ABSTRACT

Title of Thesis:	QUEERING OUR CONCLUSIONS: UNDERSTANDING MEASUREMENT'S INFLUENCE ON QUEER CRIMINOLOGICAL RESEARCH
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To effectively understand *how* people end up in prison, criminologists need to understand *who* is in prison; especially given the novelty of the concept, queer criminology has yet to standardize a definition of "queer," "LGBT," etc. In leaving these definitions up to researchers, there is no consensus on how much of the prison population is queer and, consequently, to what degree, if at all, queer individuals are differently represented in the prison system. Based on a review of the literature, and simple quantitative models, this study attempts to understand the definitions and conclusions in existing literature, to standardize how criminologists measure "queer," and to understand to what extent, if any, this population is differently represented in prison.

QUEERING OUR CONCLUSIONS: UNDERSTANDING MEASUREMENT'S INFLUENCE ON QUEER CRIMINOLOGICAL RESEARCH

by

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Dedication

To Caren, for pushing me to be the best person and scholar I can be, and for never letting me forget my potential: from Lav Grad till forever. To my love, my best friends, and my role models: Alannah, Alyse, Gabi, Hayden, Maddie, Maven, and Sarah Silb for being there through my darkest days, and helping me get back on my feet. Every phone call, text, coffee, and tear led us here, and I will never be able to thank you enough.

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I can't wait to see you all at ASC.

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Chapter 1: Introduction

As the field of criminology attempts to move toward a more critical approach to crime and the lived experiences of the people we study, it has begun to add and recognize new divisions that warrant extra consideration. One of these new divisions is queer criminology—even though researchers began to ask about queerness in their research in only the last fifteen years or so, the intersectionality, and prevalence of this community are already evident. But how should we measure queerness, and how do our measurements and definitions affect the conclusions we come to? How do these conclusions affect the way we study and accommodate the queer community in our field? This study attempts to answer these questions.

The homosexual deviancy thesis

In 2014, Dr. Jordan Woods proposed the homosexual deviancy thesis, an addition to the minimally existent literature on queer criminology which posits that criminologists, whether intentionally or not, contribute to the field's perpetuation of pre-1970s beliefs about queer and transgender individuals. Among these beliefs are that homosexual individuals, defined to include anyone whose sexuality or gender is non-normative, are perverts, psychopaths, and criminals. Woods further divides this thesis into the "deviance-centered" and "invisibility" elements to explain this perpetuation of stereotypes (Woods, 2014b).

The deviance-centered element focuses on how criminology as a field wrote about sexuality and gender before the 1970s. Rooted in the institutional misunderstanding of Freud's theory of psychosexual development, the contemporary

political agenda advanced by the middle class. and accepted by academia, painted homosexuals as "significant social threats, especially to minors" (Freud, 1905; Fradella, 2024, pp. 22-24 (forthcoming); Eskridge, 1996).

The invisibility element refers to the notion that after the 1970s, discussions of queer and transgender issues in criminology came to an end. The United States sociopolitical climate of the 1970s regarding queerness and transness is of note– the Stonewall Riots for queer and transgender liberation happened in 1969, and then from 1971 until 1975, 21 states repealed their sodomy laws[1] (Matzner, 2015; Stein, 2019; Eskridge, 2008; American Civil Liberties Union [ACLU], n.d.). The Stonewall Riots are virtually absent from criminological study, and after the repeal of so many sodomy laws, the focus of queerness and transness fell out of criminology almost entirely. Given this invisibility element, that there has been little to no effort on the part of the field of criminology to include non-normative sexualities and genders in studies[2]; combined with the deviance-centered element, that scientifically baseless assumptions and beliefs regarding queer individuals were so widely accepted within the field; the marginalization and abuse of queer individuals within the field of criminology and the criminal justice system still pervade because of the absence of literature attempting to prove otherwise (Woods, 2014b; Fradella, 2024 (forthcoming); Buist and Lenning, 2016).

[1] In 2003, the Supreme Court case *Lawrence v Texas* deemed sodomy laws unconstitutional. At time of writing, there are still 11 states that have anti-sodomy laws on their books, and an additional 3 that have laws specific to homosexual sodomy. Though they cannot be used while the court decision stands, should *Lawrence v Texas* be overturned, the laws would once again become effective (American Civil Liberties Union [ACLU], n.d.).

[2] There is an exception regarding the experiences of incarcerated transgender individuals. This is the only criminological realm in which the trans experience is studied more widely than are the experiences of cisgender queer people (Buist and Lenning, 2016).

The invisibility element of Woods' deviancy thesis largely informs the motivation behind this study. Queerness is not new– as will be explained below, what we now know as "queerness" has been around since ancient civilizations. Criminology, and many disciplines, however, has largely left it out of our studies, demographic tables, and conclusions. Without having explored non-normative gender and sexuality, the field has not been able to truly grasp what it means to be queer in our literature; without an extensive understanding of queerness, criminology is further limited in its reach and ability to understand and accommodate an already hard-to-study population; as well as its bandwidth to prescribe effective, innovative carceral policies.

Queer criminological theory

Even without a genuine understanding of what queerness is and how to measure it, scholars are beginning to attempt to understand how queerness impacts our discipline. There is not one clear, agreed-upon definition of "queer criminology." Buist and Lenning write that "the definition of queer criminology should be broad and dynamic and remain so to reflect the fluidity of the Queer identity and therefore allow for a variety of contributions both theoretically and via practical application in the field" (Buist and Lenning, 2016, p. 3). Some scholars push for a strictly theoretical application and definition of queer criminology (Dwyer et. al., 2016; Ball et. al., 2014). Using Crenshaw's intersectionality as a starting point, some queer criminologists consider the understanding of how queerness shapes experiences with crime and victimization critical to the development of the field (Buist and Semprevivo, 2022). Accompanying Woods' publication on the homosexual deviancy

thesis, he conceptualizes queer criminology as a reformulation of criminology as a whole– only in eliminating the invisibility element of his thesis could queer criminology truly begin to capture the lives and interactions of queer individuals as they apply to our discipline (Woods, 2014a; 2014b). Others focus on the ways that sexuality and gender are policed and regulated in a heteronormative society, across cultures and times. Queerness is still punishable by death in some nations, and there is extensive literature about the exaggerated rate at which transgender people, and especially transwomen, are killed in the United States, as if they are "doing gender wrong" or being deceptive to intimate and other partners (Panfil, 2018).

Some queer criminologists attempt to define the field as the understanding that heteronormativity and homophobia are innate to the criminal justice system. Panfil's work in queer criminology is largely to do with the participation of gay men in gangs, and how perpetuation of gay stereotypes and stigmas transcends even gang offending (2014). She has also documented the overrepresentation of queer individuals in the juvenile justice system, and the ways the system over-penalizes queer individuals for the offenses that non-queer individuals may be "let off on" (Panfil, 2018). The question then arises whether these biases can ever truly be undone, or if there would need to be an overhaul of the system in order to see any sort of equality (Ball, 2016; Conrad, 2009; Dwyer, 2011, 2012). For the purposes of this paper, the definition of "queer criminology" accords with Buist and Lenning's, and Panfil's definitions: queer criminology is a theoretical and practical approach that aims to examine the ways that queer and transgender individuals have been criminalized, victimized, and stigmatized by both the worlds of academia and

criminal law. It also examines the lives of incarcerated queer individuals and professionals within the criminal justice system as parole officers, prison guards, attorneys, etc (Buist and Lenning, 2023; Panfil, 2018).

Queer individuals, by nature of their queerness, interact with the justice system in unique ways, and experience different pains of imprisonment (Rosenberg and Oswin, 2015; Kohn et. al., 2022; Vitulli, 2013). In 2015, Black & Pink surveyed queer prisoners around the United States to get a better grasp on the injustices faced by queer individuals once they have been incarcerated. Black & Pink is a prison abolition organization in the United States that specifically supports queer and HIV-positive individuals, and the survey they conducted

> seeks to offer a tool for organizers, both inside and outside of prisons, to strengthen national campaigns and grassroots efforts to alleviate the immediate suffering of prisoners and bring an end to the prison industrial complex while centering the needs of LGBTQ prisoners (Lydon et. al., 2015, p. 3).

According to this study, 39% of incarcerated queer individuals have traded sex for survival, often for financial resources; and more than half of respondents reported selling drugs for survival, with rates of drug trafficking increasing among racial minority respondents. Almost two-fifths of incarcerated queer individuals experienced housing insecurity in the period leading up to their arrest and incarceration. Literature on housing insecurity among LGBT youth is extensive, but less is known about this phenomenon among LGBT adults (Ecker et. al., 2019). What is known, however, is that queer individuals are more likely than non-queer

individuals to report housing insecurity due to things like perceived threat of violence from family and or friends, drug abuse, and mental health complications (Cusack et. al., 2023). Whether a direct or indirect effect of this, queer individuals were also more likely to report unemployment in the six months leading up to their arrest. Even with the Supreme Court ruling in *Bostock v. Clayton County* in 2020, queer individuals experience an unemployment rate higher than the national average (Drydakis, 2021). *Bostock v. Clayton County* made employment discrimination illegal, but research has shown that employers may still discriminate on the basis of assumed gender presentation or social media presence, creating an extensive gap in employment rates according to queer identity (Lydon et. al., 2015; Badgett et. al., 2021).

