

# UNJUST: HOW THE BROKEN JUVENILE AND CRIMINAL JUSTICE SYSTEMS FAIL LGBTQ YOUTH

August 2016



Center for American Progress



movement advancement project ▶

Authors



Partners

## This report was authored by:

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### Contact Information

#### Center for American Progress

1333 H Street, NW, 10th Floor  
Washington, DC 20005  
202-682-1611  
[www.americanprogress.com](http://www.americanprogress.com)

#### Movement Advancement Project (MAP)

2215 Market Street  
Denver, CO 80205  
1-844-MAP-8800  
[www.lgbtmap.org](http://www.lgbtmap.org)

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See page 34 for more information about these organizations.

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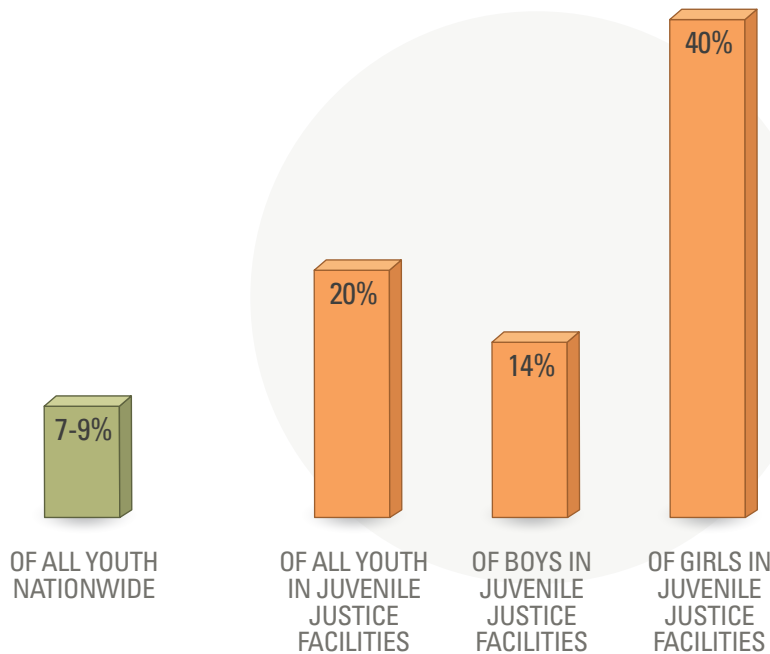
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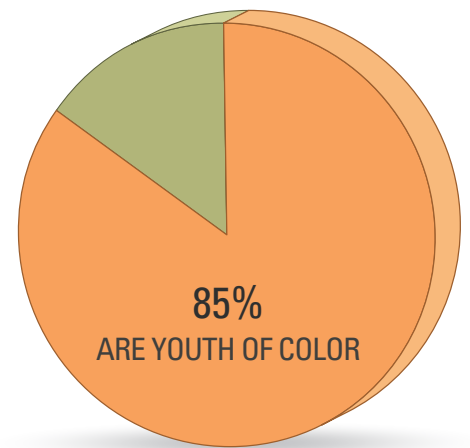
# UNJUST: LGBTQ YOUTH IN THE CRIMINAL JUSTICE SYSTEM

THE FACTS

## LGBTQ YOUTH OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM



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# UNJUST: LGBTQ YOUTH IN THE CRIMINAL JUSTICE SYSTEM

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## INTRODUCTION

This report offers a snapshot of how the U.S. criminal justice fails lesbian, gay, bisexual, transgender, and queer<sup>a</sup> (LGBTQ) youth. As shown in the graphic on page 1, LGBTQ youth are overrepresented in juvenile detention centers: the percentage of LGBT and gender nonconforming youth in juvenile detention is double that of LGBTQ youth in the general population. LGBTQ youth, particularly LGBTQ youth of color, face discrimination and stigma that lead to criminalization and increased interactions with law enforcement and the criminal justice system. Once within juvenile and criminal justice systems, LGBTQ youth face bias in adjudication and mistreatment and abuse in confinement facilities. Finally, LGBTQ youth lack supportive services when leaving the criminal justice system, often forcing them back into negative interactions with law enforcement.

This report is a companion to a larger report released in February 2016 entitled *Unjust: How the Broken Criminal Justice System Fails LGBT People*. That report focuses on the larger LGBT population and provides more detailed analyses and statistics, innovative programs and personal stories, and detailed recommendations. This companion report is designed to highlight the key issues that arise for LGBTQ youth within the criminal justice system.

### What Do We Know About LGBTQ Youth?

There are more than 73 million youth in the United States under the age of 18.<sup>1</sup> When older youth under the age of 25 are added, youth comprise approximately one-third (33%) of the U.S. population.<sup>2,b</sup> While few nationally representative, large surveys of youth ask about sexual orientation and gender identity, best estimates suggest that between 7-9% of youth identify as lesbian, gay, bisexual, transgender, or queer.<sup>3</sup> Using these estimates, the Williams Institute reports that there are approximately 3.2 million LGBTQ youth between the ages of eight and 18, more than half of whom (52%) are youth of color (compared to 39% of LGBT adults who are people of color).<sup>4</sup>

**LGBTQ Youth and the Criminal and Juvenile Justice Systems.** There are an estimated 57,000 youth in juvenile detention and correctional facilities on any given day, with hundreds of thousands more on probation.<sup>5</sup> The Williams Institute estimates that half of LGBTQ youth in the United States are “at risk” of being arrested or entering juvenile and criminal justice systems.<sup>6</sup> Emerging

research shows that LGBTQ and gender nonconforming youth are more likely to be officially sanctioned; analysis of a national population-based survey found that LGBTQ youth were between 25% and 300% more likely than their non-LGBTQ peers to experience some sort of official sanction, ranging from being expelled from school, to being stopped by police, to being arrested or convicted as a juvenile or adult.<sup>7</sup>

Within juvenile justice facilities, LGBTQ and gender nonconforming youth are again overrepresented. A survey by the federal Bureau of Justice Statistics found that 12% of youth in juvenile facilities self-identified as non-heterosexual compared to the estimated 7-9% of youth who identify as LGBTQ nationally.<sup>8</sup> In a survey of seven juvenile justice facilities across the United States, 20% identified as LGBT or gender non-conforming.<sup>9</sup> Forty percent of girls in these seven facilities identified as LGBT or gender non-conforming, and 85% of LGBT and gender non-conforming youth were youth of color.

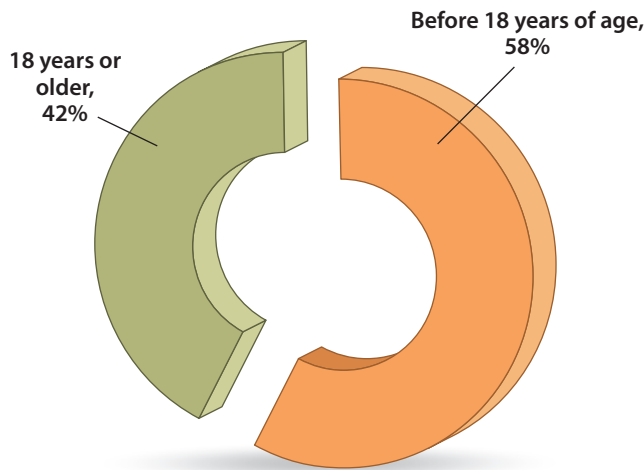
High rates of incarceration for LGBTQ youth of color are not surprising, however, given that youth of color, in particular black youth, are disproportionately more likely to be in the juvenile justice system; 40% of incarcerated youth are black compared to 14% of youth overall.<sup>10</sup> Rates of incarceration for Latino youth are roughly proportionate to the Latino youth population overall, while white youth are underrepresented among youth in juvenile justice facilities (33% of incarcerated youth are white versus 53% of the overall youth population).<sup>11</sup>

And youth who enter the system are at increased risk for criminal justice system involvement in later life. In a study of youth in Pittsburgh, roughly half of youth involved before turning 18 had a subsequent conviction before the age of 25, but after 25, the rates of reoffending dropped substantially.<sup>12</sup> As shown in *Figure 1* on the next page, in Black and Pink’s survey of more than 1,100 currently incarcerated LGBTQ adults, a majority (58%) had been arrested before age 18, with black and Latino respondents at increased likelihood of having been arrested as youth.<sup>13</sup>

<sup>a</sup> Typically, we use the acronym LGBT to describe individuals who identify as lesbian, gay, bisexual, or transgender. In this report, however, we frequently add the letter “Q” representing the term “queer,” which some people, including many youth, use to describe their sexual orientation and/or gender identity. When used in this report, it is because the specific survey or individual used the term “queer.” In the instances where we use LGBT or LGB, it is similarly because of the data presented in that particular survey.

<sup>b</sup> In this report, we are typically speaking about people under the age of 18 when we refer to “youth,” however in some instances where noted, youth may be used to refer to individuals under the age of 25.

Figure 1: Age of First Arrest for Currently Incarcerated LGBTQ People



Source: Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," Black & Pink, 2015.

## WHY ARE LGBTQ YOUTH OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM?

Family rejection, family instability, and poverty may result in homelessness or time spent in the child welfare system, where LGBTQ youth frequently face stigma and discrimination. Additionally, LGBTQ students often lack support or are over-policed at school, pushing them out of school and onto the streets. Once on the streets, drug laws and laws criminalizing sex work—as well as policing strategies and discrimination by law enforcement—often target LGBTQ youth. A longitudinal study published in *Pediatrics* found that youth who reported identifying as LGB or having same-sex attractions were more likely to be stopped by police, to be expelled from school, or to be arrested and convicted as juveniles and adults.<sup>14</sup> In spite of these forces and disproportionate contact with the juvenile and criminal justice systems, LGBTQ youth demonstrate remarkable resiliency, creating families of choice, networks for support, and often not only surviving, but thriving. Yet, for some LGBTQ youth, especially LGBTQ youth of color and transgender and non-conforming youth, these factors play a large role in increasing their interactions with law enforcement and ultimately their overrepresentation in the juvenile and criminal justice systems.

## The Effects of Discrimination and Stigma on LGBTQ Youth

### Family Rejection

At the most basic level, young people rely on their families for love, support, shelter, food, and other basic necessities. Unfortunately, some LGBTQ youth are met with hostility, violence, and rejection when their families learn that the youth is LGBTQ. In a study of white and Latino LGBT young people in California, more than four in 10 (42%) of those living in out-of-home placements (such as foster care) reported family rejection as the cause of their leaving home.<sup>15</sup> When families fall short in supporting their children, youth frequently demonstrate resilience and create a chosen family for emotional and physical support. In a survey of 500 youth conducted by the Illinois Caucus for Adolescent Health, 80% of youth surveyed had created chosen family structures, which may include friends or other non-related people who provide crucial support.<sup>16</sup>

### Family Instability and Poverty

As families across the United States struggle to make ends meet and to provide stability for their children, youth feel the consequences. In 2014, one in five children (21.1%) under the age of 18 in the United States was living in poverty.<sup>17</sup> Some youth in struggling families, including many LGBTQ youth, may find themselves without a home or pushed into unsafe living situations, including public spaces. Other youth may come home to sleep but may spend most of their waking hours on the streets.

