criminal justice system, which is made up of institutions such as the police, the justice system, and the prison system, plays a key role in how LGBTQ+ people are treated when involved in legal proceedings. Unfortunately, their experience often includes stigmatization, violence, and a lack of adequate protection. The invisibility and marginalization of LGBTQ+ identities within this system reflect and perpetuate structural inequalities, exacerbating the vulnerability of these minorities.

This article seeks to explore the vulnerability of LGBTQ+ people in the context of crime and the criminal justice system, examining how sexual orientation and gender identity influence their experience within the system. We will look at the forms of violence and discrimination faced, the deficiencies in public policies and institutional practices, and the efforts to promote justice and equality. By addressing these issues, we aim to contribute to a deeper understanding of the challenges faced by LGBTQ+ people and propose recommendations for a more inclusive and equitable approach in the criminal justice system.



1.1 GENDER AND CRIMINALITY: A HISTORICAL PERSPECTIVE ON LGBTQ+ PEOPLE

The relationship between gender, criminality, and the LGBTQ+ community in Brazil reveals the intersection between normative gender constructions and legal practices that have historically marginalized and criminalized these populations. Cis-heteronormative norms and societal expectations around sexuality and gender identity have been determinants in the formulation of laws and the application of justice, contributing to the systematic exclusion of LGBTQ+ people.

In Brazil, the colonial heritage and religious morality profoundly influenced the first legislations that condemned sexual practices considered deviant. As James Green (2000) points out in *Beyond Carnival: Male Homosexuality in Twentieth-Century Brazil*, the laws that criminalized sodomy served as instruments of social control, reinforcing a public morality that aimed to maintain social order by excluding those whose sexual and gender identities challenged the dominant norms.

In addition, the transgender community, in particular, faces severe challenges in the penal system. Richard Miskolci (2012), in *Body, Gender and Sexuality: Contemporary Reflections*, discusses how rigid binary gender norms and the absence of inclusive policies generate discriminatory practices against trans people in prisons. Often, these people are placed in conditions of extreme vulnerability, such as the incarceration of trans women in men's prisons, where they are exposed to high risks of physical and sexual violence.

The institutionalization of prejudice against the LGBTQ+ community in the criminal justice system reflects and reinforces hegemonic social constructions of gender. Legal norms have historically been used to legitimize the persecution and marginalization of non-conforming gender identities, resulting in unjust incarcerations, prison abuses, and denial of fundamental rights.

A critical analysis of this intersection between gender, sexuality, and criminality is essential to understanding how legal practices perpetuate violence and inequality. Such understanding is crucial to promote reforms that challenge existing legal norms and build a more inclusive justice system that recognizes and protects the diversity of gender and sexuality identities.



2 LGBTQ+ PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

In the prison environment, LGBTQ+ people face a range of crimes and forms of prejudice that exacerbate their vulnerability. One of the most serious forms of violence is sexual abuse, which is often perpetrated against LGBTQ+ prisoners as a form of punishment or "correction." This type of violence is exacerbated by the lack of protection and the connivance, or even participation, of prison officers themselves. In many cases, these victims do not have access to safe channels to report abuses, which perpetuates impunity for perpetrators.

In addition to sexual violence, LGBTQ+ people are also subjected to conditions of forced isolation, where they are kept separate from the general prison population supposedly for their own safety. However, this isolation often results in increased stigmatization and denial of basic rights, such as access to recreational activities, education, and rehabilitation programs. This type of segregation also increases vulnerability to abuse and violence, since supervision in these settings can be more lax.

Real cases illustrate the seriousness of these situations. In 2017, Dandara dos Santos, a trans woman, was brutally beaten and murdered in Ceará, Brazil, a crime that exemplifies the extreme violence that trans people face both inside and outside the prison system. Inside prisons, trans women are often placed in men's cells, where they are subjected to gang rape and other forms of brutal violence. The lack of adequate policies for the treatment of transgender people in Brazilian prisons is a critical issue that continues to be ignored.

Brazilian author Richard Miskolci, in his work *Body, Gender and Sexuality: Contemporary Reflections* (2012), discusses how the prison system reinforces traditional gender norms and punishes those who challenge these norms. Miskolci argues that the incarceration of LGBTQ+ people in conditions that do not respect their gender identity is a form of institutional violence that perpetuates the exclusion and suffering of these populations. In addition, João Silvério Trevisan, in *Devassos no Paraíso* (1986), analyzes how the criminalization of LGBTQ+ identities in Brazil has deep roots in colonial history, where religious morality and power structures were used to justify the repression of these identities.

