

# Challenging Heteronormative Practices in the Juvenile Justice System

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## Executive Summary

The juvenile justice system contains a disproportionate number of youth who identify as a part of the lesbian, gay, bisexual, transgender, queer and/or questioning community. These youth travel distinctive pathways into the juvenile justice system stemming from historically pervasive discrimination in response to sexual orientation and gender identity or expression. Bias, rejection, and isolation often result in school discipline, running away, homelessness, or crimes of survival, which are key points of system entry. Once inside, LGBTQ+ youth encounter a plethora of heteronormative policies, programs, and practices that do not fit their specific needs and frequently perpetuate their trauma. We recommend expanded use of diversion programs and practices, trauma-informed and culturally competent care, as well as widespread extensions of existing legislative protections. Related, we call on the federal agency responsible for guiding and funding state juvenile justice systems, the Office of Juvenile Justice and Delinquency Prevention, to expand its definition and protections for “minority” youth to include sexual minorities.

## Introduction

Despite their overrepresentation in the juvenile justice system, lesbian, gay, bisexual, transgender, queer and/or questioning (LGBTQ+) youth are often overlooked by policy makers and practitioners in service planning, leading to ill-fitting or inappropriate treatment.<sup>a</sup> This is in part because the [Office of Juvenile Justice and Delinquency Prevention](#) (OJJDP) does not include sexual and gender minorities in their definition of Disproportionate Minority

Contact (DMC), the reduction of which has been a core requirement for states since 1992. Several vulnerabilities specific to their sexual orientation and gender identity or expression (SOGIE) result in disproportionate numbers of LGBTQ+ youth being funneled into the justice system including: (1) status offenses such as running away that occur when young people are not accepted by family members in the home, (2) aggressive behavior in response to abuse or bullying, (3) and disciplinary measures by schools because of gender nonconforming behavior.

<sup>a</sup> Throughout this brief we use the full descriptor LGBTQ+ when referring to this population more generally. In other contexts, our preference is to use the more inclusive term LGBTQIA+, with the “I” referring to intersex and the “A” to asexual. However, much of the field’s current knowledge on the experiences of youth in the juvenile justice system does not include studies of intersex or asexual youth. Hence, in this brief, we use the term LGBTQ+ instead to reflect the research from which we are drawing. When referencing research findings that rely on narrower self-identification categories (such as LGBT), we use those abbreviations.