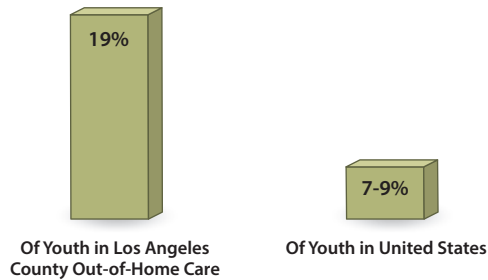
### Child Welfare System

Research finds that LGBTQ young people are overrepresented in the child welfare system. The U.S. child welfare system faces well-documented deficiencies in caring for all children, and LGBTQ young people face their own unique challenges in the system. Specifically, LGBTQ youth in the child welfare system can face a lack of support from staff and placement families or even outright discrimination and hostility. They can be at higher risk of violence from foster families and other children within the system. As a result of mistreatment and abuse in child welfare placements, many LGBTQ young people are forced out of these settings, run away and find themselves homeless. In a study of young people in out-of-home care in Los



**Figure 2: LGBTQ Youth Are Over-Represented in Child Welfare System**

Percent of Youth Identifying as LGBTQ



Source: Bianca D.M. Wilson et al., "Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles" (Los Angeles: The Williams Institute, 2014).

**Figure 3: LGB Youth Are Unsafe in Foster Care**

Percent of LGB Youth in New York City Who Ran Away from Foster Care Because It Was Unsafe



Source: Gerald P. Mallon, *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems* (New York: Columbia University Press, 1998).

**SPOTLIGHT**



**Stopping the Pathway to Youth Homelessness Through Family Support and Reconnection - The Ruth Ellis Center**

For the past 16 years, the Ruth Ellis Center has served LGBTQ youth in the Detroit area through the Second Stories Street Outreach, the new Health and Wellness Center, and Ruth's House (residential foster care). In October 2015, the Center began a pilot designed to help children and youth who may be at risk for removal from their families by the State and there is evidence that parental mistreatment may be related to the child's sexual orientation, gender identity and/or gender expression. The program has key goals of family engagement, preservation, and support.

The program is a collaboration between the Ruth Ellis Center and Dr. Caitlin Ryan and the Family Acceptance Project at San Francisco State University. Dr. Ryan is working with Ruth Ellis Center staff to integrate the Family Acceptance Project's research-based family prevention and intervention strategies into a "Family Group Decision Making" model. In this established model, staff engage parents, caregivers, youth, and others to develop a plan to provide intensive services with the goal of keeping children safe, preserving families, and increasing family connections. This collaboration adds an essential component for families with LGBTQ children: specific research-based strategies that help families understand their child's sexual orientation and gender identity and expression in a cultural context, teaches families how to identify and modify specific rejecting behaviors that increase their LGBT child's risk for suicide, substance abuse, HIV, family conflict, etc., helps families to increase accepting behaviors that promote well-being, and builds interactional skills while connecting families with an LGBT affirmative environment.

The Ruth Ellis Center receives referrals from the county's Child Protective Services case managers for families where a child abuse or neglect investigation has been opened that involves rejection related to a child's known or perceived sexual orientation or gender identity and expression. The Ruth Ellis Center has trained front line investigators about sexual orientation and gender identity and expression, the core needs and experiences of LGBTQ children and adolescents, the Family Acceptance Project's research and the critical role of family support, and how to identify abusive and harmful behaviors related to a child's LGBTQ identify and gender expression.

This enhanced, family centered approach empowers families to support their LGBT children in a culturally congruent framework that also helps families to address other pressing issues such as housing stability, food security, mental health and health care, and other basic needs.

This work aims to reduce the number of LGBTQ youth placed in foster care, which can be a pathway to homelessness and juvenile and criminal justice involvement.

The Ruth Ellis Center has trained almost every Child Protective Services case worker in the county, and is working to increase connectedness and support for families and their LGBTQ children through this project, including children ranging in age from five to 18.

Angeles County, nearly one in five (19%) identified as LGBTQ, as shown in *Figure 2* on the previous page.<sup>18</sup> This rate is approximately 1.5 to 2 times higher than the estimated LGBTQ youth population as a whole for the area.<sup>19</sup> A majority of the LGBTQ youth in the study were youth of color, and many were born outside the United States and/or had at least one parent born outside the United States.<sup>20</sup>

Of LGBTQ young people in Washington State's juvenile justice and child welfare system, 60% said they didn't feel safe or comfortable disclosing their identity to system staff.<sup>21</sup> More than half (56%) of lesbian and gay youth in New York City's child welfare system indicated they'd stayed on the streets at times because they felt safer there than living in group or foster homes, as shown in *Figure 3* on the previous page.<sup>22</sup>

Young people who were removed from their homes and placed in out-of-home care are between two and three times more likely to be involved in the criminal justice system than youth who remain in their homes.<sup>23</sup> Of all children who were involved in Illinois' child welfare system between 1990 and 2003 and who were at least age 18 in 2005, those placed in foster care were two to three times as likely to have been arrested, convicted, and placed in juvenile or adult correctional facilities compared to youth who were not in foster care.<sup>24</sup> A 2010 study found that youth aging out of foster care without a permanent placement were also more likely than their peers to be arrested, despite being no more likely to have actually committed an offense.<sup>25</sup>

See page 15 of the larger report, [Unjust: How the Broken Criminal Justice System Fails LGBT People](#), for a look at some organizations and state agencies that support LGBTQ foster youth.

### Homelessness

LGBTQ young people who are homeless or at risk of homelessness face substantial challenges, including risks to their physical safety and emotional and mental health. Engaging in shoplifting, trading sex, selling drugs, or engaging in other illegal activities as a way to survive increases the chances that young people may be stopped and arrested, and enter the juvenile justice system. An estimated 20% to 40% of youth experiencing homelessness in the United States identify as LGBTQ or believe they may be LGBTQ,<sup>26</sup> compared to an estimated 5% to 7% of youth who identify as LGBTQ.<sup>27</sup>

#### SPOTLIGHT



### LGBTQ Youth Homelessness Prevention Initiative

In collaboration with the U.S. Departments of Housing and Urban Development; Education; Health and Human Services; and Justice, the United States Interagency Council on Homelessness and the True Colors Fund, the LGBTQ Youth Homelessness Prevention Initiative began in 2014 with the goal of identifying successful strategies for ensuring that no young person is left without a home because of their gender identity or sexual orientation. In two pilot cities, Houston/Harris County and Cincinnati/Hamilton County, community organizations have come together to engage key stakeholders, address needs, and coordinate activities through a concerted, collaborative effort to address homelessness among LGBTQ youth.

Through local collaboration between stakeholders working with youth and families, including local child welfare, education, and law enforcement agencies; runaway and homeless youth providers; and LGBTQ organizations, these two initiatives have developed community-wide plans. Among the key goals of the plans are increasing community awareness of issues contributing to LGBTQ youth homelessness and local efforts to address these issues (e.g., through community forums with concrete actions including improving data collection and tools for screening and assessing the needs of youth, creating new resources and programs, and increasing the number of LGBTQ youth with positive, identity-affirming placements).

A disproportionate number of LGBTQ youth who are homeless are youth of color, reflecting broader trends in the homeless population. In a 2014 survey of human service providers serving the youth homeless population, providers reported that 31% of their LGBTQ clients identified as African American or black, 14% as Latino/Hispanic, 1% as Native American, and 1% as Asian or Pacific Islander.<sup>28</sup>

## Story: From Child Welfare System to the Streets to College: Kristopher Sharp's Journey



I was homeless, forgotten, abandoned and alone. A product of the Texas foster care system, I had no one.

My life was reduced to two pairs of clothes, a well-worn backpack, and the streets. By day, I begged strangers for their change; and by night, I was turning tricks for a place to stay, a shower, a hot meal, or whatever resources I could trade my body for.

That was my reality.

The many years I had spent growing up in foster care took away any chances I had at a normal life. I lived in over 20 different homes—sometimes moving every six to eight months—never staying in one place long enough to create support systems, build community, or establish roots. Sometimes, I think that maybe this was for the better, because almost all of the 20-plus homes I lived in were imbued with abuse.

By the time I was 18, I had been raped and beaten more times than I care to remember—often by the very people the State of Texas was paying to “care” for me.

On the streets, I found out very quickly that there aren’t a lot of resources for homeless youth in Houston, especially if you’re gay. I remember once being turned away from the Covenant House—a homeless shelter that caters to youth—after an intake worker determined I was gay and erroneously suggested that I “probably had AIDS” and would be a risk to other youth in the shelter.

So I learned to make do with what I had. Most nights, I would wander the streets in Montrose until someone picked me up. Sometimes I’d get lucky and they’d let me spend the night, but more often than not, I’d be forced to sleep on the roof of a shopping strip in the north side of Houston—no more than 10 blocks away from the group home I was living at when I aged out of the system and into homelessness.

I spent the next six months on the streets doing this over and over again, living day-to-day, surviving through the street economy—alone, ashamed and guilt-ridden.

One day in August of 2010, I was in downtown Houston searching for an air-conditioned space and a restroom and ended up wandering into the University of Houston-Downtown.

That day, the course of my life changed.

Youth who age out of the foster care system in Texas are eligible to utilize a tuition waiver that covers the complete costs of tuition and fees at state-funded institutions of higher education within the state.

It was on that fateful day in August that I found out about this waiver, and with the help of university staff I registered for classes and applied for financial aid. I spent the majority of my first semester homeless, struggling to keep up with my course work—but eventually, I would receive a refund check for about \$2,000 that I used to get my first apartment.

I live in that very same apartment today, and in May of this year, I will graduate from the University of Houston-Downtown with a bachelor’s degree in social work.

Reprinted from Kristopher Sharp, “My Struggle To Survive As A Homeless Youth,” The Huffington Post, April 28, 2015.

## Unsafe Schools

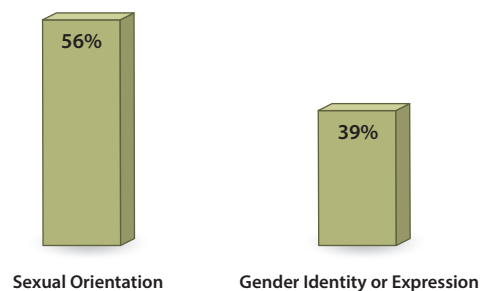
In addition to encountering challenging environments at home, LGBTQ students, including LGBTQ students of color, are more likely to report an unsafe environment at school—and they often have little means to address it. Many of these students experience bullying and harassment because of their sexual orientation, gender identity, and/or their race and ethnicity, coupled with little support or recourse through school officials. They also face the use of zero-tolerance discipline strategies that push youth of color, including disproportionate numbers of LGBTQ youth of color, into the juvenile justice system.

A large percentage of LGBTQ students report unsafe school environments. The 2013 National School Climate Survey, conducted by GLSEN, found that more than half of LGBT middle and high school students (56%) reported feeling unsafe at school because of their sexual orientation, and four in ten students (39%) felt unsafe because of how they expressed their gender, as shown in *Figure 4*.<sup>29</sup> As shown in *Figure 5*, in a longitudinal survey of 4,200 students in Alabama, Texas, and California that began when the students entered fifth grade and concluded when they finished tenth grade, students who identified as lesbian, gay, or bisexual were 91% more likely to report being bullied compared to their heterosexual peers.<sup>30</sup>

In 2016, the Centers for Disease Control released analyses of Youth Risk Behavior Surveillance System (YRBS) data, which found that LGB students were two times as likely to report being threatened or injured with a weapon on school property compared to their heterosexual peers (10% vs. 5%) and one in three LGB students had been bullied at school in the past year (34%) compared to 19% of heterosexual students.<sup>31</sup>

When LGBTQ youth experience bullying and violence, they may not report incidents to school personnel. According to GLSEN's 2013 National School Climate Survey, more than half (57%) of LGBT students who experienced harassment or assault in school did not report the incident to school personnel.<sup>32</sup> The leading reason cited by youth for not reporting was that they doubted whether staff would do anything to help. Some students worried that if they reported the incident, they themselves would be disciplined for being involved in an altercation or blamed for instigating the incident. In other surveys of LGBTQ

**Figure 4: LGBT Students Report Feeling Unsafe at School**  
Percent of LGBT Youth Reporting Feeling Unsafe Because of Their...



