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## **Issue Brief: Intersection of LGBT persons and Criminal Justice**

### **Key Words**

Statutory rape, LGBT, prison, sodomy, hate crimes

### **Description**

This issue brief highlights areas of criminal justice which are of particular importance to the LGBT community. It also shows how these areas are currently changing and updating.

### **Key Points**

- Until recently, LGBT persons were discriminated against through anti-sodomy laws.
- Laws which prescribe sentencing guidelines for statutory rape differently for same-sex and opposite-sex acts are only now being changed.
- The LGBT community disproportionately suffers from prison rape and violence.
- About half of the states in the United States make targeting LGBT persons a hate crime, and Congress is currently working on legislation to do so federally.

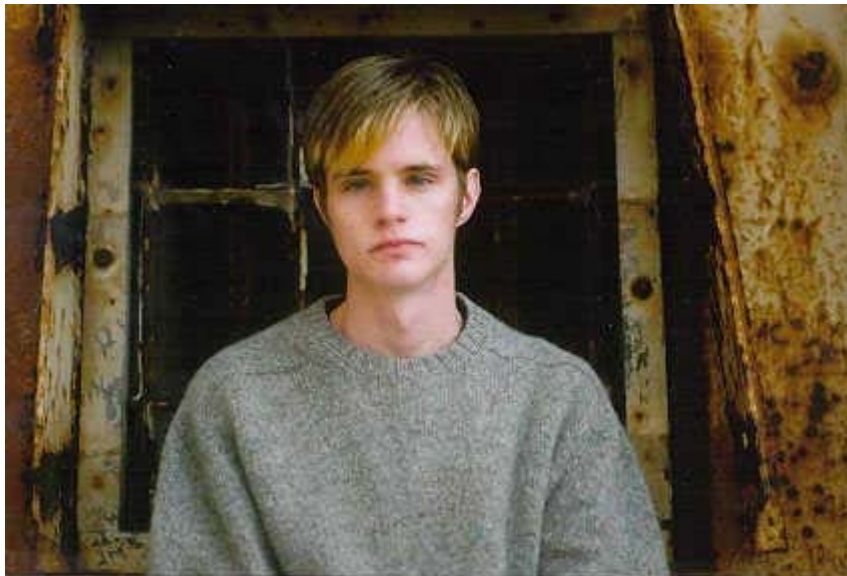
### **Issue Brief**

There have been three aspects of criminal justice which are particularly pertinent to the LGBT experience in the United States: laws which criminalize homosexual activities, the treatment of hate crimes, and the treatment of LGBT people in the prison system. Each of these areas is currently in the midst of substantial changes.

One type of law that has been used to disproportionately prosecute homosexuals are anti-sodomy laws. As of 2003, 14 states had these laws, which, although in most states nominally outlawing all anal (and in some cases oral) sex, were used primarily against homosexual acts. These laws were struck down as unconstitutional by the Supreme Court in 2003 in the case *Lawrence v. Texas*, in which the majority ruled that sodomy was protected under the due process

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clause of the Fourteenth Amendment. Another possible consequence of this ruling is an alteration in statutory rape laws. Currently, most states have so-called “Romeo and Juliet laws”, which allow lesser penalties for teenagers who engage in consensual sex. In some states, these laws apply only when both partners are of the opposite sex. However, using logic from the *Lawrence v. Texas* decision, in 2005 the Kansas Supreme Court found in the case of *Limon v Kansas*, that it was unconstitutional to treat heterosexual and homosexual sex differently. Thus, Matthew Limon, who was 18 at the time of the sexual act, should have received a maximum 15 month sentence, like a heterosexual counterpart would have, instead of a 206 month one. Many other states, however, still have these discriminatory laws on the books.



Matthew Shepard, a 21-year old gay student at the University of Wyoming whose death sparked conversation about hate crime legislation.