Of the individuals who responded to this survey, 70% expressed emotional distress due to hiding their sexuality; almost 80% of binary transgender and nonbinary individuals recorded emotional distress. Less than one-fourth of these individuals reported receiving gender-affirming care and hormones while incarcerated, compared to 44% having been explicitly denied this care. Of the individuals who were taking hormones before their incarceration, a majority reported that these medications were not prescribed by a doctor and were instead purchased on the street. 15% of queer individuals were denied access to certain programs in prison because of their identity, and only 20% have access to books that affirm and represent queerness (Lydon et. al., 2015; Mogul et. al., 2011).

Queer criminology is a subset of criminology, and especially of contemporary, critical criminology. Though still in its infancy, especially when compared to other criminological theories, this division of queer criminology calls on scholars to think

about the ways that sexuality and gender are inherent in the questions they ask, and the studies they conduct. (Daly and Chesney-Lind, 1988; Groombridge, 1999; Gateley et. al., 2022).

To be sure, the definition of queerness can and often must vary based on the particular research question. Nevertheless, as a general matter, I propose that the queer lived experience, which includes common experiences such as Othering and discrimination, is interlinked with non-cisheteronormative identity. To possess a non-cisheteronormative, or queer, identity means to A.) not identify with the sex you were assigned at birth and/or B.) identify as a sexual orientation that is not strictly heterosexual. That is, the queer identity and queer lived experiences are mutually constitutive. Thus, to accurately capture and measure what is most often understood as queerness and the queer lived experience, the criteria for measuring queerness should be primarily informed by self-identification as possessing a non-cisheteronormative identity.

Chapter 2: Conceptual Framework

This chapter details the foundation of queer theory and the role it plays in understanding criminological conclusions. National estimates of queerness, as well as measurement and estimates from prominent queer criminological literature, are explored at length, and a case is made for the standardization of queer measurement, as well as a proposed measure.

Queer theory

Michel Foucault was a French philosopher whose teachings on medicine, psychiatry, and sexuality revolutionized historical conceptions of such phenomena (Dean and Lane, 2001). He applied a psychoanalytic approach to queerness and concluded that the concept of sexuality is unfounded and rooted in contemporary Westernism, remembering that in ancient Greece and Rome, sex was nothing more than something that *happened,* with no attached indicator or determinant of character or Otherness (Dean and Lane, 2001; Gunderson, 2022). Gunderson writes that "an elite male can marry (often extremely young) women/girls, sleep with prostitutes, have a boyfriend, and impose himself upon slaves of either sex without necessarily incurring opprobrium," so long as he is the "doer," and not the "done-to" (Gunderson, 2022, p. 34). This rhetoric is commonplace in queer theory, as is the notion that a man's pleasure is natural regardless of from where, or whom, it comes. But, per the idea of the "doer," versus the "done-to," from whom a man gets his pleasure can often be the subject of ridicule and disrespect; this transcends gender lines. Whoever submits to a

man allowing their body to be entered can be, and often is, the target of humiliation (Gunderson, 2022; Kotrosits, 2018; Dover, 1980).

Another philosopher often associated with queer theory, Judith Butler, focused more on gender than sexual orientation, and proposed that gender is a performance– something we do, something we turn on and off (Butler, 1990). In the book that has come to be considered Butler's *magnum opus*, they offer a critique of feminist theory, exposing the gender-normative bounds of feminism to include a queer reading of gender and society. They write that the existing post-structuralist understanding of gender and sexuality situates the feminine within heterosexuality as the submissive, the receiver. Consequently, when women become the dominant, or men become the submissive, Butler claims that this is a subversion of gender, as these individuals are no longer "doing gender" the way they were "meant to." When considering homosexual behavior, even between what we might otherwise conceptualize as cisgender individuals, a destruction of gender, these people can no longer be cisgender, and their homosexuality means something else entirely (Butler, 1990).

The social construction of queerness

Foucault and Butler's works on queerness hinge on the fact that queerness and homosexuality are merely abstract phenomena that the West has imposed connotations upon (Butler, 1990; Foucault, 1978). While perhaps true that queerness isn't "real" or measurable in the way that height or eye color are, given the connotations that the West has placed upon it, there are real reactions and consequences to being queer. Existing literature suggests that queer individuals

experience more financial hardship and social strains than do non-queer individuals (Badgett et. al., 2021; Badgett et. al., 2019; Hsieh and Liu, 2021). In addition to what has become commonplace harassment and homophobia, according to existing literature, some of these consequences of being queer include a drastic increase in sexual victimization prevalence (Bedera and Nordmeyer, 2021; Langenderfer-Magruder et. al., 2016; Hequembourg et. al., 2013; Rene Gregory, 2011; Kendall, 1996; Whitfield et. al., 2019). Though Foucault and other queer theorists reject the construction of a measurable definition of queerness, even for reasons rooted in the origins of queerness, without one, social scientists cannot begin to understand the magnitude of discrimination and hardships against queer individuals (Watson, 2005; Sullivan, 2003; Amin and Somerville, 2020).

Though true that attempting to define queerness is antithetical to many of the original, prominent queer theorists, as society continues to evolve, it becomes ever-more important. In the same way that race is a social construct but has tangible effects on the people that fall in the man-made margins of the construct, sexuality needs to be defined and measurable so researchers can get an accurate grasp of these effects and how to handle them (Bryant et. al., 2022; Pierce, 2014).

National estimates

It has been well-documented in the literature that it is difficult to accurately capture how many residents of the United States identify as queer (Ridolfo et. al., 2012; Alexander and Rhodes, 2011; Weathington and Brubaker, 2023). In recent years, however, more data collection agencies have attempted to understand what proportion

of United States adults identify as queer; even so, they don't all ask the same questions, even though they're trying to obtain the same data.

BRFSS

The Behavioral Risk Factor Surveillance System (BRFSS) is a system of telephone surveys conducted by the Center for Disease Control (CDC) meant to capture health-related data. The BRFSS is an annual survey that collects data from over 40,000 adults in the United States, "making it the largest continuously conducted health survey system in the world" (CDC.gov). Each iteration of the BRFSS is slightly different; some questions are asked yearly, others are optional, and some are state-specific. All that is required of surveyors is they ask the "core component" questions, or the ones that do not change each year. From there, surveyors are free to ask any assortment of optional or state-specific questions.

The BRFSS 2016 Overview writes that "factors assessed by the BRFSS in 2016 included health status, healthy days/health-related quality of life, health care access, exercise, inadequate sleep, chronic health conditions, oral health, tobacco use, e-cigarettes, alcohol consumption, immunization, falls, seat belt use, drinking and driving, breast- and cervical cancer screening, prostate cancer screening, colorectal cancer screening, and HIV/AIDS knowledge" (CDC.gov, 2017, p. 1). They also include two questions on gender and sexuality, asking respondents to self-identify their gender and sexual orientation; the BRFSS estimated that, in 2016, approximately 3.6% of men and 3.5% of women identified as lesbian, gay, or bisexual, and 0.4% of respondents identified as transgender (Cunningham et. al., 2018).

US Census

2021 was the first time that the United States Census included questions about gender and sexuality in their household pulse survey. The household pulse survey is meant to collect information on emerging social justice concerns and how they impact United States citizens. The data is meant to be quickly analyzed and disseminated, so it can be used to inform the public and policymakers. The household pulse survey measures queerness using three questions: sex assigned at birth, current gender identity, and sexual orientation. Individuals fell into a "queer" category if they self-identified as transgender, if their sex assigned at birth did not match their reported gender identity, and/or if they self-identified as non-heterosexual. Of the respondents, approximately 8% of the United States population identified as queer (census.gov).

It's still relatively novel for population-level surveys to try, or have the tools, to collect information on queerness. This is evidenced by the fact that even among nationally representative datasets, conducted by government agencies, there is not a consistent measurement or estimate of queerness in the United States. And though true that it's still relatively novel for academic disciplines to attempt to collect their own data on queerness, an increasing number make the effort.

Prominent literature

As above, queerness does not have a standardized definition. Though the empirical literature on queer criminology lacks, in the studies that do exist, the definitions and items that constitute queerness vary from study to study. Below are the details of four empirical studies on queerness in prisons, and how their definitions of queerness shape their studies and conclusions. I selected which studies to serve as examples in

this study according to a significance threshold of 100 or more citations on Google Scholar: Lydon et. al. (2015), Meyer et. al. (2017), The Bureau of Justice Statistics (2013), and Wilson et. al. (2017). The selection of studies I was left with using this threshold was incredibly limited, so I widened the net to include newer publications that may have not had the time to reach that threshold. However, I found that most academic publications, non-profit briefs, and news reports, regardless of significance, used the same data: the 2011-12 National Inmate Survey (The Sentencing Project, 2022; Prison Policy Initiative, 2021; Crist, 2016; Ryan, 2022). Two publications using this data are included in the analysis (Meyer et. al., 2017; Bureau of Justice Statistics, 2013). Many of these publications even use data and figures directly from Meyer et. al. (2017), one of the studies using the National Inmate Survey already included in this analysis. These limitations, as well as the limited number of quantitative studies on queerness in prison I began with, refined which studies I could analyze to the four discussed here.

Lydon et. al., 2015

Black & Pink is a queer prison abolition group that publishes monthly newsletters, both to people in and outside prison walls. In 2015, they surveyed their queer subscribers in prison, asking questions about prison experiences, discrimination, and, in general, queerness in prisons. Lydon et. al. published a report on this survey, drawing attention to prison experiences concerning solitary confinement, abuse, and the combination of socioeconomic status and queerness that landed people in prison (Lydon et. al., 2015). In this report, Lydon et. al. use the acronym “LGBTQ,” and write that

> this acronym stands for Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning. Even though we know that sexuality and gender are much bigger than these letters, we nevertheless use this limited acronym to name include people who claim LGBTQ identities as well as many others, including but not limited to: samegender-loving, homosexual, homophile, transsexual, transvestite, nelly, asexual, Two-Spirit, intersex, sissy, dyke. We continue to seek better words for people who identify outside of heteronormative and white supremacist categories of gender and sexuality (Lydon et. al., 2015, p. 15).