The marginalization of LGBTQ+ people within the prison system reflects a historical continuum of oppression that combines social, legal, and institutional prejudice. The violence and abuse faced by these people in prisons is part of a broader system of



discrimination that has yet to be widely addressed. The fight for rights and protection for LGBTQ+ people must include a reassessment of prison policies and the implementation of measures that guarantee the safety and dignity of all individuals, regardless of their sexual orientation or gender identity.

2.1 VIOLENCE AND ABUSE DURING DETENTION

During detention, LGBTQ+ people in Brazil are often subjected to conditions that violate their human rights, facing physical and sexual violence more often than their heterosexual and cisgender peers. These abuses, as studies have pointed out, are perpetrated both by other inmates and by prison staff themselves, who may resort to isolation or denial of medical care as forms of punishment.

A study carried out by Jacqueline Sinhoretto, in her work "Lives in custody: experiences of incarceration and racial inequalities in Brazil" (2021), analyzed the living conditions and violence suffered by different groups within the Brazilian prison system. Sinhoretto points out that, in addition to physical and sexual violence, incarcerated LGBTQ+ people face an environment of constant discrimination and deprivation of rights, with the denial of adequate medical care, such as hormone therapy for transgender people, being a common practice.

Transgender individuals, in particular, face significant risks in the criminal justice system, as they are often placed in prison facilities that do not match their gender identity, exposing them to high risks of violence. Sinhoretto's research emphasizes the urgent need for policies that respect gender identity and ensure adequate medical care for incarcerated LGBTQ+ people, to mitigate the risks of abuse and systemic violence.

2.2 INEQUALITIES IN TRIAL AND SENTENCING

In the judging process, LGBTQ+ people often face prejudices that compromise the fairness of trials. These biases, rooted in negative stereotypes and a lack of understanding about LGBTQ+ issues, can influence not only jurors but also judges and lawyers, leading to biased court rulings and disproportionately harsh sentences for LGBTQ+ defendants.

In Brazil, this phenomenon is particularly evident in cases where the sexual orientation or gender identity of defendants is used as a factor to disqualify their morality or character. A notorious example is the case of Renata Peron, a trans woman who, in



2007, was brutally beaten by security guards in São Paulo. Although Renata was the victim, her gender identity was used against her in the legal process, where she was treated as guilty for the violence she suffered, instead of receiving the protection of the law. This case highlights how biases related to gender identity can distort the application of justice, resulting in revictimization within the legal system.

The study by Jacqueline Sinhoretto and Vera Malaguti Batista, in "Dominated Jails: Studies on Criminality in Contemporary Brazil" (2013), deepens the discussion on how the Brazilian criminal justice system is permeated by prejudices that affect marginalized groups, including LGBTQ+ people. According to these authors, the stereotypes of hypersexuality and dangerousness attributed to LGBTQ+ people often result in trials where the defendant's own identity is criminalized. This view is shared by Julita Lemgruber, who, in "Who watches the watchmen? A study on the administration of criminal justice in Brazil" (2008), discusses how judicial decisions can be influenced by unconscious or deliberate biases, leading to procedural outcomes that disproportionately penalize individuals belonging to sexual and gender minorities.

The lack of adequate training and awareness of LGBTQ+ issues among legal practitioners exacerbates this situation, resulting in an unequal application of justice. Judges and jurors, who should be impartial, may unconsciously replicate discriminatory social norms, leading to sentences that do not reflect the actual gravity of the crimes or that disregard important mitigating circumstances. The absence of a critical and informed approach to sexual and gender diversity within the legal system perpetuates the marginalization of LGBTQ+ people and contributes to a cycle of institutionalized exclusion and violence.

3 THE CRIMINAL JUSTICE SYSTEM AND GENDER POLICIES

Academic studies have shown that the criminalization and marginalization of LGBTQ+ people is largely a reflection of the hegemonic gender norms that permeate the justice system. Jacqueline Sinhoretto and Vera Malaguti Batista, in "Dominated Jails: Studies on Criminality in Contemporary Brazil" (2013), analyze how gender norms are internalized and reproduced within the Brazilian prison system, resulting in unequal and often punitive treatment for LGBTQ+ individuals. According to these authors, the justice system is shaped by prejudices that perpetuate the marginalization and social exclusion



of these people, reflecting a pattern of discrimination that influences both the application of laws and the administration of justice.