Source: Joseph G. Kosciw et al., "The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools" (New York: GLSEN, 2014).

**Figure 5: LGB Students at High Risk for Bullying and Victimization**

Over five years, LGB youth were:



Source: Mark A. Schuster et al., "A Longitudinal Study of Bullying of Sexual-Minority Youth," *New England Journal of Medicine* 372, no. 19 (May 7, 2015): 1872–74.

youth, they report being reprimanded for defending themselves.<sup>33</sup>

Compared to LGBTQ students who did not experience bullying, LGBTQ young people who are bullied and harassed at school often experience more negative impacts, including harsher school discipline, increased risk of substance use and mental health challenges, missed school, thoughts of suicide, and lower aspirations to attend college.<sup>34</sup> In the 2013 National School Climate Survey, 3.4% of LGBT youth said they did not plan to graduate high school or were unsure if they would graduate.<sup>35</sup> When asked why, a majority of these students (57%) named hostile or unsupportive school environments as the reason why they felt they had to leave school. One-fifth (20%) of LGBT students planning to drop out reported having mental health concerns

such as depression, anxiety, and stress. In the 2015 YRBS data, 12.5% of LGB students had not gone to school on at least one day during the the past 30 days because they felt unsafe compared to 4.6% of heterosexual students.<sup>36</sup>

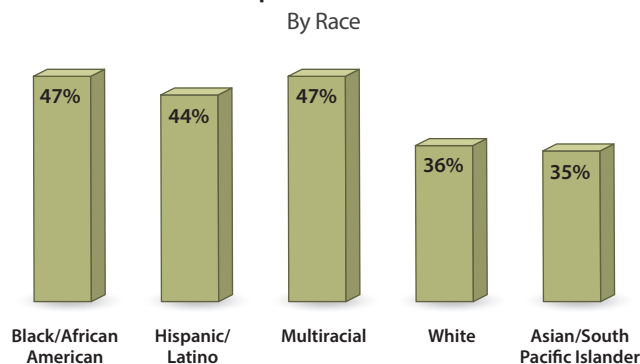
When LGBTQ young people miss school, or drop out entirely, they are at increased risk for interactions with law enforcement. In some states, “failure to attend school,” or truancy, is a criminal charge, as it is in Texas where it can be accompanied by a \$500 fine.<sup>37</sup> What’s more, when young people don’t complete their educations, they face limited employment opportunities and increased likelihood of engaging in survival or underground economies. Among young adults ages 16 to 24, those without a high school diploma were 63 times more likely to be in a correctional facility compared to those with college degrees, according to an analysis of young adults in correctional facilities in 2006 and 2007.<sup>38</sup>

### School-to-Prison Pipeline

LGBTQ young people are among the groups of students who are more likely to be suspended, expelled, or otherwise removed from school settings—often for relatively minor offenses—and pushed into the juvenile justice and broader correctional systems.<sup>39</sup> Many students in the United States, particularly students of color, attend schools that utilize metal detectors and have substantial police presence.<sup>40</sup> In a 2016 study, school security officers outnumbered school counselors in three of the five largest public school districts in the United States.<sup>41</sup>

LGBTQ and gender non-conforming students may be disciplined simply for being themselves. Over one-third of LGBTQ students in GLSEN’s 2013 National School Climate Survey had received a detention.<sup>42</sup> More than one-quarter (28%) of LGBT students in the same survey had been disciplined for public displays of affection that were not disciplined among non-LGBT students.<sup>43</sup> Nine percent of LGBT students said they’d been disciplined simply for identifying as LGBT or disciplined more harshly than non-LGBT students. The survey revealed that transgender students were more likely to have experienced school disciplinary actions, including detention, suspension, or expulsion, than non-transgender LGB students.<sup>44</sup> The New York Civil Liberties Union receives many complaints of transgender youth being disciplined for wearing clothes that were consistent with their gender identity or for using the “wrong” restroom.<sup>45</sup>

**Figure 6: Percent of LGBTQ Students Reporting Ever Being Disciplined at School**



Source: GLSEN, “Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth,” 2016.

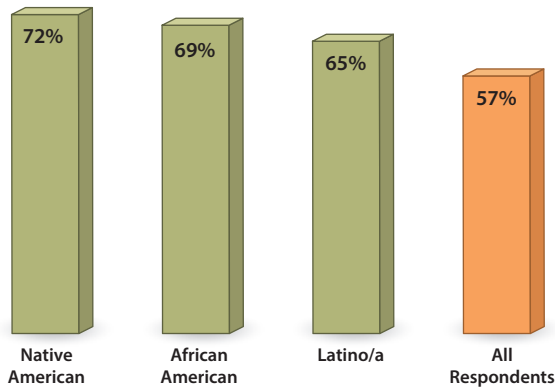
Research finds that African American and Latino students, in particular, are at increased risk for harsh disciplinary policies that can result in criminal justice involvement. Emerging research also suggests that LGBTQ students of color, as well as gender non-conforming girls, are at increased risk because of harsh school disciplinary policies. For example, African American girls and girls who identify as LGBT who are perceived to be gender non-conforming in some way, such as dressing in a more stereotypically masculine fashion, speaking out in class, or playing sports, are more likely to be disciplined.<sup>46</sup>

Additionally, in focus groups with LGBTQ and gender non-conforming students, participants reported that gender non-conforming youth, in particular, reported differential discipline and harsher punishments, in part because staff saw gender non-conformity as challenging authority or disruptive.<sup>47</sup> GLSEN’s 2013 School Climate Survey found that nearly half of transgender students (45%) had experienced discipline at school compared to 38% of LGBQ students who did not identify as transgender.<sup>48</sup> The survey also found higher rates of discipline among some LGBTQ youth of color, as shown in *Figure 6*.<sup>49</sup> In a 2012 national survey of LGBT people ages 18-24, 72% of Native American LGBT youth, 69% of African American LGBT youth, and 65% of Latino/a LGBT youth had been sent to detention in middle or high school, as shown in *Figure 7* on the next page.<sup>50</sup> Nearly one-third (31%) of African American LGBT youth reported being suspended compared to 20% of LGBT youth overall. More than three-quarters (79%) of LGBT youth of color reported that they had interacted with security or law enforcement in their middle or high school years, compared to 63% of white LGBT young people.<sup>51</sup>



### Figure 7: LGBT Youth of Color More Likely to be Disciplined at School

Percent of LGBT Young Adults Ages 18-24 Reporting Being Sent to Detention in Middle or High school, By Race/Ethnicity



Source: Lambda Legal, "Protected and Served? School Security, Policing and Discipline," accessed January 7, 2016.

### Story: Unsafe Zone

A 19-year-old, bisexual Latino boy was asked by an interviewer, "Were you ever stopped and frisked?" He responded:

About three times like in front of my old school. I would stand across the street and the [police] car would just come by and they'd be like, "freeze," and we weren't doing anything, we were just standing across the street from the school. And they would like throw my [skate] board to the side to make sure I didn't like hit them or anything. And then they would just pat me down all types of stuff. One time it was like really crazy. A guy like grabbed my penis and it was just like I don't know. I feel like it got worse, you're stopped and frisked... it just got worse.

Excerpted from Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex" (Urban Institute, September 2015).

### Story: "I didn't do anything wrong but love somebody"



Like many teenagers, Antjuanece Brown sent a lot of text messages to her friends. In 2009, she started dating Jolene Jenkins, who was 16 and three years younger than Antjuanece. The two spent time at the mall. Antjuanece attended Jolene's lacrosse games.

Like the more than half of American teens who have "sexted," the two exchanged text messages that were flirtatious and sometimes sexually explicit.

Jolene's mother didn't like that her daughter was dating another girl and took Jolene's phone. She turned it over to the police. As Antjuanece told a reporter for *Willamette Week*, "I've never been in trouble in my life. ... I'm not a sex offender."

And yet, Antjuanece was arrested and indicted by a grand jury for felony crimes, producing child pornography, sex abuse, and luring a minor. Together, these crimes could have carried a sentence of six years in prison and mandatory registration as a sex offender. The three-year age difference in their relationship wasn't itself against the law, but the fact that the two exchanged sexts was what triggered the police. After being arrested, Antjuanece spent a month in the Washington County jail. She couldn't afford the \$50,000 bail set by a judge. "I got called a child molester," she says. "I was told I should kill myself. We were only allowed out of our cells six to eight hours a day. It was lonely and scary."

Facing six years in prison derailing her plans for the future, Antjuanece pleaded guilty to "luring a minor," a felony that doesn't require her to register as a sex offender. She was sentenced to three years of probation, \$3,000 in court fees, and was unable to see Jolene until Jolene turned 18. She lost her job at a call center because of her criminal record. And her dreams of becoming a social worker and working with children seem impossible to her now that she has a felony conviction, particularly one involving minors.

After 10 months apart, when Jolene turned 18, the couple reconnected. As Jolene explained, "We had a lot of things taken away and ... Look, a lot of things we had to go through, but we're here." The couple started living together and making plans to get married.

Adapted from Beth Slovic, "Sext Crimes," *Willamette Week*, November 30, 2010; What Are LGBT Youth of Color Facing? (Cross-Coast Youth Discussion - Growing Up Policed), Growing Up Policed: Surveillance Racialized Sexualities Mini-Conference (New York & Oregon), 2011.

## Discrimination Leads to Criminalization

### Discriminatory Enforcement of Laws

LGBQ young people are at increased risk for prosecution under statutory rape and other laws regulating sex between minors. Researchers find that LGB young people, in particular, are at risk for criminalization because their sexual behavior is frequently considered less acceptable by family members, teachers, and law enforcement.

One alarming result is that many LGB young people or young people who have had same-sex sexual experiences are convicted as sex offenders, which can have incredibly detrimental results on their ability to finish school and find jobs.<sup>52</sup> In Texas, for example, sexual contact with a minor under the age of 17 is a felony, unless the parties involved are no more than three years apart in age, each party is older than 14, the sexual contact is consensual, and they are of the opposite sex.<sup>53</sup> Young people engaged in same-sex sexual contact are excluded from this exception. Similarly, when researchers asked participants in one study to propose various disciplinary actions for individuals who engaged in sex with a 14-year-old, the participants gave harsher punishments to offenders who engaged in same-sex sexual behavior than they did to offenders who engaged in opposite-sex sexual behavior.<sup>54</sup>

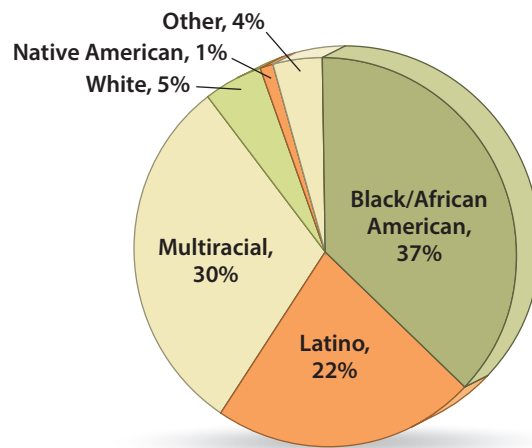
### Drug Laws

Current drug policy in the United States results in the incarceration of hundreds of thousands of individuals each year—many of whom were convicted of nonviolent crimes, such as possession of marijuana or another illegal substance. In 2012, there were 121,454 youth under the age of 18 arrested for possession in the United States, comprising nearly 10% of all arrests of youth. There were also more than 464,000 arrests of young adults ages 18-24 for possession, approximately 13% of all arrests for young adults.<sup>55</sup>

Information about rates of arrest of LGBT people, and LGBTQ youth in particular, for drug-related offenses is limited. However, it is likely that LGBTQ youth are at increased risk of arrest for these types of offenses. This is because research shows that LGBTQ youth may use substances at higher rates than their peers, perhaps as a coping mechanism related to the discrimination and stigma they experience related to their sexual orientation or gender identity. For example, a meta-