The survey items attempt to capture sexual orientation and gender identity in an array of different questions: questions include self-identified gender and sexuality, whether someone identified as LGBTQ before they were incarcerated, who knows about the respondent being LGBTQ, if they've had sex in prison, if they've been punished for their sexuality, and a lot of questions about hormone replacement therapy and gender dysphoria– a medical diagnosis for a disconnect between gender identity and biological sex (Lydon et. al., 2015).

Lydon et. al.'s (2015) sample is LGBTQ incarcerated individuals. Without a heterosexual comparison group, there is no way to determine, from this survey, how many people in prison identify as queer compared to non-queer. But still of note is the way they chose to quantify identities. The options for self-selecting gender are: trans woman, trans man, cis woman, cis man, genderqueer/gender fluid, Two-Spirit, intersex, and other, including a fill-in-the-blank option should someone select other. The options for self-selecting sexuality are: lesbian, gay, homosexual, bisexual,

queer, same-gender loving, Two-Spirit, asexual, and other, including a fill-in-the-blank option should someone select other. This is also the only survey, to my knowledge, that asks whether respondents identified as LGBTQ before their incarceration, to which 65% of participants responded affirmatively. Asking about LGBTQ identity prior to incarceration opens up the potential for a conversation on the sexed nature of prisons, despite how hard correctional officers attempt to control displays of sexuality (Lydon et. al., 2015; Krienert et. al., 2014).

Meyer et. al., 2017

Meyer et. al. (2017) analyzed the 2011-2012 United States National Inmate Survey (NIS). The NIS was developed in accordance with the Prison Rape Elimination Act (PREA), meant to capture the prevalence of sexual misconduct in carceral facilities (Field and Lauger, 2009). A subsample received an additional survey, asking an assortment of questions about demographics and criminal history, including questions on gender and sexual orientation. There are three questions in the NIS that can capture gender identity and sexual orientation: one asks for a self-disclosed gender identity, one for a self-disclosed sexual orientation, and one asks whether the respondent had only had sex with men, women, or a mix. Based on the two questions about sexuality in the NIS, Meyer et. al. came up with three categories that measured queerness, though none of the categories question gender identity: LGB (lesbian, gay, bisexual), MSM (men who have sex with men), and WSW (women who have sex with women). The NIS asks each individual if they self-identify as lesbian, gay, or bisexual; and asks if they had participated in what would be considered homosexual intercourse before entering prison. The decision-making process regarding which

acronyms to use is not explicit in the report, but I hypothesize that the decisions were made according to exactly what researchers were measuring: lesbian, gay, bisexual, women who have sex with women, and men who have sex with men. Respondents were categorized as LGB if they self-identified as such, MSM if they did not identify as LGB but were men who had had sex with men before, and WSW if they did not identify as LGB but were women who had had sex with women before.

The NIS is distributed to a sample of people in jails and prisons in the United States. For the purposes of their analysis, Meyer et. al. lumped all three categories together, and then parsed them out for more precise conclusions; they found that 6.2% of men in jails, 9.3% of men in prisons, 35.7% of women in jails, and 42.1% of women in prisons either identified as LGB or had had non-hetero sex before entering prison (Meyer et. al., 2017).

The Bureau of Justice Statistics, 2013

In May 2013, the Bureau of Justice Statistics released a report on the sexual victimization in jails and prisons, as documented by the NIS (Beck et. al., 2013). As above, the NIS was developed as a result of the implementation of PREA, meant to capture sexual offending and victimization in prisons and jails (Field and Lauger, 2009). There are two questions that capture gender and sexual orientation, and both are self-identification questions. In this publication, the BJS estimates that approximately 8.6% of the United States prison population is "non-heterosexual," meant to capture lesbian, gay, bisexual, and other non-heterosexual orientations; transness is not included in this measure. Even though Meyer et. al. and the BJS use

the same dataset, their projections of queerness are not the same (Beck et. al., 2013; Meyer et. al., 2017).

Meyer et. al. and Beck et. al. used the 2011-12 NIS. Even though Meyer et. al. is not a replication study of Beck et. al., their results should approximate each other, given they are performing descriptive statistics on the same population. Though Beck et. al. is not as explicit in their measures as Meyer et. al., given that they indicated that "non-heterosexual" indicates LGB, I'm drawn to conclude that the discrepancy in results is due to Meyer et. al.'s (2017) decision to include MSM and WSW. Meyer et. al.'s conclusions included people who self-identified as LGB, as well as people who had engaged in behaviors that would be considered homosexual. From Beck et. al.'s (2013) publication, it seems that their sample only accounts for people who self-identified as LGB (Meyer et. al., 2017; Beck et. al., 2013).

Wilson et. al., 2017

Wilson et. al. (2017) is similar to Meyer et. al. in that they only seek to study sexual orientation, not gender identity. This study examines the National Survey of Youth in Custody (NSYC), also developed in response to PREA. The NSYC is distributed to a sample of incarcerated juveniles to "[gather] mandated data on the incidence and prevalence of sexual assault in juvenile facilities" (Field and Lauger, 2018). The Bureau of Justice Statistics (2022) surveyed the whole sample on sexual misconduct, and a subsample also received a shorter survey that asked about an assortment of demographics and attitudes, including sexuality. The third dissemination of the NSYC asked multiple questions that had the potential to indicate sexual orientation: there was a question that asked respondents to identify their sexuality, and a question

that asked, similar to a Kinsey Scale[3], what their range of attraction was, from strictly heterosexual to no attraction at all. There were also questions asking about sex assigned at birth, and current gender identity. In the first two iterations of the survey, 2008-09 and 2012, there was one question that asked respondents to indicate their sexuality. There were no questions to indicate the transness of respondents (Bureau of Justice Statistics, 2022).

At the time Wilson et. al. were conducting this study, the most recent wave of data was the NSYC-2; their only measure of non-cisheteronormativity was one question asking for self-identification of sexuality. The items on that scale were totally straight (heterosexual); mostly straight but kind of attracted to people of your own sex; bisexual– that is attracted to males and females equally; mostly gay (homosexual) but kind of attracted to people of the opposite sex; totally gay (homosexual); not sexually attracted to either males or females; don't know/refused (Field and Lauger, 2009). Wilson split respondents into three categories, and then two categories for analysis: straight, mostly straight, and LGB; for analysis, the label "sexual minority" was applied to all respondents that did not indicate that they were completely straight, or that did not know. Using these measures, Wilson et. al. concluded that 11.8% of youth in custody fall under the sexual minority label, and 6.5% are LGB (lesbian, gay, or bisexual) (Wilson et. al., 2017).

[3] In the 1940s, Alfred Kinsey began formulating what would eventually become known as the Kinsey scale. The Kinsey Scale ranges from 0-6, 0 being completely heterosexual, 6 being completely homosexual. Though the scale has come under fire in social science research lately, for a long time it was a way for people to measure their own sexuality, and offered better insight than existed at the time into the true nature of sexuality as a spectrum (Drucker, 2012).

Each of these three studies does something different with their definition of queerness, and how they choose to analyze their samples, as documented in Table 1. Meyer et. al. separate their conclusion by gender and by type of facility; Lydon et. al. cannot capture a heterosexual comparison group but can capture sexual orientation before incarceration; Wilson et. al. split sexuality into measures of self-identification and behavior and provide significantly more items for respondents to select when asked about sexuality. Given that the populations of interest in these studies are slightly different, it is difficult to compare statistical conclusions; but what is not difficult to understand is that dependent on how queerness is measured, estimates of the queer population in prison vary greatly (Meyer et. al., 2017; Lydon et. al., 2015; Wilson et. al., 2017).

[Table 1 about here]

None of the studies or datasets analyzed here reach the same conclusion about proportions of queerness in the populations they wish to study. Even when using the same data, or generalizing to the same population, conclusions vary according to who researchers choose to include in their measurement of queerness. The studies cannot agree on whether to include transgender individuals in their measures of queerness; nor can they agree on whether to include individuals who have engaged in queer sexual acts but do not identify as queer in these measures. The discrepancies in both measurement and conclusions of these studies are glaring, and further evidence the necessity of one agreed-upon measurement standard when measuring queerness.

The generalizability problem

To effectively understand how people end up in prison, we have to be able to understand who the people who end up in prison are. To effectively reduce recidivism rates, we have to be able to establish identity-specific programming aimed to help the marginalized individuals in the prison system. The generalizability problem is a concept from feminist criminology and proposes that criminological theory, and the concept of justice in general, was developed according to samples of cisgender, heterosexual white men, and fails to incorporate the nuances of other identities into our understanding of criminal justice (Miller, 2014). Miller also furthers Chesney-Lind's (1989) claim that a gender-blind field isn't gender-blind at all by acknowledging that criminologists use macro-level theories, created through studying men and boys, to generalize to their entire population of interest, regardless of gender identity– the same cannot be said about studies with female samples of interest. In this, theorists acknowledge that perhaps the female experience is not generalizable to people who do not identify as female– their lived experiences, opinions, and rationalities are likely different from individuals who do not identify as female. However, the same is not said about the experiences of people who do and do not identify as male, consequently ignoring the differences in lived experiences within different gender identities. In doing this, the field claims a gender-blind approach to theory, when in actuality they assume male as the standard gender and assume non-male experiences without actually asking or studying them (Miller, 2014; Bernard et. al., 2019; Chesney-Lind, 1989).