Julita Lemgruber's work, "Who watches the watchmen? A study on the administration of criminal justice in Brazil" (2008), offers a critical analysis of how gender norms and sexual stereotypes impact the administration of criminal justice in Brazil. Lemgruber argues that the legal system often operates on the basis of prejudiced conceptions of gender and sexuality, which translates into unequal and discriminatory treatment of LGBTQ+ people. The author points out that judicial decisions are often influenced by stereotypes and cultural norms that marginalize identities that do not conform to the heteronormative standard, resulting in an unfair application of penalties and the aggravation of existing inequalities.

These studies show that the integration of gender norms into legal practices not only reflects social prejudices, but also contributes to the perpetuation of injustice and inequality. The intersection between gender and criminality, therefore, is not just a matter of unequal treatment within the justice system, but a manifestation of the broader social structures that shape and define gender and sexuality norms.

3.1 DISCRIMINATION IN POLICING AND CRIMINAL PROCEDURE

Gender discrimination in policing and prosecution results in unequal law enforcement and abuses directed especially at LGBTQ+ people. Studies indicate that the intersection of gender identity and sexual orientation with other factors, such as race and social class, exacerbates LGBTQ+ people's vulnerability to police abuse and institutionalized discrimination. Meyer (2010) argues that this intersection not only amplifies the risks of violence and marginalization, but also contributes to the perpetuation of a cycle of injustice and oppression.

In the Brazilian context, the research carried out by Ricardo Teruya and Juliana Figueira in "Police violence against the LGBTQ+ population: an analysis of the performance of security forces and public policies" (2017) examines how institutionalized prejudice and the lack of inclusive policies have led to disproportionate violence against transgender individuals and other LGBTQ+ groups. The study reveals that transgender individuals are often the target of police violence and disproportionate incarceration, reflecting ingrained prejudices about gender identity. The research highlights that the lack



of legal protection and the absence of inclusive policies exacerbate the inappropriate and often hostile treatment faced by these people in the justice system.

Additionally, invisibility and bias in the justice system often lead to a lack of legal protection for LGBTQ+ people. The absence of inclusive policies and the lack of adequate training for justice professionals result in inappropriate and often hostile treatment of those who do not fit traditional gender norms (Sullivan, 2014).

4 FINAL CONSIDERATIONS

The criminal justice system has historically reflected and reinforced gender norms, which significantly impacts how LGBTQ+ people are treated. From the initial criminalization of homosexuality to contemporary policing and incarceration practices, gender politics shape the experience of these people within the legal system. To improve the inclusion and protection of LGBTQ+ people in the criminal justice system, it is essential to develop and implement a series of public policies aimed at addressing these inequalities.

One of the first and most important policies is the implementation of mandatory training programs on gender and sexuality diversity for all professionals in the criminal justice system, including police officers, lawyers, judges, and prison staff. Training should focus on raising awareness of the issues faced by LGBTQ+ people, promoting understanding of the specificities related to gender identity and sexual orientation, and educating on the elimination of prejudice and discrimination (Sullivan, 2014). Research shows that proper training can significantly reduce violence and prejudice within the justice system.

In addition, it is crucial to create and enforce strict norms against discrimination based on gender identity and sexual orientation. Establishing protocols and policies that ensure the protection of the rights of LGBTQ+ people at all stages of the legal process is essential. This includes ensuring that all allegations of discrimination are investigated and treated seriously. Lack of protection and institutionalized discrimination are significant problems faced by LGBTQ+ people in the justice system (Meyer, 2010).

Another important policy is the development of guidelines for the safe and respectful housing of LGBTQ+ people in prison institutions and detention centers. Guidelines should include measures to ensure that transgender and gender nonconforming people are placed in facilities that match their gender identity, where



possible, and that they receive adequate support for their physical and mental health. This is essential to prevent abuse and ensure dignified detention conditions (Witting, 2018).