**Figure 8: LGBTQ Youth of Color More Likely to Engage in Survival Sex Work in New York City**

Race and Ethnicity of LGBTQ Youth Engaged in Survival Sex Work



Source: Meredith Dank et al., "Surviving the Streets of New York: Experiences of LGBTQ, YMSM, and YWSW Youth Engaged in Survival Sex" (Urban Institute, February 2015).

analysis of 18 published academic studies found that LGB youth, and especially bisexual and female youth, were more likely to use illegal substances and alcohol than heterosexual youth.<sup>56</sup> Family rejection may also contribute to the use of illegal substances. Research has found links between parental rejection during adolescence and negative health outcomes, including substance use, for LGBTQ young adults.<sup>57</sup>

### Enforcement of Anti-Prostitution Statutes.

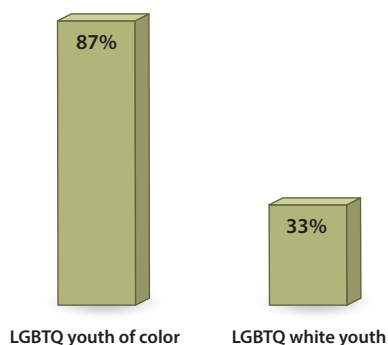
Research finds that homelessness is a primary driver of reliance on survival sex, particularly for LGBTQ youth. As described earlier, LGBTQ young people are more likely to be homeless due to the high rates of family rejection and discrimination they face.<sup>58</sup> In a survey of nearly 1,000 youth experiencing homelessness in New York City, LGBTQ youth were seven times more likely to have traded sex for a place to stay than heterosexual, non-transgender youth.<sup>59</sup> As shown in *Figure 8*, in a survey of LGBTQ youth engaged in survival sex in New York City, virtually all of those surveyed were youth of color; 37% identified as African American or black, 22% as Latino, and 30% as multiracial.<sup>60</sup>

### Harmful Policing Strategies

**Broken windows and zero tolerance.** Over the past 30 years, government and law enforcement officials have prioritized a policing strategy called "quality-of-life policing."<sup>61</sup> This strategy is based on the "broken windows

**Figure 9: LGBTQ Youth Interactions with Law Enforcement**

Percent of LGBTQ Youth in New Orleans  
Reporting Interactions with Police



Source: BreakOUT! and the National Council on Crime & Delinquency, "We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color," 2014.

theory," which posits that cracking down on highly visible minor crimes and even non-criminal activity can prevent more serious crimes in a neighborhood and restore "order." In some places, "broken windows" policing is part of a broader community policing strategy, which relies on community organizations and community members to be attentive to activities in their neighborhoods and to act as partners in improving safety.<sup>62</sup> However, in many areas, quality-of-life policing is used solely as a tactic to appear tough on crime, with little community engagement or dialogue.

Research finds that police departments do not use these policies across an entire jurisdiction, but rather in specific neighborhoods, either based on high rates of crime or concern from residents.<sup>63</sup> As a result, young people, people of color, people perceived to be involved in trading sex or perceived to be under the influence of drugs, homeless people, and low-income people, many of whom are LGBT, are explicit targets of broken-windows policing.

In focus groups of LGBTQ and questioning young people in New York, several youth said they'd been ticketed for putting their feet on a subway seat, sitting in a playground after dark, or dressing in a way that officers found "offensive."<sup>64</sup> Analysis of nationally representative data shows that LGBTQ youth were at increased risk of police stops compared to their non-LGBTQ peers.<sup>65</sup> This is particularly true for LGBTQ youth of color; in a survey of LGBTQ youth in New Orleans, 87% of LGBTQ youth of color had been approached by the police compared to just 33% of LGBTQ white youth (see *Figure 9*).<sup>66</sup>

### Story: LGBTQ Youth in Gay Neighborhood Targeted by Police

In the Boystown neighborhood in Chicago, groups of black and Latino LGBTQ youth have been targeted by neighbors and the police for congregating on the street, listening to loud music, and other infractions such as drinking in public, smoking marijuana, urinating, or vandalism. The youth come from other neighborhoods to hang out and to attend programs at the LGBT community center, the Center on Halsted, but they are perceived to be the root cause of increases in robberies, assaults, and vandalism in the neighborhood. Kloe Jones, a 23-year-old transgender woman, explains, "There's a lot of people from the South and West Side. [Boystown] is a predominantly white neighborhood, but this is all we have. There have been muggings and robbings up here, and [white residents] look at the African Americans who come to the Center, as if somehow it's their fault."

Adapted from Mitch Kellaway, "Working With Laverne Cox, Standing in Solidarity with Trans Women of Color," *The Advocate*, October 19, 2014.

**Stop and Frisk.** "Stop-and-frisk" is a form of policing where an officer stops an individual on the street alleging a reasonable suspicion of criminal activity. If the officer believes that the individual is armed and presents an immediate danger, the law allows the officer to perform a limited pat down of the outer clothing of the person (a "frisk"). In reality, stop-and-frisk has been grossly abused by police departments, who routinely engage in the practice without sufficient legal basis. Additionally, officers often go far beyond what is legally permissible as a "frisk" to conduct full searches without probable cause to believe that a person is concealing weapons or is involved in a crime.

In New York City's West Village, a neighborhood with a predominantly white LGBTQ community (just 8% of residents are African American or Latino), 77% of individuals stopped were African American or Latino, as shown in *Figure 10* on the next page.<sup>67</sup> Some LGBTQ youth commented that they felt particularly targeted, not only because they were African American or Latino, but also because they were queer or gender non-conforming.

**Mistreatment and Violence When Interacting with Police or Seeking Assistance.** Youth of color

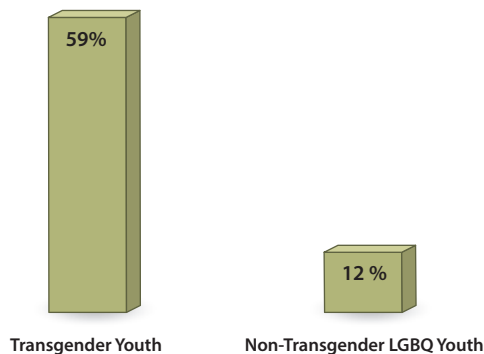
**Figure 10: People of Color Disproportionately Stopped by Police in West Village**



Source: "Queer Youth of Color Complain of West Village Stop and Frisk," *Gay City News*, May 23, 2012.

**Figure 11: High Rates of Abuse and Brutality by Law Enforcement**

Percent of LGBTQ Youth in New Orleans Reporting Being Asked for Sexual Favors by Police



Source: BreakOUT! and the National Council on Crime & Delinquency, "We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color," 2014; Somjen Frazer and Erin Howe, "Transgender Health and Economic Insecurity: A Report from the 2015 LGBT Health and Human Services Needs Assessment Survey" (New York, NY: Empire State Pride Agenda, 2015).

are frequently the target of harassment, violence, and sexual assault by police officers. In a nationally representative sample of young people ages 18 to 29 conducted in December 2013 and January 2014, young black people reported the highest rate of harassment by police (54%), nearly twice the rate of other young people.<sup>68</sup>

For LGBTQ youth, particularly LGBTQ youth of color, interactions with police and law enforcement are frequently dangerous. In a survey of youth in New York City, some of whom identified as LGBTQ, 12% reported negative sexual experiences with police, including receiving sexual attention or being touched inappropriately.<sup>69</sup> A survey of LGBTQ youth in New Orleans found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBTQ youth, as shown in *Figure 11*.<sup>70</sup> LGBTQ youth in the New York City survey were more than twice as likely to report negative sexual contact with police in the past six months, compared to non-LGBTQ youth.

Of 1,094 youth surveyed throughout New York City, nearly half (48%) reported a negative experience of some kind with police in the past six months, including negative verbal or sexual experiences.<sup>71</sup> The LGBTQ youth were much more likely to have negative experiences with police than their non-LGBTQ peers, including negative legal contact, verbal contact, physical contact, and sexual contact with police. Nearly half (49%) of

these youth who had been arrested said they felt unsafe in the patrol car following their arrest.<sup>72</sup>

The Young Women's Empowerment Project, a Chicago-based organizing project for girls and women ages 12 to 23, including transgender youth who have current or past experience in the sex trade and street economies, analyzed complaints filed through their "Bad Encounter Line." In 2009, the hotline received reports of 146 encounters with police, 33% of which were bad encounters.<sup>73</sup> Of all complaints filed about interactions with police, transgender youth comprised 25%.

Finally, LGBT people in the United States continue to experience high levels of homophobic and transphobic violence directly because of who they are and who they love; these situations are often called "hate violence" or "hate crimes." According to a 2014 study by the National Coalition of Anti-Violence Projects (NCAVP), transgender women, transgender people in general, LGBTQ people of color, gay men, and LGBTQ young people are most at risk for severe violence.<sup>74</sup> LGBTQ young people were 2.5 times more likely to be injured due to hate violence than LGBT and HIV-affected adults, as shown in *Figure 12* on the next page. Previous negative interactions with law enforcement mean LGBT people often don't call for the help they need. And that caution may be warranted; when seeking assistance from law enforcement, either as a survivor of a hate crime or an intimate partner incident, LGBTQ youth may be incorrectly assumed to be the perpetrator and arrested.

Figure 12: LGBTQ Youth At Risk For Hate Violence

LGBTQ YOUNG  
PEOPLE ARE **2.5x**  
MORE LIKELY TO BE INJURED BY HATE  
VIOLENCE THAN OLDER LGBTQ PEOPLE

Source: Osman Ahmed and Chai Jindasurat, "2014 Report on Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence" New York: National Coalition of Anti-Violence Programs, 2015.

**BOTTOM LINE.** LGBTQ youth are frequently pushed out of families, communities, and schools, and they are at increased risk of negative interactions with law enforcement. They are targeted by drug laws, laws criminalizing the trading of sex, and also face discriminatory enforcement of a wide variety of laws. When LGBTQ youth, especially LGBTQ youth of color and transgender youth, engage with law enforcement, their experiences are often fraught with abuse, assault, and, at best, a lack of understanding.

SPOTLIGHT



### Educating LGBTQ Youth About Their Rights

In the absence of broader reforms, the best response for LGBTQ youth facing discriminatory policing strategies is to know your rights. Across the country, many organizations are working on campaigns and materials to educate LGBT communities about their rights through "know your rights" campaigns and resources. These efforts strive to educate people, and particularly minority communities such as people of color or transgender people, about their rights as they interact with police and the criminal justice system.

The **National Lawyers Guild** created a series of documents to assist the transgender community, as well as attorneys and service providers, in knowing their rights when it comes to criminal law, immigration law, housing law, and employment law.

The Sylvia Rivera Law Project and the National Center for Transgender Equality published **a guide specifically focused on transgender people participating in direct actions**, such as protests, where they may interact with law enforcement.

In Chicago, the **Chicago Street Youth in Motion Task Force** created a "Street Youth Bill of Rights," which focuses on areas of health care, education, police, and social services.

In 2015, Streetwise And Safe (SAS) and BreakOUT! developed the **Get YR Rights Network**, a national know your rights network for LGBTQ youth and LGBTQ youth-serving organizations. Bringing together over 30 organizations, and growing, the **Get Yr Rights: A National LGBTQSTS Youth Know Your Rights Network** is a vehicle for connection and collaboration among organizations, including sharing materials and strategies, including the victories and challenges in organizations' efforts to end discriminatory policing practices and police profiling. Through conversations with LGBTQ youth organizations across the country, SAS and BreakOUT! sought to address young people's consistently identified needs for media, materials, and strategies in doing Know Your Rights work. In partnership with Network members, SAS and BreakOUT! gathered Know Your Rights materials specific to the experiences of LGBTQ youth with the police on the website, and set out to create a campaign toolkit and curriculum for LGBTQ, questioning, and Two-Spirit youth and youth-serving organizations focused on policing and interactions with law enforcement. Streetwise and Safe has created two workshops, "This is My Truth" and "The Criminal Injustice Machine," which are facilitated by peer youth facilitators.