A queer generalizability problem, as is applied to this study, seeks to understand and deconstruct the gender normativity and heteropatriarchy that the United States justice system is built upon (Vitulli, 2012). First coined by Kimberlé Crenshaw in 1989, the term intersectionality attempts to explain and understand the differences in the lived experiences of people who reside in the margins of society: the life of a Black woman is inherently different from the lives of a Black man or a white woman, because of the ways that Blackness and womanhood intersect to create an entirely new, further-marginalized identity (Crenshaw, 1989). The discussion of intersectionality is crucial to understanding both a queer generalizability problem, as above, and the lives of the people most at-risk of incarceration.

Prisons were conceptualized as cisheteronormative, sexed institutions, meant to “remove sexual and romantic intimacy and associated disciplinary problems" (Carr, et. al., 2020, p. 552); the gender normativity and heteropatriarchy of prisons also manifest in access to healthcare and proper housing, among other necessities. Many queer individuals are housed in prisons according to their biological sex, or observable genitalia, regardless of their gender identity (Brown and Jenness, 2020). Some prisons choose to place trans individuals into solitary confinement instead of with the population that matches their gender identity– Lydon et. al.’s (2015) report on Black and Pink’s survey of incarcerated queer people found that 85% of queer adults had been in solitary confinement during some part of their sentence. From the same report, 7% of queer adults are HIV positive; 67% have been diagnosed with a mental illness, and of the 67%, 48% have been denied therapy (Lydon et. al., 2015).

Prisons were initially conceptualized to isolate individuals, forcing them to repent and attempt to reconcile their relationship with God (Meskell, 1998). As the American prison system evolved, there were separate prisons for men and women, largely to save the souls of deviant women by keeping them away from the sexual temptation of men and reforming them into submissive, domestic housewives. Though these are not the explicit goals of prisons anymore, the foundation of the carceral system has always been and will continue to be, unwelcoming of individuals who do not conform to strict, binary gender roles (Mogul et. al., 2011; Chesney-Lind, 1989).

Though true that prisons have always been institutions known to foster queerness, the separation of men and women into sexed prisons exacerbated this phenomenon (Vitulli, 2013). Mogul et. al. (2011) write that

> Ultimately, prisons and jails have always served as a breeding ground for raced, gendered and classed archetypal amalgam of criminality, disease, predation, and out-of-control sexuality [...] Additionally, prisons are places where deviance from gender and sexual norms is punished through sexual systemic violence, forced segregation, the denial of sexual and gender expression, and failure to provide medically necessary treatment for conditions deemed queer, including hormone therapy and treatment of HIV/AIDS (pp. 95-96).

Individuals who either self-identify as queer, or who staff have decided are queer based on actions or other non-determinate factors, suffer pains of imprisonment that heterosexual individuals are not subject to, or are not subject to the same extent. Any

sort of interaction between individuals of the same gender expression can be interpreted as sexually promiscuous, even should it be something as simple as handholding or letter writing (Borchert, 2016). This extends outside of within-prison relationships as well, with denial of hugging or hand holding with visitors of the same gender expression having been documented (notably, however, hand holding and hugging with individuals of the opposite gender presentation [read: heterosexuality] are allowed). Sexual activity is illegal across the United States carceral system, and any sort of violation is punishable by loss of "good time," solitary confinement, or any number of other institutional punishments. Multiple studies have found that queer individuals are placed in solitary confinement at higher rates than are non-queer individuals– they are also more likely to be placed in solitary confinement than are any minority group in the prison system (Meyer et. al., 2017; Beck et. al., 2013; Brown and Jenness, 2020; McCauley and Brinkley-Rubinstein, 2017; Arrigo and Bullock, 2008; Grassi et. al., 2018).

The United States carceral system was built anticipating the lives of cisgender, heterosexual men, with racial discrimination and segregation built into the foundation of the system (Javaid, 2018; Carr et. al., 2020; Johnson et. al., 2005). Given that the prison system is far from generalizable to the queer population, it is further from generalizable for anyone who falls at the intersection of queerness and any other marginalized identity. It is a common refrain that individuals of racial minorities are overrepresented in the prison system, and that there are more people of lower socioeconomic status incarcerated (Garland et. al., 2008; Blumstein, 1988; Blumstein, 1982; Beck and Blumstein, 2018; Clarke and Koch, 1976; Greenberg and Rosenheck,

2008). However, the literature on the people who identify as queer *and* of a racial minority, or queer *and* at a socioeconomic disadvantage, is markedly missing. To begin to understand intersectionality's role in the prison system, recidivism, and rehabilitation, criminology needs to achieve a better understanding of the populations that make up the prison society.

Standardizing a social construction

According to prominent queer theorists like Foucault, queerness was never meant to be defined, standardized, or even concretized. Living in a post-post-structuralist society, however, queerness means something and changes the way people inside and outside the label live their lives. To understand what these changes are, and the magnitude to which they affect society, criminology needs to move toward a standardized measure of queerness. Upon a thorough understanding of the measurements of data sources and publications, both those detailed above and others, I propose that, when asking questions that attempt to understand the differential life experiences of individuals who identify as lesbian, gay, bisexual, transgender, queer, and other non-heterosexual orientations, the field use strictly self-identification as a measure of queerness.

Yost and McCarthy published a study in 2012 on the phenomenon of heterosexual women's "same-sex encounters" in the college party scene (p. 7). They found that approximately 33% of heterosexual women had had some consensual sexual contact with other women, driven by a host of factors including the desire to experiment in college, pressure and sexualization by men, and alcohol or other substance inhibition (Yost and McCarthy, 2012). In some studies on queerness, these

women would be included in measures, given their experience, no matter how brief (Meyer et. al., 2017). While true that sometimes the phenomenon of "straight girls kissing" leads to an eventual queer identity and research that seeks to examine the reasoning for or the effect of, these behaviors would benefit from those measures, I propose that research that seeks to examine the queer population and their experiences, or queerness in general, should not include these individuals in their measures (Rupp and Taylor, 2010). Some attitudes and discriminations shape queerness into the margins, and into something of radical resistance (Ben-Moshe et. al., 2015; Henriksson, 2019). To claim that the individuals who "visited" queerness and decided that it wasn't for them, have experienced the same reactions from the general public as queer "residents," even if these "visitors" eventually become "residents," discounts the vilification that people who actively identify as part of the queer community still face (Rupp and Taylor, 2010; Adam, 1998; Diefendorf and Bridges, 2020; Peterson, 2020).

The present study

It was only in 2008 that the first United States criminal justice agency collected information on gender and sexuality in its survey. Now that some institutions are regularly including questions on sexuality and gender in their survey items, the field needs to begin to move toward standardizing a definition of queerness so we can accurately understand to what extent if at all, queer people are differently represented at each phase of the criminal justice system. This study proposes that queerness be measured only according to self-identification, because of the discrimination and struggle that often accompany a queer identity that do not always apply the same way

to “visitors” of queerness who experiment with queerness and eventually decide against it.

Existing criminological literature accepts the conclusion that queer individuals are overrepresented in the United States prison system (Donohue et. al., 2021; Cain and Ellison, 2022; McCauley and Brinkley-Rubinstein, 2017; Meyer et. al., 2022). However given the inconsistencies in measurement across studies, I seek to empirically analyze the validity of this conclusion.

Hypothesis

This study examines the following hypothesis:

Hypothesis 1: Based on the proposed standardized definition of queerness, the proportion of people in prison who self-identify as queer will be significantly different from the general adult population in the United States.

Chapter 3: Data and Methods

This study will compare estimates of queerness in the prison and general population against each other, and against existing literature, as the studies that have been detailed above. Estimates of queerness in prison are based on the 2016 Survey of Prison Inmates (hereafter: SPI) and estimates of queerness in the general adult population are based on the 2016 Behavioral Risk Factor Surveillance System (hereafter: BRFSS). The BRFSS is one of the data collection agencies that was examined in the existing literature and has been chosen for comparison in this study due to data availability, both in the sense of public access to the data as well as having data on transness and non-heterosexuality; as well as, and a bigger driver in the selection of this data as comparison, the existence of data from 2016 that can be used as a direct comparison to the SPI. The Census, one of the only other general surveys that captures queerness, didn't start to ask those questions until 2021, and comparing estimates from 2021 and 2016 would be inaccurate. Having data from the BRFSS and the SPI from the same year makes the comparison stronger and more accurate.

Data

The data for this study comes from the 2016 SPI, as this is the most recent update to the dataset. The population of interest in this study is all incarcerated individuals over the age of 18 in United States prisons during 2016. The sample was determined through a two-stage sample design: first, researchers conducted a stratified random sample of prisons based on the 2012 census– of 385 sampled facilities, 364 responded and participated in this survey, producing an institutional response rate of 98.4%.

Facilities were stratified according to biological sex housed, federal facility, Texas facility, California facility, Florida facility, or facility in any of the other 47 states. Then, researchers conducted a random sample of prisoners from each of the 364 prisons in the sample. For each of the state prisons in the sample, there was a simple random sample of 92 prisoners drawn from each facility. For each federal prison, researchers stratified individuals according to whether their controlling offense was a drug offense; given that half of all federal prisoners were incarcerated for a drug offense, individuals that were not incarcerated for drug offenses were oversampled by a factor of 1.5 to ensure that non-drug offenses were adequately represented in the study. Researchers anticipated a 70% response rate, and sampled 115 individuals from each facility, hoping for 80 valid responses. The total sample of prisoners in the United States is composed of 24,848 individuals, ranging within a 70-75% response rate.