# LGBTQ Youth in the Juvenile Justice System

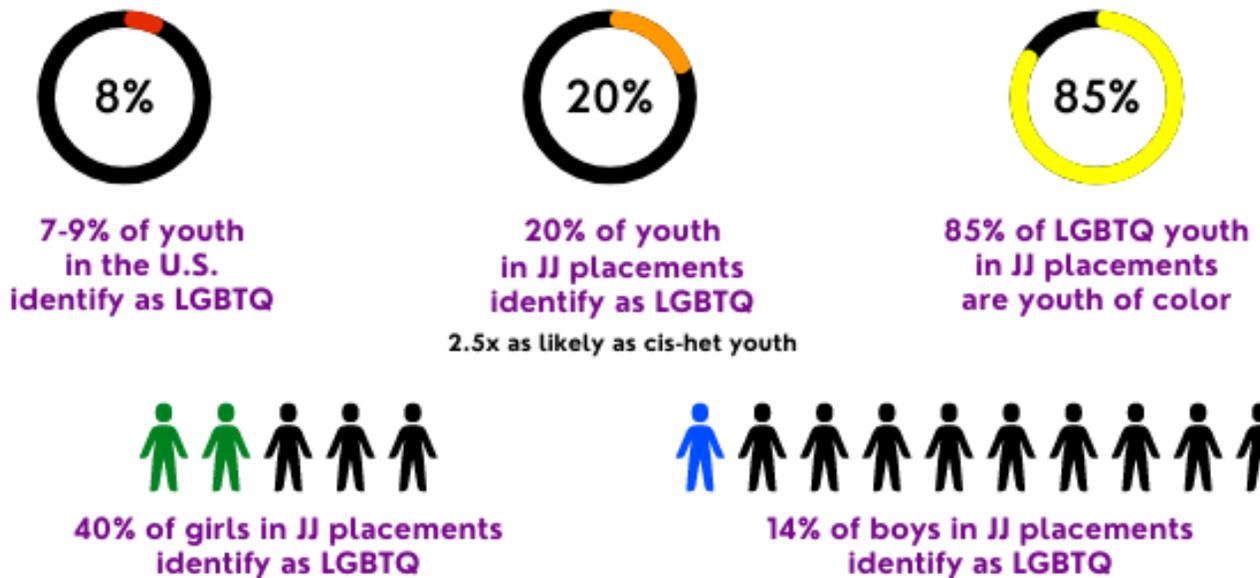


Figure 1. LGBTQ Youth in the Juvenile Justice System

Source: Center for Academic Progress & Movement Advancement Project (2016). *Unjust: How the broken juvenile and criminal justice systems fail LGBTQ youth*. <http://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-youth>

Once these youth enter the system, they find a series of court procedures and practices, such as detention and therapeutic intervention, which are grounded in heteronormative assumptions, fail to meet their needs, and run counter to healthy adult trajectories. This brief describes the typical pathways and experiences of LGBTQ+ youth as they move through the juvenile justice system and concludes by recommending the wide-scale adoption of best practices and extensions of legislative protections for this population.

LGBTQ youth are overrepresented in the juvenile justice system, particularly in the “deep end” such as detention or residential treatment programs. Approximately 8 percent of the youth population in the U.S. but 20 percent of youth in juvenile justice facilities identify as part of the LGBTQ community.<sup>1</sup> Girls in juvenile justice facilities are more likely (40 percent) to self-identify as LGBTQ than boys (14 percent). The vast majority (85 percent) of LGBTQ identifying youth in juvenile justice facilities are

youth of color, most coming from low-income schools and communities, occupying multiple positions of marginalization and exclusion (Figure 1). As adults, LGBT individuals are at significantly higher risk for adult system involvement than their cisgender, heterosexual counterparts; one study found that LGBT individuals are more than twice as likely to be arrested (with lesbian and bisexual women four times as likely) and incarcerated at more than three times the rate of the general population inside prisons.<sup>2</sup>

## Unique Pathways into the System

The unique pathways that LGBTQ+ youth travel into the system result from a combination of discriminatory treatment, enforcement of laws, and policing practices targeting this population. Family rejection of youths’ SOGIE is a common starting place, which often pushes young people into unstable housing situations. It is estimated that between 20 to 40 percent of homeless youth identify as LGBT.<sup>3</sup> Living on the street draws the attention of the police,

who can arrest youth for status offenses such as running away and truancy or quality-of-life crimes such as loitering or vagrancy. These youth may engage in “crimes of survival” such as stealing, drug sales, or prostitution, which puts them at risk for arrest and incarceration, as well as a high probability of violent victimization and adverse health outcomes.

School is another problematic site for LGBTQ+ youth when gender non-conforming behavior or public displays of affection are subjectively assessed as violating school dress codes or other rules, such as using the “wrong” bathroom. These youth are susceptible to zero tolerance policies for infractions such as challenging authority or being “disruptive.” These policies can lead to school pushout through suspension or expulsion, which then increases the likelihood of dropout and later justice system involvement. Bullying by other students can lead to self-defensive fighting, resulting in arrest or school discipline. Many LGBTQ youth report unsafe school environments. One study found that more than half (59 percent) felt unsafe because of their sexual orientation and more than one-third (43 percent) because of their gender expression.<sup>4</sup> When we consider that homes and schools are where youth spend most of their time, it is disheartening to see that this population of youth is so much less likely to be or feel safe in these settings.

LGBTQ+ youth are also disproportionately found in the child welfare system and sent to group homes or foster care after being rejected from their homes of origin. This child welfare involvement, sometimes known as “dependency” status, also increases the likelihood of later juvenile and adult justice system involvement.

### Once Inside the System

These pathways indicate a set of needs that LGBTQ+ youth bring with them into the system, such as histories of trauma, substance abuse, bullying, housing instability, educational deficits, and family rejection. Once they have entered the system, they encounter a set of procedures that are ill-suited to these needs.