## WHAT ARE LGBTQ YOUTH'S EXPERIENCES IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS?

### Overview: Youth in Detention:

After minors are arrested by police, but before they are tried for a crime, they are either released back to their home or are placed in a juvenile justice facility to await adjudication. In general, young people under age 18 who violate the law are tried in juvenile court. Some youth, however, are moved to the adult criminal justice system. Of juvenile cases filed directly in adult criminal courts, either because of laws dictating the charges or prosecutor discretion, the youth involved were overwhelmingly male (96%) and black (62%).<sup>75</sup>

Young people who are adjudicated then receive a sentence. Some youth are placed in correctional facilities. Others are sentenced to a period of supervision, are asked to perform community service, or are assigned to community-based services such as counseling, family assistance, substance abuse education, and other supportive services. In some states, a young person's sentence—the specifics of where a youth is placed and for how long—is determined by a judge, while in other states it is determined by the juvenile correctional department. Youth without strong family support, including many LGBTQ youth or youth involved in the child welfare system, are more likely to be placed in correctional facilities (see pages 5-7 for more on this disparity).

One-quarter (26%) of youth sentenced under juvenile delinquency statutes in 2010 were “committed” to residential facilities that offer varying levels of security, such as training schools, treatment centers, boot camps, drug treatment, or private placement facilities.<sup>76</sup> The other three-quarters of youth were placed under supervision but were allowed to return to their homes.

Many juvenile residential facilities resemble prisons in their design and operation, with isolation cells, locked cellblocks, razor wire, and frequent use of restraints.<sup>77</sup> Extensive research shows that these facilities do not meet the needs of youth and do little to ensure their safety and well-being or to provide effective services to help youth when they are released.<sup>78</sup>

## During Adjudication

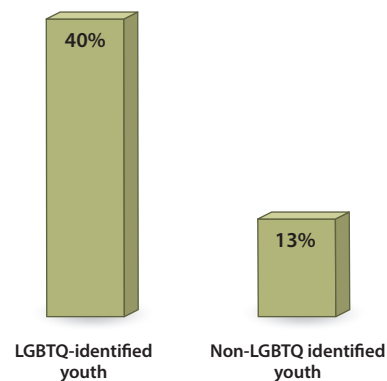
### Bias in Pre-Trial Release

LGBTQ young people face disadvantages in the arraignment process and are more likely to be placed in a facility to await trial, rather than being sent home.<sup>79</sup> As noted above, lack of family support, poverty and housing instability, and harassment and bullying at school all impact LGBTQ youth, and in turn influence decisions made at pre-trial and arraignment hearings. In focus groups and a survey of LGBTQ youth who had been in Washington State child welfare and juvenile justice systems, several youth told researchers that they had been missing school due to bullying and harassment because of their sexual orientation and gender identity. However, they feared coming out to court staff, so they didn't explain why they'd been missing school.<sup>80</sup> LGBTQ youth are two times more likely to be placed in a jail or correctional facility while awaiting adjudication for nonviolent offenses like truancy, running away, and prostitution, compared to non-LGBT youth.<sup>81</sup>

In a 2008 survey of youth in detention in several sites in California, 40% of LGBTQ youth had been held in juvenile detention for running away compared to 13% of straight youth, as shown in *Figure 13*.<sup>82</sup> In a survey of youth in Louisiana, 50% of gay young people arrested for nonviolent offenses in 2009 were sent to jail to await trial compared to fewer than 10% of non-gay peers, as shown in *Figure 14* on the next page.<sup>83</sup>

**Figure 13: LGBTQ Youth Held At Higher Rates**

Percent of Youth in California Being Held in Detention for Running Away



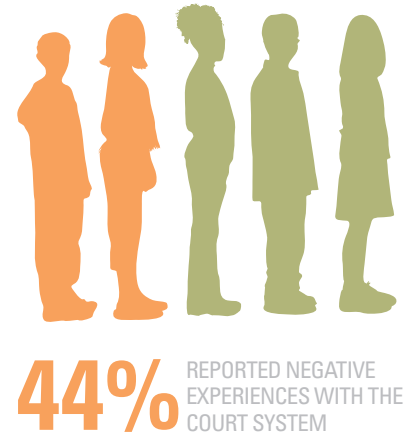
Source: Legal Services for Children, National Center for Lesbian Rights, and National Juvenile Defender Center, “The Equity Project,” September 2008.

**Figure 14: Rates of Detention for Youth Awaiting Trial in Louisiana**



Source: Daniel Redman, "I Was Scared to Sleep": LGBT Youth Face Violence Behind Bars," *The Nation*, June 21, 2010.

**Figure 15: LGBTQ Youth Report Negative Experiences with Court System**  
Of LGBTQ Youth Engaged in Survival Sex in New York City



Source: Meredith Dank et al., "Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YSW Who Engage in Survival Sex" (Urban Institute, September 2015).

SPOTLIGHT



**Increasing Access to Counsel Helps LGBTQ Youth**

When LGBTQ youth lack support from their families and communities, they may be more likely to lack legal representation in the juvenile justice system. In 2014, it was estimated that 98% of low-income youth in Louisiana's juvenile justice system had never been visited by an attorney. Lack of counsel can have serious ramifications, including increased risk of being adjudicated, increased punishments, and difficulties receiving needed assistance while in the system.

Launched in 2006, the LGBTQ and HIV/AIDS Project of the **Juvenile Justice Project of Louisiana** focuses on protecting the rights of incarcerated LGBTQ youth and youth living with HIV/AIDS in secure care facilities. One of the objectives of the project is to ensure that LGBTQ youth in the juvenile justice system receive quality representation in delinquency proceedings.

Similarly, having access to counsel is crucial in ensuring that immigrants receive a fair hearing and can avoid deportation. Started in 2013, the **New York Immigrant Family Unit Project** provides free, high-quality legal representation to every indigent immigrant facing deportation in or near New York City (including in New Jersey).

And while they cannot take on every case, several organizations focus specifically on providing legal assistance and representation to LGBT immigrants in immigration proceedings, including those seeking asylum. Among these organizations are **Immigration Equality**, which provides assistance to LGBT and HIV-positive immigrants, and the **National Immigrant Justice Center**, which provides legal representation through its LGBT Immigrant Rights Initiative.

## Bias in Court Proceedings

In a survey of LGBTQ youth engaged in survival sex in New York City, many youth reported that judges, prosecutors, and court officers refused to use correct pronouns or names during proceedings or made negative comments about their gender identity, gender expression or sexual orientation.<sup>84</sup> Nearly half (44%) reported their experience with the court system as negative, as shown in *Figure 15* on the previous page.

## Bias in Sentencing

Although there are no data tracking the placement of LGBTQ young people after adjudication, it is likely that LGBTQ youth are disproportionately committed to residential facilities, similarly to how they are disproportionately more likely to be placed in facilities while awaiting adjudication. Certainly this holds true for youth of color. In 2014, youth of color ages 10 to 17 comprised just 16% of the total youth population ages 10 to 17. By comparison, they were 34% of youth arrested, 38% of youth adjudicated, and 68% of youth in residential placements.<sup>85</sup>

Boys and young men comprise nearly all juvenile offenders placed in residential facilities (87%).<sup>86</sup> However, girls and young women are more likely than boys and young men to be committed to residential facilities for status offenses—instead of receiving supervision or community-based services.<sup>87</sup> Status offenses are noncriminal behaviors that are unlawful because of an individual's age, but that would not be illegal if an adult undertook the same behavior. Examples include running away from home, truancy from school, curfew violations, or possessing substances like tobacco or alcohol, for which research shows LGBTQ youth are at increased risk, as described on page 12.<sup>88</sup> Other examples are technical violations, including violations of the conditions of community supervision, such as failing drug tests or not appearing for scheduling appointments.<sup>89</sup>

In a survey of LGBTQ young people in Washington State's juvenile justice and child welfare systems, several participants said they experienced discrimination by court professionals. For example, one participant said a judge gave him the most severe, longest sentence possible for his crime and cited the youth's sexual orientation as the reason.<sup>90</sup>

## In Juvenile Justice Facilities

### Little Oversight for Youth Facilities

A 2008 report by the U.S. Government Accountability Office found that states license and regulate public and private youth facilities to varying degrees, with some private facilities freely operating without licenses.<sup>91</sup>

The Prison Rape Elimination Act (PREA) helps set some basic standards for the treatment of youth (including LGBTQ and intersex youth) within juvenile justice facilities, though implementation of PREA standards has been inconsistent, with some states opting out altogether. In general, PREA standards establish that youth should be involved in determining the best placement given their safety and vulnerabilities, and they should be respected when they identify as LGBTQ or intersex or express concern that they will be perceived as such.

The federal Juvenile Justice and Delinquency Prevention Act also sets standards and provides funding for preventing youth from being involved in the juvenile justice system and for evaluating and improving youth facilities. For example, young people cannot be placed in secure adult facilities or have contact with adult detainees or prisoners. Youth also cannot be placed in an adult jail or lockup for more than six hours unless tried or convicted of a felony. Thirty-four states and the District of Columbia have explicit policies requiring that youth be separated from adult prisoners by "sight and sound," and eight states ban youth from being confined in adult facilities altogether.<sup>92</sup> While "sight and sound" separation is protective for youth, some facilities rely on solitary confinement or other isolation for youth in adult facilities, which brings with it negative physical and mental health outcomes, including extremely heightened risk of suicide.<sup>93</sup> Many of these protections, however, do not apply to youth who are considered to be adults, including in the nine states that automatically treat youth ages 16 or 17 as adults.<sup>94</sup>

### Placement

The Prison Rape Elimination Act (PREA) provides standards regarding the placement of individuals, including youth, in any type of confinement facility—a jail lock up, a juvenile detention facility, or an immigration detention facility. Specifically, PREA states that all placement decisions must be individualized, taking into consideration safety concerns. This means that a youth's LGBTQ identity—or perceived LGBTQ identity—should be considered when making placement decisions.

## SPOTLIGHT



## Massachusetts – Changing Staff Culture One Training at a Time

Every single staff member at the Massachusetts Department of Youth Services (DYS), the state's juvenile justice agency, has received training on how best to serve the Department's LGBTQ youth. This extensive training regimen was partly the recommendation of another Massachusetts agency, the unique Massachusetts Commission on LGBTQ Youth.

More than two decades old, the Commission is an independent agency of the state charged with reviewing all state programs, resources, and policies in order to provide the state with extensive recommendations on how best to serve the state's LGBTQ youth. Comprised of 50 members, the Commission submits annual recommendations to the state covering all areas of life for LGBTQ youth, from school to immigration to library services to housing. Find the complete list of recommendations here: <http://www.mass.gov/cgly/publications.html>.

In 2011, the Commission recommended significant improvements to how DYS served LGBTQ youth in juvenile justice facilities. The Commission and DYS collaborated closely on how to begin a process of implementing the recommendations, particularly in light of changes required by the Prison Rape Elimination Act. DYS leadership quickly understood that staff buy-in at all levels would be critical to making sustainable progress.