Once selected, each of these individuals participated in a 50-minute interview with an individual at Research Triangle Institute (RTI) International on behalf of the Bureau of Justice Statistics. Cross-sectional interviews were conducted face-to-face between the months of January and October 2016 using computer-assisted personal interviewing (CAPI), which provided respondents the option to navigate around and away from sensitive questions. RTI researchers would ask respondents questions and input them on a computer– respondents were then routed through other avenues of the survey according to their answers.

The SPI is the dataset of interest in this study because it captures the gender and sexuality of respondents to the extent that they are willing to disclose, as well as

extensive demographic characteristics. Other prison datasets focus mostly on the prevalence of sexual victimization, and only a subsample of respondents is asked any further demographic questions; the SPI is a cross-sectional survey analysis of the demographic/life experiences of those in prison and offers more data to answer the question posed in this study.

There were a series of weights and adjustments applied to the SPI before it was disseminated for public use. In order for the SPI to be nationally representative, responses were weighted, including different weights according to state or federal facility, and design-base weights. Design-base weighting happened in two stages in accordance with the two stages of sampling: the first stage was the inverse probability of selection of a facility, and the second stage was the inverse probability of selecting a respondent; this is meant to account for the over- and under-sampling of some demographics. Further weighting according to the two stages of sampling adjusted for the selection of ineligible facilities, and ineligible participants, respectively. There was a nonresponse adjustment applied at each stage of selection as well; in the first stage, the number of responsive facilities was divided by the total number of facilities in the United States. In the second stage, a generalized exponential model (GEM) was applied:

> The GEM procedure was computed at the sex and jurisdiction level [...] Computing the second-stage nonresponse adjustment at the jurisdiction level was done for two reasons: (1) to increase the number of sampling units which contribute to the model and allow for a more robust set of covariates, and (2)

> to account for an inconsistent set of covariates provided by each [Department of Corrections] (SPI Codebook, 2016, p. 21).

Once the two-stage sampling was complete and weighted, weights were applied at the respondent level. The SPI's population of interest included all individuals in prison; however, in some states, individuals in solitary confinement were restricted from participating in the survey. In order to correct for this, and in an attempt to make the survey generalizable to those in solitary who had been kept from the survey, there was a restrictive housing adjustment: the total number of incarcerated individuals in restricted housing, is divided by the total number of second-stage respondents in restricted housing that were allowed, by their state's Department of Corrections, to be sampled and interviewed; this produced national estimates that included individuals in restricted housing.

There were two final adjustments applied: a post-stratification adjustment, and a final weight. The post-stratification adjustment was intended to make sure analysis weights were representative of the population of interest, and the final weight was meant to make sure each response is adjusted to make the sample representative. The post-stratification adjustment divided the total in each stratum by the adjusted weight computed in the nonresponse adjustment. The final weight for each individual is the product of the two original design weights multiplied by the post-stratification adjustment.

As will be explored further below, the BRFSS does not have information on queerness for all 54 eligible territories. To account for this, in an attempt to make the data more generalizable, the only states included in this analysis are those that are

also included in the BRFSS. Figure 1 details which states are included in this study's analysis: states marked gray indicate that both the BRFSS and SPI have data on queerness and are consequently included in this study.

[Figure 1 about here]

The state indicator in the SPI is the state in which the respondent was arrested. The sample was further limited to those that had non-missing data for the variables used in the analyses, therefore the analytic sample consists of 15,859 observations of the original 24,848. The decision about what subjects to drop, in addition to the attempt to generalize using the BRFSS as detailed above, is given that this study examines queerness as it relates to gender and sexuality: if respondents refused to answer both questions on gender identity and sexuality they were dropped from the sample.

Data for comparison: BRFSS

The Behavioral Risk Factor Surveillance System (BRFSS) is a telephone survey conducted in all 50 states, and some participating territories, meant to capture "uniform state-specific data on health risk behaviors, chronic diseases and conditions, access to health care, and use of preventive health services related to the leading causes of death and disability in the United States" (CDC.gov). 2011 was the first time the CDC began to include cell phone respondents, not just landline respondents, as a response to the rapid decrease of landline telephones and increase of mobile devices. The CDC works with state health departments to collect data, before all responses are returned to the CDC for editing and analysis. The BRFSS is weighted using a raking, or iterative proportional fitting, technique; this weighting allows for

cell phone respondents to be included in the sample, as well as the addition of an assortment of demographic questions (CDC.gov).

The unit of analysis for the BRFSS is each telephone number in the United States and participating US territories that is in service and can be dialed. Guam, Puerto Rico, and the US Virgin Islands used a simple random sample; all other locations used a disproportionate stratified sample. Phone numbers were included in a stratum dependent on the population density of the neighborhood with which the phone number was associated– there were medium- and high-density strata. Interviews were conducted as computer-assisted telephone interviews (CATI). Phone calls were conducted all days of the week, during daytime and evening hours (CDC.gov).

The BRFSS is composed of three sets of questions. There is a core unit, that all interviewers have to ask all respondents. There is an optional unit, where each state gets to decide which questions will be asked. States also get to add in extra questions of their choosing, according to what information is important for that state's health department to collect. The variable of interest in the BRFSS is composed of the responses to two other questions in the survey, but these questions are part of the optional module and add incredible missingness to the sample (cdc.gov). Only territories that were asked questions that could indicate queerness are included in the analysis, with the exception of Guam, since the SPI does not capture Guam.

Design weights are calculated using the weight of each geographic stratum, which accounts for differences in the likelihood of selection among strata; multiplied by the reciprocal of the number of phones within a household; multiplied by the

number of adults aged 18 years and older in the respondent's household. If respondents are cell phone users, then the reciprocal of the number of phones and the number of adults aged 18 and older, are both set to 1. The BRFSS design weight is meant to adjust for the probability of selection, nonresponse bias, and non-coverage errors in order to make the sample more generalizable to the entire United States population.

Variable of analysis

The variable of analysis is a binary variable that indicates queerness. This variable was constructed using others in each dataset to capture individuals who 1. Self-selected a sexuality other than heterosexual when surveyed or 2. Self-selected the option for transgender when surveyed on gender identity.

The necessity for the independent variable of interest to be self-constructed comes in the potential for discrimination and internalized homophobia associated with identifying as queer. Whether individuals exhibit queer behaviors but fail to consider themselves queer, or are adamantly heterosexual as a protective measure, the primary interest in this study resides in how exhibition of behavior and desires can lead to differential incarceration rates. Constructing this variable was multi-fold: I first identified variables "gender identity," and "self-reported sexuality", given that they document potential queerness among subjects. Categories for self-reported gender identity in the SPI are "don't know," "male," "female," "transgender," and "do not identify as male, female, or transgender." The BRFSS asks if the respondent identifies as transgender and, if they do, provides the respondent to select if they are transmasc, transfem, or nonbinary. There is also a question that indicates biological

sex. Finally, the variable for self-reported sexual orientation provides the following categories: don't know; lesbian or gay; straight, that is not lesbian or gay; bisexual; something else; you don't know the answer. I generated a "trans" dummy variable and set all observations to 0, before replacing observations with 1 if they self-identify as transgender and marking the observation as missing if the individual refused to identify their gender identity. There were 31 documented transgender individuals in the sample. I then tabulated the variable asking about self-reported sexuality and generated dummy variable "LGBQ" to strictly capture subjects' sexuality. Observations were marked as missing if they refused to answer, 0 if they identified as heterosexual, and 1 if they identified as lesbian/gay, bisexual, or other– this study assumes that other non-normative sexualities fall under "other," such as pansexual or demisexual. Table 3 details which questions were used from each dataset to determine whether a respondent qualified as queer for this study. Bolded terms and numbers indicate that those responses are included in the final analysis variable.

In constructing the final dummy variable of interest, "queer" I set observations to 1 if one or both observations in the "trans" and "LGBQ" variables were 1. Inversely, if both observations in the "trans" and "LGBQ" variables were missing, the observation was dropped. As noted above, this study acknowledges that grouping cisgender queer individuals and transgender queer individuals can misconstrue the experiences that are unique to individuals based on their gender identity. However, this variable allows for the analysis of the entire queer community, which is seen as a greater benefit with more accurate results than the study would be without the inclusion of transgender individuals in this variable.

[Table 2 about here]

Analytic strategy

Following the recommendations of the User's Guide, I use jackknife replicate weights for all analyses with the SPI. According to the documentation, "The Public Use File (PUF) does not contain the necessary identifiers to support the use of [Taylor series linearization]; as such, the use of replicate weights is required for direct variance estimation" (User's Guide, p. 3), especially for analyses of "finite population estimation by geography/jurisdiction […] and any analyses of sex, sexual orientation, and gender identity" (User's Guide, p. 3). To account for the complex weighting strategy utilized in the BRFSS, a strata weight adjustment was performed. The sample proportions of queerness were analyzed using a two-sample test of proportions. In this, I compare the proportions of queer-identifying people in prison, as documented by the SPI, and in the general public, as documented by the BRFSS. I use the *z* statistic in Equation (1) to test these proportions.

$$z = \frac{(\overline{p_1} - \overline{p_2}) - 0}{\sqrt{\bar{p}(1-\bar{p})(\frac{1}{n_1} + \frac{1}{n_2})}} \quad (1)$$

In this, $\overline{p_1}$ represents the proportion of queer individuals in the SPI, and $\overline{p_2}$ represents the proportion of queer individuals in the BRFSS. $\bar{p}$ is the overall sample proportion, found by adding together the number of queer individuals in the SPI and the BRFSS, and dividing by the total sample size when the SPI and the BRFSS are combined. n_1 is the total sample size for the SPI, and n_2 is the total sample size for the BRFSS. The *z* statistic will then be compared against the *z*-score associated with a 99% confidence level, or when α=0.01.