This population is disproportionately detained before being found guilty (adjudicated) as a result of parents’ or guardians’ unwillingness to take custody of them or because they are seen as needing protection. They are also more likely to be segregated or isolated in protective custody because of their vulnerability to violence by staff members or other youth. Some detention facilities fail to acknowledge when a youth’s gender identity does not align with their sex assigned at birth, using misgendered housing assignments based on genitalia or neglecting provision of access to or continuity in medicine such as hormone therapy or hygiene products.

LGBTQ+ youth are more likely than their straight or cisgender counterparts to be placed outside the home after being adjudicated delinquent (or dependent by the child welfare system). In residential facilities, they are likely to encounter staff who hold outdated, stigmatic, and discredited assumptions about these youth, attributing SOGIE to personal choice or suggesting that it might be cured with conversion therapy—or worse, mandating it.<sup>5</sup> Few counselors in the system are trained to address the specific and multi-dimensional needs of this group of youth. Moreover, youth often face disruptions in access to appropriate medical care or supportive services after release from these facilities.

### Recommendations and Best Practices for LGBTQ+ Youth

Despite the comparatively rehabilitative practices of the juvenile justice and child welfare systems, diversion programs and practices that steer youth toward supportive services and informal processing are the best way to avoid the negative effects of these systems on youth. Popular diversion programs include restorative justice, which is often provided in schools and allows for youth to settle disputes and repair harm in a facilitator-led conference, and peer or youth courts, which are staffed by teen volunteers who hear the facts of a case and determine a suitable (usually restorative) sanction. Both types of programs are supported by an evidence base but need to be monitored to avoid net-widening, or including new populations that are system involved. Other non-system approaches, such as supportive housing for

youth who are pushed out of their homes by families who reject their SOGIE, could also reduce exposure to the system.

An overwhelming consensus supports the use of trauma-informed care for handling the unique needs of LGBTQ+ youth at every stage of the system.<sup>6,7</sup> These youth are more likely than their counterparts to present with multiple forms of trauma from physical, sexual, and emotional abuse in the home; rejection by family members; bullying in schools; and deprivation and exposure to violence. Trauma-informed practices acknowledge trauma histories and actively ensure that services avoid re-traumatizing individuals throughout their treatment or care. Despite widespread adoption of this model in a variety of settings, LGBTQ+ youth have been neglected in planning, training staff, and executing trauma-informed care. A related recommended practice is cultural competency, which raises staff consciousness about heteronormativity that may be built into organizational language and policies and treats youth with compassion and acceptance. Culturally competent service provision avoids making assumptions about youths' SOGIE and focuses on strengths instead of deficits. Including youth in the service planning process empowers them and results in treatment that meets their unique needs.

Title IX legislation protects students from harassment and discrimination for failing to conform to gender stereotypes in federally funded schools. Several states have gone even further by explicitly including sexual orientation and gender identity and presentation in their anti-bullying or discrimination statutes. Enforcement of these protections can vary significantly by jurisdiction and are unlikely to be triggered without legal advocacy from groups such as [Lambda Legal](#) or [GLAD](#). Moreover, working to specifically address the treatment, screening, and placement of LGBTQ+ youth, the [Prison Rape Elimination Act](#) (PREA) has been another policy route used to protect these youth in custody. PREA includes various provisions that aim to improve the training of carceral staff on LGBTQ+ identities and the housing of LGBTQ+ youth, among other measures.

## Conclusion

Although policy makers and practitioners in the juvenile justice system are held accountable by OJJDP for taking steps to record and address DMC, this problem has been framed solely in terms of overrepresented racial and ethnic minorities. We argue that LGBTQ+ youth comprise another (and typically intersecting) minoritized group that deserves heightened attention and protection from the harms of the criminal legal system. Diversion practices should be implemented widely and supports established to address the unique vulnerabilities of this population. Trauma-informed and culturally competent service provision should be used whenever these youth enter the system. Staff training must also target myths and misinformation about SOGIE. Advocacy groups can help youth engage existing federal protections through Title IX and PREA. Further safeguards could be provided by including sexual minority youth in the definition of DMC measures that OJJDP uses to grant state funding for juvenile justice operations.

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