DYS contracted the services of Missy Sturtevant, who later formed MaeBright Group, LLC, a firm that works with state agencies and service providers to evaluate and improve services for LGBTQ people. Starting in 2013, Sturtevant, along with Vicky Henry from GLBTQ Legal Advocates & Defenders, reviewed DYS policies, recommended implementing some changes, and began training staff. Thanks to the Commission, MaeBright, other advocates in Massachusetts, and DYS's own initiative, the Department began housing transgender youth based on their gender identity rather than the sex listed on their birth certificate. This determination is made on a case-by-case basis with input from the youth. Upon intake, youth are asked their legal name and the name they would like used, the pronoun they would like used, and if they identify as transgender or intersex. Transgender youth may specify the gender of their searching officer.

The goal of the staff trainings is to help staff better understand LGBTQ youth and how to best support them. The coalition also hopes to bring in youth from Boston-based BAGLY (Boston Alliance of Gay, Lesbian, Bisexual, Transgender Youth) to co-facilitate workshops on self-advocacy with youth currently living in DYS facilities. The DYS has been recognized in state and throughout the United States for its leadership in serving LGBTQ youth in detention facilities. Its policy and best practices guide is now serving as a national model.

For transgender and gender non-conforming youth, however, the reality is that placement decisions rarely take into account their gender identity or expression. Instead, LGBTQ youth are frequently placed in facilities according to the sex on their birth certificate or based on their genitalia. For example, transgender girls are frequently placed in a facility for boys. Placing transgender and gender non-conforming youth in facilities that do not match their gender identity puts them at increased risk for harassment, violence, and sexual assault by fellow youth and staff. Incorrect placements also make it more difficult for these youth to receive appropriate services, including access to gender-specific clothing, personal care products, and medical care such as hormones.

In addition to being placed in an incorrect facility, LGBTQ youth are also at increased risk for being placed in solitary confinement or segregated units. Facility staff isolate LGBTQ youth out of concern for the youth's safety, but these placements are detrimental. Segregating and isolating youth limits their access to programs and services, and it also increases the risk of harassment and abuse by staff because of reduced visibility and oversight. Research also finds a link between isolation and risk of suicide for youth.<sup>95</sup> In January 2016, the U.S. Department of Justice released guidance prohibiting the use of solitary confinement for juveniles in federal prisons, but that guidance did not impact state or local facilities.<sup>96</sup>

## SPOTLIGHT



### A Model Approach in the Santa Clara Juvenile Division

Santa Clara County (CA) is considered a model site nationally for the treatment of LGBTQ youth in the juvenile justice system. The Santa Clara County Probation Department underwent a system-wide transformation to improve care for LGBTQ youth.

As Lorie Brisbin, a program specialist with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, noted, "Santa Clara County is phenomenal. ... Santa Clara probation has worked hard to redefine juvenile corrections. Now when a youthful offender who is LGBTQ comes in, they are processed much differently, providing the best possible outcome for the general population and the staff."

Specifically, system-wide change was implemented through a steering committee, which oversaw the work and identified priorities, and three workgroups: policy, training, and youth and family engagement. The Chief Probation Officer attended all steering committee meetings, and her leadership was essential to implementing the work. The workgroups represented a cross-section of juvenile justice stakeholders, including judges, public defenders, prosecutors, probation (both institutions and services), and community providers.

The policy workgroup first created a policy for housing and services to trans youth in the juvenile hall, and then created a broader policy for LGBTQ youth across the system. The Juvenile LGBT Policy released in 2013 outlined core principles and detailed policies. One important aspect of the policy is the guiding principles, which clearly state the department's values and mission. Among the key provisions, LGBTQ-affirming materials will be available to youth; discrimination, harassment, and violence are not tolerated; and all youth are to be respected and made to feel safe. The policies detail issues from names and language to housing placement to training for employees, volunteers, and contractors. The policy also spells out processes for responding to harassment and discrimination.

The training workgroup worked initially with The Equity Project staff to develop a "train the trainer" model. They have trained several local trainers from different parts of the system, who have trained over 700 personnel across county public systems. They have adjusted the curriculum over time in response to feedback from attendees, and to make it specific to Santa Clara County.

A youth and family engagement committee was formed later in the process to ensure that youth and families were part of the reform process. They created materials for families about the critical role that family plays in promoting the well-being of LGBTQ youth. They also recruited young adults with systems experience to serve on the Steering Committee.

Written in consultation with Shannan Wilber, Youth Policy Director, National Center for Lesbian Rights.

### Abuse and Mistreatment by Staff

Several surveys of young people find high rates of sexual misconduct and assault by staff in juvenile detention facilities. Of all youth in juvenile justice facilities, half of those reporting sexual assault identified facility staff as their assailant.<sup>97</sup> LGBTQ youth are particularly vulnerable to sexual assault by staff. In a survey of youth, more than one in five youth who identify as non-heterosexual reported sexual victimization involving another youth or facility staff member compared to slightly more than one in 10 heterosexual youth, as shown in *Figure 16* on the next page.<sup>98</sup>

LGBT youth also report that staff frequently overreact to displays of affection, between girls in particular.<sup>99</sup> They say they are unfairly disciplined compared to other youth.



**Figure 16: Rates of Sexual Victimization of Youth in Juvenile Detention Facilities**



Source: Allen J. Beck, Paige M. Harrison, and Paul Guerino, "Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09" (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, January 2010), 2008–09.

**SPOTLIGHT**



**Kentucky Stands Up For Its LGBT Policy in Juvenile Detention Centers**

In June 2013, the Liberty Counsel threatened to sue the Kentucky Department of Juvenile Justice (DJJ) over its policy that protects LGBT and other youth held in state facilities from hate speech or other language that may demean LGBT people. According to the policy, this includes telling youth they are "abnormal, deviant, sinful, or that they should change their sexual orientation or gender identity." Rather, the policy requires "fair and equal treatment without bias."

The Department defended the policy, stating that it was crucial in "developing a trusting, therapeutic relationship with the children in DJJ custody, which requires an environment of unconditional acceptance." This policy is an important component of protecting LGBT youth in Kentucky, particularly given that the state lacks any nondiscrimination provisions explicitly covering sexual orientation and gender identity.

Adapted from John Cheves, "Kentucky Juvenile Justice Department Says It Won't Change Policy Prohibiting Anti-Gay Comments," *Lexington Herald Leader*, July 31, 2015.

## Abuse by Other Youth

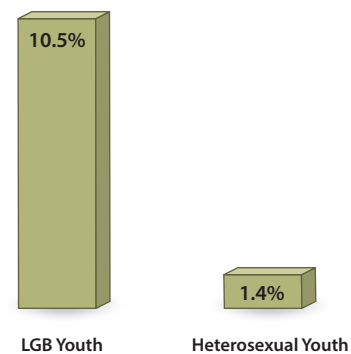
Physical assault and sexual violence are an enormous problem in juvenile justice facilities across the nation. Studies find that girls in particular in juvenile justice facilities in particular report incredibly high rates of sexual violence, and they rarely receive adequate support or protection within facilities.<sup>100</sup> In some instances, staff may "blame the victim" of a sexual or physical assault for being open about their sexual orientation or gender identity.<sup>101</sup>

In a national survey of youth in 205 residential juvenile justice facilities conducted between 2003 and 2005, more than one-quarter (29%) of youth reported being a victim of physical assault or facing threats of physical violence during their stay.<sup>102</sup> Four percent of youth reported being sexually assaulted, of whom 41% were forcibly penetrated. Of youth reporting sexual assault, 60% reported being assaulted by another resident—with some indicating they had been assaulted by both a staff member and another resident.

Analysis of 2012 facility-level and individual-level data conducted by the Bureau of Justice Statistics found that 10.5% of youth identifying as LGBT had experienced youth-on-youth sexual assault compared to 1.4% of heterosexual youth, as shown in *Figure 17* on the next page.<sup>103</sup> When youth are placed in adult facilities—for example, when they are charged or convicted as adults—they are five times more likely to be sexually assaulted than youth in juvenile facilities.<sup>104</sup>

**Figure 17: LGBT Youth Experience High Rates of Peer Sexual Assault**

Percent of Youth Reporting Peer-on-Peer Sexual Assault



Source: Allen J. Beck, "PREA Data Collection Activities, 2016," Bureau of Justice Statistics, June 2016, NCJ 249872.

## Health Care

While in juvenile justice facilities, or as part of community supervision, some LGBTQ young people have been forced to undergo harmful conversion therapy: counseling or treatment that punishes them for expressing, or that aims to change, their sexual orientation or gender identity.<sup>105</sup> In some instances, LGBTQ youth are required to undergo sex-offender counseling based solely on their sexual orientation or gender identity.<sup>106</sup>

Medical care for transgender youth in confinement varies greatly; obtaining appropriate care may be very challenging. Research finds that a majority of juvenile justice professionals do not understand the medical needs of transgender youth.<sup>107</sup> Medically necessary care for youth may include transition-related hormones or hormone blockers to delay puberty. However, young

transgender people in confinement may have to seek a court order, with the assistance of legal counsel, to receive this medical care.

## Lack of Supportive Services

Juvenile facilities are required to offer educational programming to youth in their care. This is vitally important, particularly for LGBTQ youth, for whom education may be able to serve as a protective factor against discrimination. Research finds that more than half of incarcerated youth have reading and math skills significantly below their grade level, many have dropped out of or been suspended or expelled from school, and at least one in three youth are in need of learning support services.<sup>108</sup> Yet a 2015 survey by the Council of State Governments finds that in many states, youth do not receive access to the same educational and vocational services as youth who are not in state facilities.<sup>109</sup>

### Story: Teen Paves the Way for Improvements in Transgender Health Care



In 2006, Alyssa Rodriguez, with assistance from Lambda Legal and the Sylvia Rivera Law Project, sued the New York Office of Children and Family Services. While she was in state custody in the male facility at Red Hook Residential Center and other juvenile detention facilities in New York State, Alyssa was denied prescription hormone medication and was punished for expressing her gender identity as a transgender youth. She experienced severe health consequences and emotional trauma as she went through withdrawal when she didn't receive hormones.

As part of the settlement, the Office of Children and Family Services agreed to evaluate their policies. Two facilities within the system have since been designated as facilities specifically trained to care for gay, bisexual and transgender youth, including Red Hook Residential Center. That center now has medical and support staff trained to assist youth who have experienced trauma. Youth are permitted to access items from both the male and female commissaries, effectively deeming Red Hook's grooming products gender-neutral.

Source: Aisha C. Moodie-Mills and Christina Gilbert, "Restoring Justice: A Blueprint for Ensuring Fairness, Safety, and Supportive Treatment of LGBT Youth in the Juvenile Justice System" (Center for American Progress, The Equity Project, FIRE, December 17, 2014); "Red Hook Residential Center," New York State, Office of Children and Family Services.

### SPOTLIGHT



### Cook County Makes Changes to Better Help LGBTQ Youth

In 2007, a federal judge appointed new leadership for Cook County's Juvenile Temporary Detention Center, which is one of the largest youth facilities in the entire country. Substantial policy and leadership changes took place at the facility. As part of those changes, staffing was increased, mental and physical healthcare services were improved, and staff received increased training. Integral to that work was how LGBTQ youth were treated within the center.

In 2010, Illinois created the Illinois Court-Involved LGBTQ Youth Task Force, which has led trainings for all front-line staff and has informed policy change within the facility. In 2013, the center adopted a 12-page LGBTQI policy document, which created an LGBTQI Multidisciplinary Team that makes individualized recommendations about placement, clothing, name and pronouns, medical care, and other services for all youth who identify as LGBTQI.

As part of its commitment to improved health care for LGBTQ youth, the center established a collaboration with Stroger Hospital. All youth receive a medical exam upon entrance, and LGBTQ-identified youth receive weekly care at the "Same-Gender Loving Clinic" operated through Stroger.