After this comparison, I will draw a conclusion regarding whether, using the definition of queerness as proposed in this study and these data, queer individuals are differently represented in the prison system than the general population. If the samples are significantly different from one another, indicating different proportions of queer individuals in prison and the general population, I will determine the relative risk associated with being queer in prison versus the un-incarcerated adult population using Equation (2).

$$\frac{\pi_1}{\pi_2} \tag{2}$$

Here, π_1 is the proportion of queerness in the SPI, and π_2 is the proportion of queerness in the BRFSS.

Chapter 4: Results

[Table 3 about here]

Table 3 reports the weighted demographic characteristics of the Survey of Prison Inmates, according to queer status.

[Table 4 about here]

Table 4 reports the weighted demographic characteristics of the Behavioral Risk Factor Surveillance System, according to queer status. The variable indicating housing insecurity is not included in this demographic table because the BRFSS is a survey of people with telephone numbers, and each telephone number has some home address associated with it. There is no variable to indicate housing insecurity in the BRFSS.

H1

The null hypothesis for this test of proportions is that there is no difference in the proportion of queer people in prison, and the proportion of queer people not in prison. The calculated z statistic using each independent sample is z=-4.87. At a 99% confidence level, the p-value is $p<0.001$, indicating a rejection of the null hypothesis and a statistically significant difference between the proportions of queer people in prison and queer people not in prison.

Relative risk ratio

[Table 5 about here]

The relative risk statistic was calculated by dividing the weighted proportion of queer respondents in the SPI, by the weighted proportion of queer respondents in the BRFSS (Agresti, 1996). The un-rounded risk statistic 0.819 indicates that the sample proportion of queer respondents is 18.1% lower in prison than not– that is, the proportion of queer individuals in the prison population is approximately 18.1% smaller than in the non-incarcerated general population.

Demographics

The demographic tables in this study present a complex picture of the prison population and the general population, differentiated by queerness. The proportion of Black queer individuals in prison is approximately twice as large as that of the general population. The overrepresentation of Black individuals in prison has been documented for years (Tonry, 1994; Forman Jr., 2010; Blumstein, 2014; Hinton et. al., 2018). The War on Drugs is often cited as the nexus for this overrepresentation (Koch et. al., 2016; Walters, 1994; Mitchell, 2009; Bobo and Thompson, 2006; Provine, 2011), but it has traced back as far as the implementation of the thirteenth amendment (Gilmore, 2000; Gómez and Farr, 2023).

This study shows, as well, that the proportion of queer mixed-race individuals in prison is more than five times greater than that of queer mixed-race individuals in the general population. While there is extensive literature on minority incarceration, perhaps because of small sample sizes, there is little literature that addresses specifically the over-incarceration of mixed-race individuals, which lends itself to future research.

The proportion of cisgender queer women in prison is approximately five times greater than the proportion of cisgender queer women in the general, non-incarcerated adult population; the proportion of cisgender queer men in prison is approximately half as large as the proportion of cisgender queer men in the general population. At the intersection of the disciplines of anthropology and criminology lay studies on the effects of prenatal testosterone and androgens on development, and evolutionary neuroandrogenic theory. Hoskins and Ellis (2015) published on what has been called the "criminogenic hand": they write that exposure to increased levels of prenatal androgens increases the likelihood of offending as an adult, and there is evidence of this exposure in the ratio of the ring finger to the index finger– if the index finger is shorter than the ring finger, an individual was exposed to high testosterone levels in utero, and is more likely to offend as they mature (Hoskins and Ellis, 2015). In 1987, Ellis and Ames published on potential biological causes of queerness and reached a similar conclusion: exposure to high prenatal androgen levels is more common in lesbians and queer women than non-queer women (Ellis and Ames, 1987). Taking these two studies concurrently, there is a correlation between prenatal androgen exposure, female queerness, and criminal offending, which offers one potential explanation for the overrepresentation of queer women as compared to queer men in the SPI.

Another potential explanation for this overrepresentation is the highly masculine nature of prison, and the feeling queer men may experience of needing to conceal their queerness for protection. Harvey et. al. (2021) interviewed incarcerated men who detailed their decision whether or not to be openly queer in prison; many

said that they chose not to disclose their identity because of how much violence they saw directed at other gay men. Others reported that to identify as gay would be to identify as feminine, which came with potentially life-threatening consequences. Even for the men that did choose to be openly queer in prison, there were often violent consequences, in the form of physical and verbal abuse at the hands of other incarcerated individuals and moderated by the staff of the correctional facility (Harvey et. al., 2021). It is possible then, perhaps, that the disparity between incarcerated cisgender queer men and women is not as large as reported in the SPI, and queer men do not feel safe disclosing their sexuality while in the confines of the prison.

In the incarcerated population, there are proportionately fewer queer individuals than non-queer individuals that were employed in the 30 days leading up to their arrest. While true that Title VII of the Civil Rights Act of 1963 prohibited discrimination in the workplace, it wasn't until *Bostock v. Clayton County* (2020) that it was explicated at the federal level to include gay and transgender individuals– bisexual individuals are nowhere in the text (Marcus, 2020). The data in this study were collected four years before this decision, leaving open the possibility of employment discrimination to account for this disparity. Further, Burn (2018) wrote that employment non-discrimination acts, in general, are associated with an increase in wages for gay men, but a decrease in wages and hours worked for lesbian women.

Chapter 5: Discussion

In this study I proposed that researchers begin to use a standardized definition of queerness when conducting criminological research, as opposed to including behaviors. Table 1 reported the variants of how queerness is identified in the literature, and decisions of whether to include transness or sexual behaviors as opposed to strictly identified sexual orientation had evident effects on researchers' understandings of queerness in different populations. The ability of criminology as a field to use the same, streamlined definition of such an important, but still new to the field, identity will help propel our research forward. It will provide us with better understandings of the intricacies of queer justice.

Table 1 details how prominent literature and data collection agencies measure and report queerness. The only consistency among the publications selected for analysis in this study is that they all included nonheterosexuality in their measures of queerness. However, these studies varied on whether they included transgender individuals in their estimates and figures; they varied on the dataset they used and were limited by the questions in each survey; and most significantly, they varied in their estimates of queer individuals, both in the general population and in the carceral sphere.

The US census predicted that 8% of adults in the United States identify as queer, according to both self-reported identity and discordance between gender identity and sex at birth. Using the measurement as proposed in this study, and only counting individuals who reported that they were not cisgender and/or not heterosexual, this study estimates that only 4.7% of adults in the United States

identify as queer. Meyer et. al. (2017), using the 2011-12 National Inmate Survey, estimated that 9.3% of men and 42.1% of women in prison were not heterosexual; this estimate comes from including individuals who don't identify as heterosexual in their sample, but also from including individuals who reported having sex with a member of the same gender presentation. This study estimates that 2.3% of men and 22.3% of women in prisons are cisgender and queer. The Bureau of Justice Statistics, using the same 2011-12 National Inmate Survey, estimated that approximately 8.6% of adults in US prisons are not heterosexual, but included no measure for transness. This study estimates that 3.9% of adults in US prisons identify as queer and does account for transgender individuals in this estimate.

Based on the differences in measurement evident in queer criminological research, I also asked whether there is a disproportionate number of queer individuals in prison when compared to the non-incarcerated general population. After performing a two-sample test of proportions and learning that there is a statistically significant difference between these proportions, I determined the relative risk ratio associated with being queer. I found that the ratio of queer individuals in prison is approximately 18.1% smaller than in the adult non-incarcerated population.

One potential driver of the underrepresentation of queer individuals in the prison population has to do with the gender makeup of prison, and the queerness distribution within each gender. Figures 2 and 3 detail how queerness is represented in each dataset by age brackets—Figure 2 shows how queerness is distributed across ages for male respondents, and Figure 3 shows how queerness is distributed across ages for female respondents. Below the age of 65, there are proportionally more male

queer respondents in the BRFSS than in the SPI—there are proportionally more queer men in the general un-incarcerated population than there is in the incarcerated population. Even so, between the ages of 35-64, the proportion of queer male respondents in the general population is less than twice the proportion of queer male respondents in prison—the discrepancies are not extreme. However, below the age of 54, there are, proportionally, between two and three-and-a-half times more queer women in prison than in the general population.

[Figures 2 and 3 about here]

In accordance with existing literature, criminology should expect, both statistically and substantively, that queer individuals are overrepresented in the United States carceral system; until this point, this has been the conclusion reached and accepted by the field (Cain and Ellison, 2022; Ball et. al., 2019; Williams and Restivo, 2024; Hanssens et. al., 2014). After applying my proposed measurement of queerness, though, I find evidence for the opposite. As far as I am aware, no study to date has concluded that queer people are slightly underrepresented in the United States prison institution.

The general prison gender makeup is approximately 13.7:1 cisgender male to cisgender female, according to the data analyzed in this study. Even though queer women are so vastly overrepresented in the prison population when compared to the general population, because they are so incredibly underrepresented in the total prison population, these proportions are lost to the magnitude of incarcerated males. That is, given that males are less or equally as likely to report being queer in prison than they are in the general population, the low proportion of queer male respondents in prison

is likely driving the overall conclusion of this study, that queer individuals are underrepresented in the prison population. Had this study focused exclusively on women's prisons, the conclusions would likely have been of a greater magnitude, and in the opposite direction.