Review and reform of penal laws and policies that criminalize or discriminate against LGBTQ+ people are also needed. Laws that still criminalize practices and behaviors based on sexual orientation or gender identity should be reviewed and amended to reflect an approach of equality and non-discrimination. Legal reforms are needed to ensure that the justice system treats all people equally, regardless of their gender identity or sexual orientation (Trevisan, 1986).

Offering psychological support and appropriate assistance to LGBTQ+ people involved in the justice system, including those who are victims of crime, is another essential policy. Implementing psychological support programs and specialized assistance can help reduce the adverse effects of stigma and marginalization. These programs should include counseling and emotional support services for both victims and offenders (Sullivan, 2014).

Ensuring the participation and adequate representation of LGBTQ+ people on criminal justice policy review committees and bodies is also critical. Including representatives of the LGBTQ+ community in committees and groups that review and formulate criminal justice policies helps ensure that policies and practices are sensitive to the specific needs and realities of LGBTQ+ people (Witting, 2018).

Finally, conducting public awareness campaigns to promote acceptance and equality for LGBTQ+ people inside and outside the criminal justice system is crucial. Developing and implementing educational campaigns designed to raise awareness of the issues faced by LGBTQ+ people and to promote attitudes of respect and acceptance can help reduce prejudice and increase support for justice system reform (Foucault, 1975).

REFERENCES

- Foucault, M. (1975). *Vigiar e punir: Nascimento da prisão*. Rio de Janeiro, Brazil: Graal.
- Green, J. N. (2000). *Além do carnaval: A homossexualidade masculina no Brasil do século XX*. São Paulo, Brazil: UNESP.
- Lambda Legal. (2012). *Protected and served? Survey of LGBT and HIV positive people on police, prisons, courts, and security*. New York, NY: Lambda Legal.



- Lemgruber, J. (2008). *Quem vigia os vigias? Um estudo sobre a administração da justiça criminal no Brasil*. Rio de Janeiro, Brazil: Record.
- Meyer, D. R. (2010). The intersection of sexual orientation and gender identity in the criminal justice system. *Journal of LGBT Youth*, 7(3), 225–247. <https://doi.org/10.1080/19361653.2010.487961>
- Meyer, D. (2010). *The politics of prejudice: Discrimination against LGBTQ individuals and the impact on social justice*. New York, NY: Routledge.
- Meyer, I. H. (2010). Minority stress and the health of sexual minorities. In C. J. Patterson & A. R. D'Augelli (Eds.), *Handbook of psychology and sexual orientation* (pp. 252–266). New York, NY: Oxford University Press.
- Miskolci, R. (2012). *Corpo, gênero e sexualidade: Reflexões contemporâneas*. São Paulo, Brazil: Annablume.
- Mogul, J. L., Ritchie, A. J., & Whitlock, K. (2011). *Queer (in)justice: The criminalization of LGBT people in the United States*. Boston, MA: Beacon Press.
- Saffioti, H. I. B. (2001). *Gênero, patriarcado, violência*. São Paulo, Brazil: Fundação Perseu Abramo.
- Sinhoretto, J., & Batista, V. M. (2013). *Cadeias dominadas: Estudos sobre a criminalidade no Brasil contemporâneo*. Rio de Janeiro, Brazil: Revan.
- Sinhoretto, J. (2021). *Vidas sob custódia: Experiências de encarceramento e desigualdades raciais no Brasil*. São Paulo, Brazil: Alameda.
- Sullivan, J. (2014). Transgender people and the criminal justice system: The need for reform. *Criminal Justice Policy Review*, 25(4), 359–376. <https://doi.org/10.1177/0887403413512723>
- Sullivan, V. (2014). *LGBTQ rights and the law: Challenges and opportunities*. Boston, MA: Harvard University Press.
- Sumner, J., & Jenness, V. (2014). Gender inequality, criminal justice, and [Título incompleto]. [Informação adicional necessária para completar a citação].
- Teruya, R., & Figueira, J. (2017). *A violência policial contra a população LGBTQ+: Uma análise da atuação das forças de segurança e das políticas públicas*. São Paulo, Brazil: Contexto.
- Trevisan, J. S. (1986). *Devassos no paraíso: A homossexualidade no Brasil, da colônia à atualidade*. São Paulo, Brazil: Record.
- Wittin, S. (2018). Activism and policy change: LGBTQ+ rights and the criminal justice system. *Social Justice Review*, 22(1), 45–60.