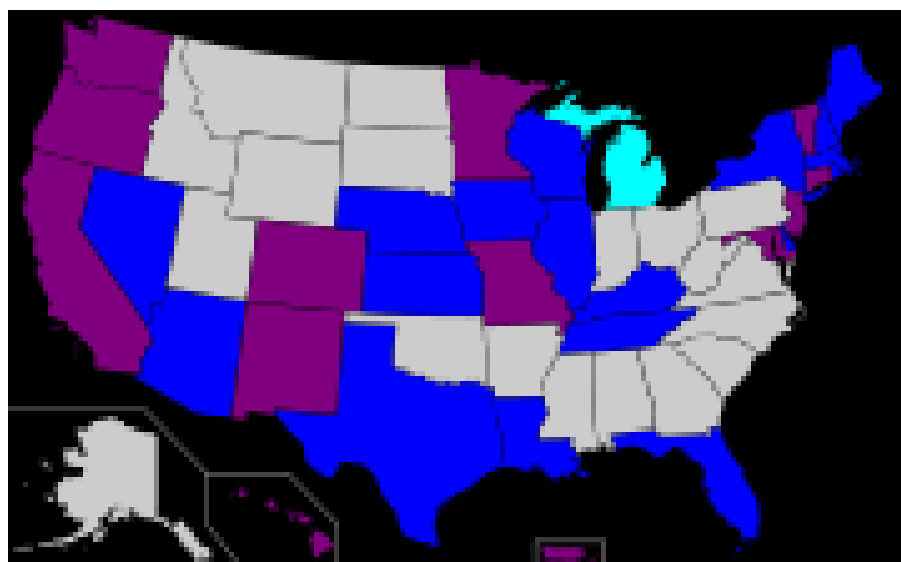
Source: [http://en.wikipedia.org/wiki/File:Matthew\\_Shepard.jpg](http://en.wikipedia.org/wiki/File:Matthew_Shepard.jpg)

Hate crime laws are laws which increase the amount of time in the corrections system person is sentenced to if they are judged to have committed the crime on the basis of the victim’s real or perceived group identity – such as race, religion, gender, gender identity, sexual orientation, or disability. As of the date of this brief’s submission, of the 45 states which have

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any hate crime protections, only 30 states plus the District of Columbia have hate-crime statutes inclusive of sexual orientation, of which only 12 also recognize gender identity. The Local Law Enforcement Hate Crimes Prevention Act of 2009, or LLEHCPA, also known as the Matthew Shepard Act, was signed into law by President Obama on October 28<sup>th</sup>, 2009. This act appends both sexual orientation and gender identity (as well as gender and disability) to the existing federal hate crime laws, and requires the FBI to be keeping track of statistics on violence against transgendered people.

### Hate Crime Laws by State



- State hate crimes law uninclusive of sexual orientation or gender identity
- Sexual orientation recognized for data collection about hate crimes
- Sexual orientation recognized in state hate crimes law
- Sexual orientation and gender identity recognized in state hate crimes law

Source: [http://en.wikipedia.org/wiki/File:Map\\_of\\_LGBT-related\\_hate\\_crime\\_law\\_in\\_the\\_United\\_States.svg](http://en.wikipedia.org/wiki/File:Map_of_LGBT-related_hate_crime_law_in_the_United_States.svg)

Human Rights Watch has found that prisoners who identify as or are perceived as homosexual or transgendered are more likely to be raped in prison than those who identify as heterosexual and cisgendered (having the same biological sex and gender identity). In addition, LGBT persons in the prison system who are able to get protective custody to avoid being raped or abused are often treated the same as those who are in disciplinary custody – being given 23-

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hour-a-day lockdown in some instances, for example. According to Masen Davis, Executive Director of the Transgender Law Center, "LGBT people in prisons often face extra barriers to accessing basic and necessary medical treatment."<sup>1</sup>

In conclusion, there are many facets of the criminal justice system which are particularly important to LGBT people. LGBT people suffer disproportionately from discriminatory statutory rape laws, prison violence, and in some areas, a lack of protection from bias-related crimes. However, many of these laws are currently being changed to allow for more protection and fairer treatment of the LGBT population.

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<http://www.hrw.org/lgbt>

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<sup>1</sup> [http://www.nclrights.org/site/PageServer?pagename=press\\_LGBTCAprisons121108](http://www.nclrights.org/site/PageServer?pagename=press_LGBTCAprisons121108)