It is evident in these simple comparisons that there is a disjunction between how many queer people criminology thinks are in spaces, and how many people are actually in these spaces. In deciding to measure queerness to include sexual contact with someone of the same gender presentation, or to exclude transgender individuals, for some examples, the risk of being incarcerated and queer is unduly inflated. This does not take away from the fact that the queer individuals that are in these spaces, and especially in the carceral space, live lives that any non-queer counterpart could not conceptualize. But without an actual understanding of how many queer individuals are incarcerated, and of the intersections within those broad statistics, any attempt made by the justice system to attempt to accommodate and incorporate queerness into carceral dealings runs the risk of being unhelpful and misguided.

Policy implications and revisiting the generalizability problem

Knowing more about the makeup of the queer incarcerated community, particularly as it relates to intersectional disparities as represented in this paper, should provide additional information and empirical evidence for correctional departments as they design reentry, therapeutic, vocational, and other programs that are suited for the populations for which they are directed. Knowing that there are, proportionally, vastly more queer women in prison than in the unincarcerated adult population, state Departments of Corrections should be motivated to develop programs specifically

that can address the gendered experiences, trauma, and discriminations that may be shared experiences among this population.

Researchers and practitioners cannot apply a cisgender, heterosexual, androcentric framework to prison programming and regulation when this is, evidently, not the population at the greatest risk once they've been incarcerated. The prison system was not inherently designed with the feminine experience in mind: there are states that restrict access to menstrual products so that incarcerated women are either provided with too few products or have to pay for their own products (O'Shea Carney, 2020; Tapp and Henson, 2024). The United States carceral system was not developed with the queer experience in mind; it certainly was not developed with the experiences of anyone who identified as queer *and*—and Black, and economically disadvantaged, and disabled.

The failure to consider the individuals who reside in the intersections of marginalized identities is a failure of the system. Even though this study has shown that there are fewer queer people in prison than in the general population, the number of queer individuals that are in prison is a non-negligible amount; and, in the population of incarcerated women, queer women are proportionately over-represented. Necessarily, prisons cannot provide programming suited to each individual and their life experiences; but to even begin to move away from the masculine, heterosexual framework that is the United States prison system as it stands right now, is a step toward decreased recidivism rates and a more rehabilitative system.

Limitations

As with any research, this study is not without its limitations. The BRFSS only asks questions about transness and sexual orientation in 26 of the 54 possible territories, and the SPI does not generalize to Guam, so this study is limited to 25 states, and not the whole country. There is a diverse mix of political orientations for the states that are included in the analysis, coupled with the decision to only compare the states that both surveys have data on, which hopes to provide some external validity that wouldn't have been there in the event of comparing 26 territories from the BRFSS to all 50 states and D.C. as captured by the SPI. Having done some basic analyses with both full datasets, however, the results would have been in the same direction, but different magnitudes. Regardless, it would better serve this research agenda to have data on queerness from more, if not all, of the territories captured by the BRFSS.

Another limitation of this study is the highly masculinized, heterosexualized institution that is the prison system. As above, queer men have been open with researchers about choosing not to disclose their sexuality while in prison as a protective factor. Given this, it is crucial that the researchers asking these survey questions make all respondents feel comfortable and ensure confidentiality and neutrality in their surveys. If a respondent chooses not to disclose their sexuality for fear of repercussion from other incarcerated individuals, if they do not feel safe with the researcher, or are not confident that their responses cannot be traced back to them, there is likely an undercounting of queer individuals, especially queer men, in especially the SPI.

Related is the question of what it even means to be queer, and what it means to be "queer enough" to answer affirmatively when surveyed. Sexuality is individual, and incredibly personal: one set of behaviors or actions might result in a multitude of different identity responses according to the lived experiences of the respondent. I still feel that there is incredible value in using self-identification as a queer indicator in criminological research; but I would be remiss to ignore the ways that society may tell someone who identifies as bisexual, but is in a heterosexually presenting relationship, that they are not queer, or are not queer enough to identify as part of the community. There are also questions of whether nonbinary identities should be included as transgender, or as something else entirely; the SPI does not offer that distinction.

Future research

The findings in this study open the door to a multitude of research questions. Now that it has been established that there is a disparate overrepresentation of queer women in prison as compared to queer men, researchers should continue to seek to understand the sentencing disparities among queer women and the compounded masculinization of lesbians, who subvert gender roles both in criminal offending and non-normative sexual orientation. Further, this study's conclusions and the Survey of Prison Inmates lend themselves to research on a specified queer strain theory: more incarcerated queer individuals experienced housing insecurity and unemployment in the time leading up to their arrest than did non-queer individuals, indicating a differential exposure to socioeconomic strain contingent on queerness. There is also room for study into the overrepresentation of mixed-race individuals in the prison

system– there is extensive literature on Black and Hispanic overrepresentation, but hardly any on mixed-race overrepresentation.

Conclusion

Just in the demographics explored in this study, a clearly intersectional image of the United States carceral system has emerged. There are individuals who reside at the intersections of queerness, racial and gender minority, socioeconomic strain, and so many others that could be explored further, whose lived experiences could have never been imagined by the individuals that built the prison system. If the criminal justice system should hope to enforce any humanitarian goal of punishment, the consideration of these people's identities needs to be brought into a conversation on reimagining United States incarceration.

While not all incarcerated trans individuals are denied gender affirming medical care, any denial is too much (Murphy et. al., 2023; Phillips et. al., 2020). Transgender individuals are often put in solitary confinement rather than housing for their gender identity (Phillips et. al., 2020; Van Hout et. al., 2020; Arrigo and Bullock, 2008). The people who find themselves in prison are often already at a socioeconomic disadvantage, and the mark of a criminal record now follows them for the rest of their life, as they may attempt to navigate obtaining education or employment (Pager, 2003; Buonanno, 2003). These are just a few examples of the punishment that accompanies the criminal sentence placed on an intersectional identity; the United States prison system needs to make advances toward humane treatment of all incarcerated individuals, not just the heterosexual white men the

system was originally created for, if there should be any hope of decreasing recidivism rates and lowering the prison population.

Table 1. Definitions and proportions of queerness by study

Study/data source	Definition	Data	Target population	Proportion queer
BRFSS	Self-identification of non-hetero sexual orientation and/or transgender identity	2016 BRFSS	Adults (18+) in the 50 United States, Guam, Puerto Rico, and the US Virgin Islands	3.6% men 3.5% women 0.4% trans
US Census	Self-identification of non-hetero sexual orientation, self-identification of transgender identity, and/or sex assigned at birth that does not match reported gender identity	2021 Household Pulse Survey	United States households	8% of the US population
*Lydon et. al., 2015**	Identified as LGBTQ before incarceration	2015 Black & Pink Prison Survey	Incarcerated queer adults (18+)	65.00%
Meyer et. al., 2017	Self-identification of non-hetero sexual orientation and/or sexual activity with a member of the same gender presentation	2011-12 National Inmate Survey	Incarcerated adults (18+) in United States prisons, jails, and other specialty facilities	6.2% of men in jails 9.3% of men in prison 35.7% of women in jails 42.1% of women in prison
BJS	Self-identification of non-hetero sexual orientation	2011-12 National Inmate Survey	Incarcerated adults (18+) in United States prisons, jails, and other specialty facilities	8.6% of US prisons
Wilson et. al., 2017	Self-identification of non-hetero sexual orientation, split into categories "LGB" and "sexual minority"; "sexual minority" captures respondents who experience queer attraction but don't identify as LGB	2012 National Survey of Youth in Custody	Incarcerated youth (<18)	11.8% sexual minority 6.5% LGB

*This study sample is of queer individuals, so there is no non-queer comparison. This proportion is representative of queer individuals in prison

Table 2. Data used to construct "queer" variables

Question	Proportion
Survey of Prison Inmates (n=15,506)	
"Which of the following best represents how you think of yourself?"	
Straight	0.961
Lesbian or Gay/Bisexual/Something Else	**0.039**
"How would you describe yourself?"	
Male/Female	0.998
Transgender	**0.002**
Behavioral Risk Factor Surveillance System (n=197,418)	
"Do you consider yourself to be:"	
Straight	0.955
Lesbian or Gay/ Bisexual/Other	**0.045**
"Do you consider yourself to be transgender?"	
No	0.996
Yes: MTF, FTM, GNC	**0.004**

Table 3. Survey of Prison Inmates sample demographics

	Non-Queer (n=14,357)		Queer (n=1,149)		Total (n=15,506)	
	X	**SE**	**X**	**SE**	**X**	**SE**
Race						
White	0.291	0.010	0.382	0.027	0.294	0.010
Black	0.340	0.012	0.227	0.018	0.336	0.012
Hispanic	0.246	0.010	0.227	0.024	0.245	0.010
Other race	0.020	0.002	0.019	0.006	0.020	0.002
Mixed race	0.104	0.004	0.147	0.016	0.105	0.004
Age						
Age 18-24	0.100	0.005	0.103	0.014	0.100	0.005
Age 25-36	0.317	0.008	0.407	0.022	0.320	0.008
Age 37-44	0.274	0.005	0.232	0.020	0.272	0.005
Age 45-54	0.184	0.006	0.188	0.018	0.184	0.006
Age 55-64	0.096	0.004	0.052	0.010	0.094	0.004
Age 65+	0.030	0.003	0.018	0.006	0.030	0.003
Gender identity						
Cisgender male	0.945	0.004	0.547	0.031	0.930	0.005
Cisgender female	0.055	0.004	0.402	0.032	0.068	0.005
Transgender	0.000	N/A	0.052	0.010	0.002	0.000
Socioeconomic indicators (dichotomous)						
High school degree	0.372	0.007	0.454	0.030	0.375	0.007
Employed	0.609	0.007	0.558	0.026	0.607	0.007