## Family Visitation

Many LGBTQ youth who have had negative experiences with their families are cut off from their families entirely and do not receive any visitors during their confinement—further disconnecting them from a support system. At the same time, many young LGBTQ people are not “out” to their parents but understand themselves to be LGBTQ. For these individuals, visits from family can mean that they will be “outed” to the family. For example, if they share their sexual orientation or gender identity with correctional staff, perhaps as part of conversations related to safety or health care, this information is not always treated confidentially when staff are interacting with the youth’s parents or other family members.<sup>110</sup> Additionally, when youth rely on families of choice rather than biological families for support, these individuals may not be permitted to visit due to limitations in visitation policies.

## Upon Release

It is estimated that 100,000 young people are released from juvenile justice facilities each year,<sup>111</sup> and there are an estimated half million youth under probation supervision in the United States.<sup>112</sup> Rarely are plans in place to support these youth as they return to their families, schools, and communities.<sup>113</sup> To succeed in rebuilding their lives and staying out of the

criminal justice system, youth need to be reconnected with schools, health services, employment services (particularly for young people who are over age 18), housing, and families.

Young people leaving juvenile justice facilities, particularly youth who have been committed to residential facilities, have a wide range of needs. Among the most important: resuming their education; finding good, affordable healthcare services; finding housing; and reconnecting with their family of origin or chosen family. Support for young people leaving these systems is limited and varies greatly across states and within cities and counties. In some instances, youth are simply given a bus ticket or released to a family member. Other young people benefit from a much more strategic and thoughtful approach: engaging in pre-release planning alongside a “reintegration team” that includes family members, correctional staff, social workers, and school staff to help ease the transition.

Without appropriate support, many LGBTQ young people released from the system face substantial barriers to successful re-entry. These barriers include: unsafe and underfunded schools that are unprepared to integrate young people back into the educational system; families frequently struggling with financial, health, or other challenges that make welcoming a young person home difficult; and unsafe communities lacking in social

### SPOTLIGHT



#### Juvenile Facility in New York Strives to Do Better by LGBTQ Youth

Located north of Poughkeepsie in New York State, Red Hook Residential Center houses youth between the ages of 12 and 18 who were adjudicated by the New York State Family Courts. Though a male facility, Red Hook has become a leading facility in working effectively with gay, bisexual, transgender, and questioning youth.

The staff have made a strong commitment to soliciting feedback and input from youth about programs and services and integrating their suggestions. For example, all youth in state Office of Children and Family Services facilities are permitted to wear undergarments that correspond to their gender identity. But youth at Red Hook complained that they were unable to access gender-appropriate items through the commissary. The facility now permits youth to purchase gender-specific personal care items, such as deodorant. Several transgender youth were interested in hosting a voguing night, and Red Hook provided the space for that program to occur.

Using a positive youth development framework, they emphasize building relationships with the youth and focus on rehabilitation rather than punishment. As Judy Yu from the Correctional Association of New York wrote after visiting Red Hook, “We were impressed by the positive, caring relationships between staff and youth that we saw on our visit. ... Their work shows that it is possible to transform a punitive discriminatory facility into one that supports and affirms LGBTQ youth.”

support and adequate medical and mental health services.<sup>114</sup> And while many youth are eligible for record expungement, unless a youth petitions for expungement, those records may have a negative impact on their lives moving forward, making it more difficult to find housing or a job, for example. In Illinois, for every 1,000 juvenile arrests, only three are expunged.<sup>115</sup>

As a result, young people who leave the juvenile justice system are at high risk of recidivism. Programs employing models that engage young people, families, peers, schools, and communities in re-entry have shown great promise of improving outcomes for youth.<sup>116</sup>

### Barriers to Education

Young people who have spent time in the juvenile justice system often struggle to continue their education. It is estimated that youth who were incarcerated as a juvenile are 39% less likely to graduate from high school than their peers; even for youth simply charged with a crime but not incarcerated, they are 13% less likely to complete high school than their peers.<sup>117</sup> Often, young people are pushed into alternative programs that lack academic rigor or supportive services. For LGBTQ youth for whom school may not have been a safe place, returning to school can be difficult. What's more, youth who came out while in the system may face challenges in being out at school or accessing supportive programs. Additionally, youth who were convicted of drug-related felonies or misdemeanors while receiving federal student aid are ineligible for aid.<sup>118</sup> Some colleges ask applicants about their criminal history, which may discourage individuals with criminal records from even applying to college.<sup>119</sup>

### Limited Access to Health Care

LGBTQ young people also face challenges in finding health care in their communities when they are released from the system. Transgender youth, for example, struggle to find physicians and counselors who can provide appropriate care. Another problem facing all young people leaving the system is a lack of continuity of care; even just obtaining healthcare records once released can be a major challenge.

### Unsafe Housing

When youth are released from juvenile facilities, many return to their families and communities. But for LGBTQ youth for whom home is not a safe or supportive place or where their families may struggle with economic insecurity or other challenges (as described on pages 5-7), some youth may end up in the child welfare system (which is too frequently unsupportive of LGBTQ youth) or ultimately without a place to stay. Finding safe emergency or temporary housing, such as in shelters or other supportive housing, can be a serious challenge for LGBTQ youth, and transgender youth in particular. Many shelters don't have basic training in working with LGBTQ youth, and few can provide specialized services.

### Employment Discrimination

High rates of incarceration and criminal justice involvement for young adults, particularly black and Latino young adults, have long-term impacts on employment and economic security over the course of one's lifetime. When young adults with juvenile or criminal records seek employment, they may be unfairly disqualified because of their records because many employers include questions about criminal records on job applications or require individuals to undergo a background and criminal record check.<sup>120</sup>

## CONCLUSION

LGBTQ youth, particularly LGBTQ youth of color, are overrepresented in the criminal justice system. When LGBTQ youth are pushed into the juvenile and criminal justice system, not only are they disconnected from their communities and families, but they are frequently subjected to physical and emotional harassment and violence. What's more, their experiences in the system do little to prepare them for a productive and healthy life as adults. Instead, too many LGBTQ youth, both as youth and as adults, find themselves in a cycle of poverty, homelessness, and incarceration.

### More in-Depth Content is Available

This overview about LGBTQ youth and the juvenile and criminal justice system is designed to be a primer. For more detailed policy analyses, statistics, stories from youth, and spotlights on innovative programs and initiatives around the country, please visit: <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>

For example, the following can be found in the broader report, *Unjust: How the Broken Criminal Justice System Fails LGBT People*:

- How the criminal justice and immigration systems interact and the experiences of LGBT people, including youth, in the immigration detention system.
- Detailed recommendations focused on three key areas: reducing the number of LGBT people who interact with the criminal justice system; improving the conditions of confinement for LGBT people; and improving systems to ensure that LGBT people with criminal records can rebuild their lives and avoid the cycle of incarceration.
- Stories from LGBTQ youth, including stories about involvement with the child welfare system, youth homelessness, the school-to-prison pipeline, and being profiled by police.
- Innovative programs from around the country working to improve the lives of LGBTQ youth who are at risk of becoming or are juvenile justice involved, including homeless shelters focused on serving LGBTQ youth, and local city and county juvenile justice facilities that have redesigned programs with the needs of LGBTQ youth in mind.



## RECOMMENDATIONS

Given the high rates of juvenile and criminal justice involvement for LGBTQ youth, substantial work is needed to reduce the number of youth who come into contact with the system, to address the safety issues for youth in the system, and to improve the chances for LGBTQ youth to have every opportunity to live safe, successful lives as youth and as adults. The recommendations below are purposefully high-level and broad, but they are key to reducing criminal justice involvement for LGBTQ youth; to ensuring fair treatment within the justice system and safety, dignity, and healthcare within the confinement facilities; and to improving the supports for LGBTQ Youth upon reentry. More detailed recommendations are available in the broader report focused on LGBT people and the criminal justice system, released in February 2016, [Unjust: How the Broken Criminal Justice System Fails LGBT People](#).

**Increase support for and acceptance of LGBTQ young people within families, schools, communities, and institutions.**

- 1. Family rejection.** Youth-serving organizations, social service organizations, and schools should emphasize the power of family acceptance in reducing negative outcomes for LGBTQ youth. Programs like the Family Acceptance Project pair research about the link between rejecting behaviors by families and negative physical and mental health outcomes for LGBTQ youth and young adults with concrete tools and skills for families.
- 2. Increased support for families.** Policymakers should take steps to reduce family poverty; reform immigration policies to keep families together; provide affordable, safe housing; and reduce mass incarceration to improve the stability and security of families. This will reduce the number of youth who end up on the streets, many of whom are LGBTQ.
- 3. Child welfare.** Policymakers and government agencies serving families and children should increase funding, increase staff and organizational competence, and ensure nondiscrimination in the provision of services to protect LGBTQ youth. Governments and communities should also encourage LGBTQ adults to serve as foster and adoptive parents. Governments and foundations should increase funding for programs, including

voluntary harm reduction programs, to meet the needs of LGBTQ youth who are at risk for criminalization.

- 4. Safe schools.** Congress should pass legislation ensuring nondiscrimination in education and prohibiting bullying based on sexual orientation and gender identity. State policymakers should pass state nondiscrimination and anti-bullying laws that specifically enumerate discrimination based on SO and GI as prohibited conduct. States and the federal government should also require that districts adopt model policies that address incidents as they arise but do so in a manner that ensures student safety while striving to keep young people in school to the extent possible.
- 5. Dismantle the school-to-prison pipeline.** Policymakers at all levels should advance policies and initiatives that keep youth from entering the school-to-prison pipeline. Districts and schools should review discipline policies to better ensure student safety while working to keep students in school. Schools should implement innovative programs designed to reduce bullying and discrimination while simultaneously working to address the school-to-prison pipeline. States and school districts should review school discipline standards to appropriately and proportionally address student behavior. School districts and schools should work to create agreements with law enforcement as to when and how officers will be involved in school disciplinary issues, with the majority of issues being handled by teachers, staff, and students through a conflict resolution model.

**Work to reduce homelessness among the LGBTQ youth.**

- 1.** Congress should fully fund and implement legislation such as the Federal Plan to End Homelessness, which would expand access to affordable housing.
- 2.** Federal, state, and local governments should expand investment in public and affordable housing, increasing the number of units available and improving the quality of housing.
- 3.** Congress should amend the Runaway and Homeless Youth Act to provide explicit protections for LGBT homeless youth, including prohibiting grant recipients from discriminating against LGBT youth.

4. Congress should pass legislation to reduce homelessness among all youth. Such legislation would improve training, educational opportunities, and permanency planning for older foster care youth.
5. Government agencies should increase funding for direct services to assist LGBT people experiencing homelessness and those at risk for homelessness.
6. Governments and foundations should provide more funding for research on LGBTQ youth homelessness. Local, state, and federal agencies should implement homelessness data collection that includes data on gender identity and sexual orientation. Researchers and advocates should include LGBTQ youth in their research to better understand the development needs, health disparities, and educational and workplace challenges facing LGBTQ youth.
7. States and localities should repeal laws and policies targeting homeless people.

#### **Eliminate discriminatory laws that target LGBTQ youth.**

1. States and local law enforcement should ensure that laws policing sex are not discriminatorily enforced against LGBTQ youth.
2. States should pass legislation ensuring access to condoms without fear that their possession or presence will be used as evidence to justify stops, arrest, or prosecution for any position-related offense or lewd conduct-related offense.
3. Congress and the states should pass sentencing reforms to allow for judicial and prosecutorial discretion to take into account the circumstances surrounding a crime. Another priority: exploring and implementing alternatives to criminal charges, such as substance abuse assistance, alternative justice methods, and restorative justice programs.
4. Congress, states and communities should increase funding for LGBTQ-specific and LGBTQ-inclusive drug treatment facilities.
5. Congress, states and communities should improve drug treatment options. This means increasing funding for public drug treatment programs, including in-prison treatment.