Table 4. Behavioral Risk Factor Surveillance System sample demographics

	Non-Queer (n=189,755)		Queer (n=7,663)		Total (n=197,418)	
	X	**SE**	**X**	**SE**	**X**	**SE**
Race						
White	0.640	0.002	0.597	0.012	0.638	0.002
Black	0.108	0.002	0.112	0.007	0.108	0.002
Hispanic	0.167	0.002	0.190	0.010	0.168	0.002
Other race	0.070	0.002	0.073	0.008	0.071	0.002
Mixed race	0.015	0.001	0.028	0.003	0.016	0.001
Age						
Age 18-24	0.115	0.002	0.252	0.010	0.122	0.002
Age 25-36	0.157	0.002	0.233	0.009	0.160	0.002
Age 37-44	0.162	0.002	0.144	0.008	0.161	0.002
Age 45-54	0.178	0.002	0.147	0.007	0.177	0.002
Age 55-64	0.178	0.002	0.121	0.007	0.175	0.002
Age 65+	0.210	0.002	0.103	0.006	0.205	0.002
Gender identity						
Cisgender male	0.484	0.002	0.422	0.011	0.481	0.002
Cisgender female	0.516	0.002	0.488	0.011	0.515	0.002
Transgender	0.000	N/A	0.090	0.007	0.004	0.000
Socioeconomic indicators (dichotomous)						
High school degree	0.867	0.002	0.847	0.009	0.866	0.002
Employed	0.571	0.002	0.574	0.011	0.571	0.002

Table 5. Cross-classification of queerness and data sample

	Queer identity		
Survey	No	Yes	Total
SPI	0.961	0.039	15,506
BRFSS	0.953	0.047	197,418

Figure 1: States included in this analysis

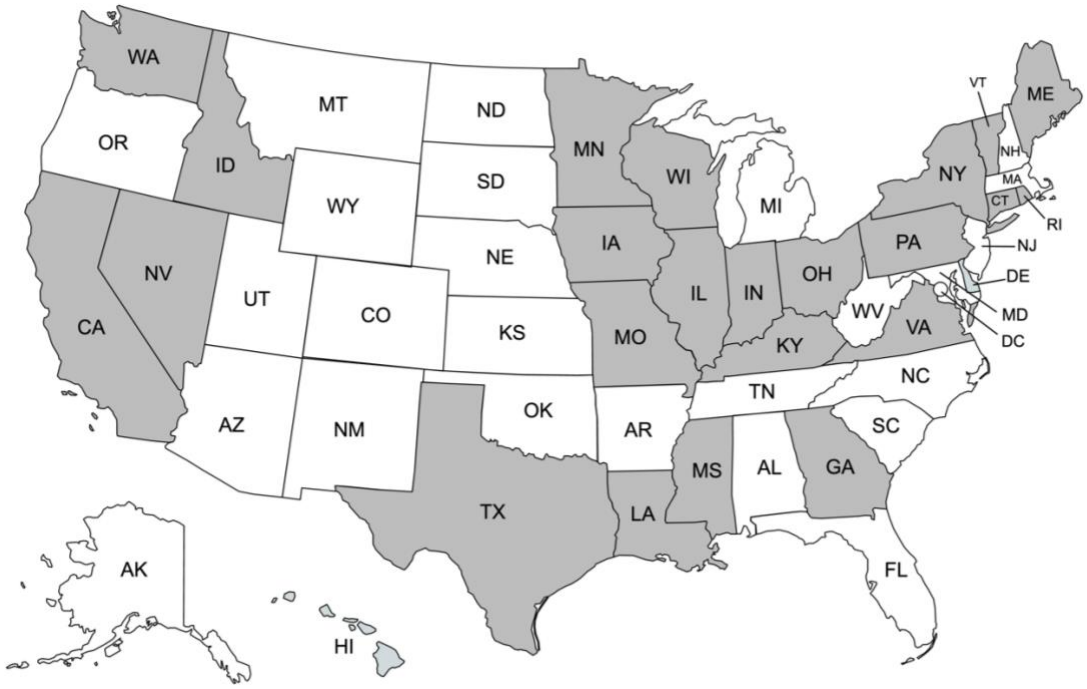


Figure 2: Proportions of queerness by age (male), SPI and BRFSS

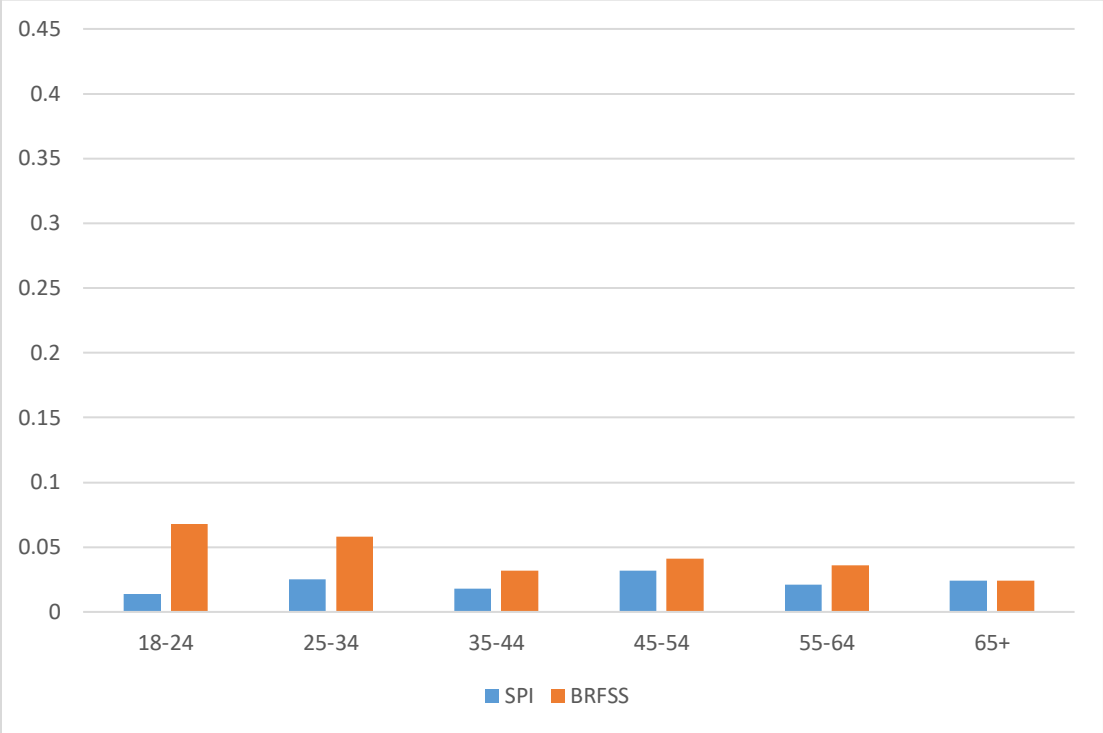
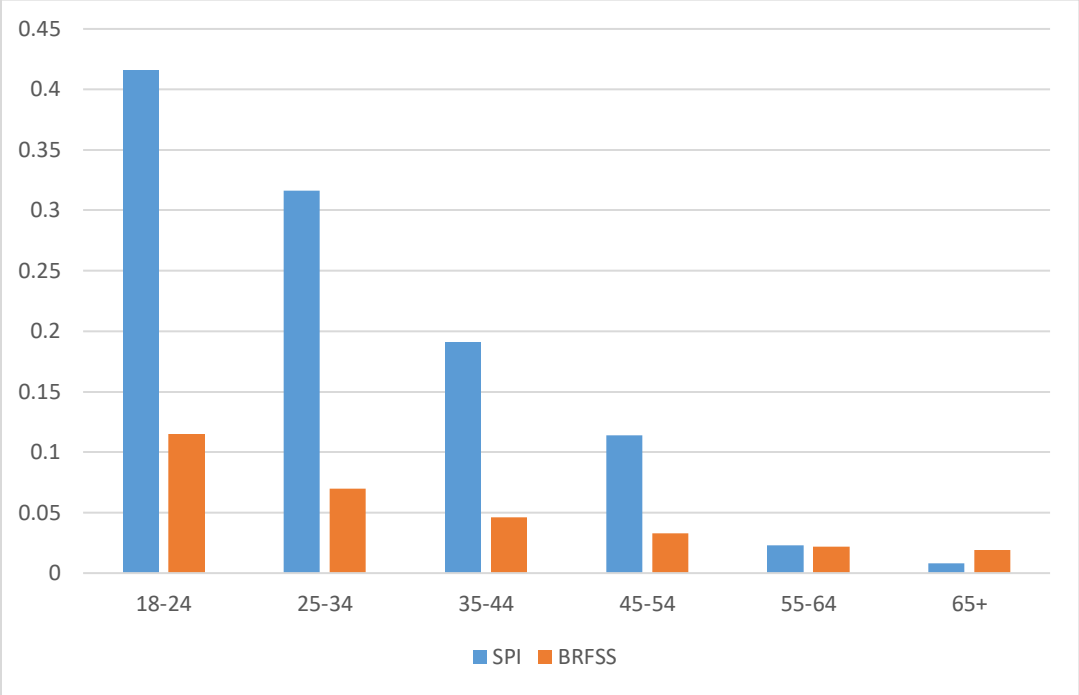


Figure 3: Proportions of queerness by age (female), SPI and BRFSS



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