#### **Reform policing strategies to reduce discrimination against and targeting of LGBTQ youth.**

1. Law enforcement should adopt “least harm” practices, including issuing warnings and recommendations for diversion programs as opposed to citations and fines for minor infractions. Quotas or benchmarks for the number of citations, tickets, or arrests should be abandoned and not used as a way to generate revenue for localities.
2. Law enforcement should deprioritize enforcement of laws criminalizing prostitution. Efforts should be made to provide supportive services requested by people in the sex trades, including drug treatment and housing, rather than focusing on arrests.
3. Congress should pass a law to end profiling by law enforcement on the basis of actual or perceived race, color, ethnicity, immigration status, language, disability (including HIV status), sexual orientation, and gender identity, among other characteristics, such as the End Racial Profiling Act. Local and state legislatures should pass their own LGBT-inclusive anti-profiling laws.
4. All law enforcement agencies that receive federal funding should implement guidance from the U.S. Department of Justice regarding profiling, which states that federal law enforcement officers cannot use “race, ethnicity, gender, national origin, religion, sexual orientation or gender identity to any degrees, except that officers can rely on the listed characteristics in a specific suspect description.”<sup>320</sup> This guidance should be applied to all federal government agencies. Cities and counties should adopt similar guidance.
5. Police departments should adopt and enforce policies governing interactions with LGBT people during stops, arrests, transport, and detention and ensuring non-discriminatory treatment in responses to violence experienced by LGBTQ people.
6. Local and state law enforcement agencies should enact and enforce nondiscrimination provisions that prohibit discrimination on the bases of sexual orientation and gender identity. Officers should be trained on these policies and held strictly responsible for their enforcement.
7. Police departments should pass and enforce “zero-tolerance” policies toward sexual harassment and assault by police officers.

### **Reduce the number of youth held in juvenile facilities.**

1. Federal and state legislators should revisit mandatory sentencing guidelines, mandatory minimums, and increased penalties, especially for non-violent offenses, including non-violent drug crimes.
2. Reduce the use of pre-adjudication detention.
3. Eliminate the use of youth prisons, investing resources used to support these facilities in community-based solutions focused on the individual needs of youth and their families.
4. Federal, state, and local legislators should increase funding for the expansion of community-based alternatives to incarceration, including drug treatment programs and mental health programs.

### **Reduce discrimination in the juvenile justice system.**

1. Federal and state governments should fund and provide cultural competency training for judges and attorneys. Cultural competency training may help reduce discrimination and stigma on the part of judges, attorneys, and court staff.

### **Improve safety of and resources available to LGBTQ youth in juvenile facilities.**

1. Intake procedures should be individual-centered and in compliance with PREA's requirements for addressing safety for LGBTQ youth. Departments should develop and implement intake processes to identify individuals who are or who are perceived to be LGBTQ, as they are more vulnerable to physical and sexual assault.
2. Implement PREA requirements for placement of LGBTQ youth based on an individual's concerns about safety. All confinement facilities should implement and enforce PREA regulations for placement of LGBTQ youth. LGBTQ individuals should be consulted about their needs and safety concerns in determining the most appropriate housing assignments. In particular, transgender youth should be housed based on the gender identity they express rather than based on anatomical sex or the sex on their birth certificate. Some transgender individuals may prefer single rooms or showering in a private room for safety.

LGBTQ youth should not be placed in solitary confinement based solely on their sexual orientation and/or gender identity.

3. Reduce sexual assault and improve systems for addressing assault when it occurs. Departments should improve training for staff to proactively address safety concerns to reduce instances of sexual assault; educate youth about their rights to safety and procedures for reporting misconduct and sexual assault by staff and fellow youth; and allow youth to quickly and easily file complaints and do so without fear of retribution or punishment.
4. Develop and implement nondiscrimination policies with education and ongoing training for staff. Departments should develop policies and implement training for the treatment of LGBTQ youth, including procedures for searches and prohibitions on harassment, violence, abuse, or discrimination.
5. Improve health care in prisons. Medical personnel in confinement facilities should provide consistent, research-based medical care according to approved standards of care, including prompt access to HIV medication and transition-related health care for transgender youth. All staff should ensure confidentiality for all youth by protecting medical records and allowing only necessary information to be shared with non-medical staff. This includes an individual's HIV status and identification as LGBTQ.
6. Provide access to appropriate clothing and grooming products for transgender youth. Agencies should give all youth the ability to choose between available clothing and grooming items so that they can express their gender identity through choice of clothing, name, hairstyle, and other means of gender expression.
7. Improve visitation policies to help youth remain connected to loved ones. Departments should update policies to permit individuals who may not be legally related to an inmate, but who have a family-like relationship, to visit.

### **Improve support for LGBTQ youth who are released from juvenile facilities.**

1. Legislators should pass nondiscrimination legislation that explicitly prohibits discrimination based on sexual orientation and gender identity at

- the federal, state, and local levels in employment, housing, and public accommodations to ensure equal access to all programs and services.
2. Juvenile justice facility staff and child welfare staff should engage youth, particularly LGBTQ youth, in re-entry planning, as well as engage community members in supporting youth upon release.
  3. Juvenile justice facility staff and child welfare staff should connect youth to supportive services including assistance finding health care, navigating relationships with family and peers, reconnecting with schools, and more.
  4. Congress should repeal the federal ban on TANF cash assistance and SNAP food assistance for individuals with drug-related felony convictions. In the meantime, states should exercise their ability to extend such benefits.
  5. States should pass fair change hiring legislation limiting employers' consideration of criminal records.
  6. Build employment and postsecondary pathways to careers that operate at a large scale and reach young people at risk of justice system involvement and those who are already involved.
  7. Federal, state, and local housing authorities should reform restrictions on accessing public housing for individuals with criminal records. Specifically, the federal Department of Housing and Urban Development should release additional guidance making clear when and how public housing agencies and landlords should consider an applicant's criminal history. States and cities should pass fair housing legislation and policies to limit the use of criminal history by private landlords.
  8. Congress should remove bans on educational assistance for students with drug convictions, including for federal student loans and educational tax credits.
  9. Colleges and universities should remove questions about criminal records from application materials and revise admissions policies to ensure they are not overly broad or exclusionary.
  10. Increase efforts to assist youth in expunging their records, including providing funding for legal aid and expungement clinics.

## ENDNOTES

- <sup>1</sup> U.S. Census Bureau, Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2015, June 2016.
- <sup>2</sup> *Ibid.*
- <sup>3</sup> Bianca D.M. Wilson et al., “Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles” (Los Angeles: The Williams Institute, 2014), [http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf).
- <sup>4</sup> Christy Mallory et al., “Ensuring Access to Mentoring Programs for LGBTQ Youth” (The Williams Institute, January 2014), <http://www.nwnetwork.org/wp-content/uploads/2014/04/TWI-Access-to-Mentoring-Programs.pdf>; Same-sex Couple and LGBT Demographic Data Interactive. (May 2016). Los Angeles, CA: The Williams Institute, UCLA School of Law.
- <sup>5</sup> “Realizing Youth Justice: Advancing Education and Employment through Public Policy and Investment” (CLASP, June 2016), <http://www.clasp.org/resources-and-publications/publication-1/CLASP-Realizing-Youth-Justice-Final-June-20-2016.pdf>.
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## PARTNER ORGANIZATION DESCRIPTIONS

This report was developed in partnership with:

### Advancement Project

Advancement Project is a next generation, multi-racial civil rights organization. Rooted in the great human rights struggles for equality and justice, we exist to fulfill America's promise of a caring, inclusive and just democracy. We use innovative tools and strategies to strengthen social movements and achieve high impact policy change. Learn more at [www.advancementproject.org](http://www.advancementproject.org).

### The Equity Project

The Equity Project is collaboration of the National Center for Lesbian Rights and the National Juvenile Defender Center. Its mission is to ensure that lesbian, gay, bisexual, transgender, and queer youth in the juvenile justice system are treated with dignity, respect, and fairness. The Equity Project seeks to prevent discrimination and disparities based on sexual orientation, gender identity, and gender expression (SOGIE) at every stage of the delinquency process, ranging from arrest through post-disposition. For more information, visit [www.njdc.info/equity-project](http://www.njdc.info/equity-project).

### Forward Together

Forward Together is a multi-racial, multi-issue organization that is changing how we think, feel, act, and make policy about families. Whether chosen or biological, we work to ensure that all families have the power and resources they need to thrive. We work at the intersections of race, gender, and sexuality—and find ways to shift our culture and policy in the areas of reproductive justice, economic justice, and ending mass incarceration. For more information, visit [www.forwardtogether.org](http://www.forwardtogether.org).

### GLSEN

GLSEN champions safe and affirming schools for all students. We envision a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. Each year, GLSEN programs and resources reach tens of thousands of K-12 schools across the United States, and our network of chapters brings GLSEN's expertise to their local communities. GLSEN's progress and impact have won support for our work at all levels of education in the United States and sparked an international movement to ensure equality for LGBTQ students and respect for all in schools. For more information on GLSEN's policy advocacy, student leadership initiatives, public education, research and educator training programs, please visit [www.glsen.org](http://www.glsen.org).

### Genders & Sexualities Alliance Network

Genders & Sexualities Alliance Network (GSA Network) is a next-generation LGBTQ racial and gender justice organization that empowers and trains queer, trans and allied youth leaders to advocate, organize, and mobilize an intersectional movement for safer schools and healthier communities. Our overall strategy for fighting for educational justice is to work with grassroots, youth-led groups and GSAs, empowering them to educate their schools and communities, advocate for just policies that protect LGBTQ youth from harassment and violence, and organize in coalition with other youth groups across identity lines to address broader issues of oppression. Learn more at [www.gsanetwork.org](http://www.gsanetwork.org).

### Human Rights Campaign

The Human Rights Campaign and the Human Rights Campaign Foundation together serve as America's largest civil rights organization working to achieve LGBTQ equality. By inspiring and engaging individuals and communities, HRC strives to end discrimination against LGBTQ people and realize a world that achieves fundamental fairness and equality for all. The Human Rights Campaign envisions a world where lesbian, gay, bisexual, transgender and queer people are ensured equality and embraced as full members of society at home, at work and in every community. For more information, visit [www.hrc.org](http://www.hrc.org).

### JustLeadershipUSA

JustLeadershipUSA is dedicated to cutting the U.S. correctional population in half by 2030, while reducing crime. JLUSA empowers people most affected by incarceration to drive policy reform. Learn more at [www.justleadershipusa.org](http://www.justleadershipusa.org).

### National LGBTQ Task Force

The National LGBTQ Task Force works to secure full freedom, justice and equality for lesbian, gay, bisexual, transgender and queer people. For over forty years, we have been at the forefront of the social justice movement by training thousands of organizers and advocating for change at the federal, state, and local level. For more information, visit [www.thetaskforce.org](http://www.thetaskforce.org).

### True Colors Fund

The True Colors Fund works to end homelessness among lesbian, gay, bisexual, and transgender youth, creating a world in which young people can be their true selves. Through a broad continuum of community organizing, public engagement, public policy, research, and youth collaboration programs, the True Colors Fund is working to end homelessness among lesbian, gay, bisexual, and transgender youth by creating systemic change. Learn more at [www.truecolorsfund.org](http://www.truecolorsfund.org).

### Youth First

Youth First is a national advocacy campaign to end the incarceration of youth by closing youth prisons and investing in community-based alternatives to incarceration and programs for youth. Learn more at [www.youthfirstinitiative.org](http://www.youthfirstinitiative.org).

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1333 H Street NW, 10th Floor • Washington, DC 20005  
202-682-1611  
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2215 Market Street • Denver, CO 80205  
1-844-MAP-8800  
[www.lgbtmap.org](http://www.lgbtmap.org)