

UNJUST: LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM

June 2017



Authors



NATIONAL CENTER FOR LESBIAN RIGHTS



Partners



This report was authored by:

Center for American Progress

The Center for American Progress (CAP) is a think tank dedicated to improving the lives of Americans through ideas and action. CAP combines bold policy ideas with a modern communications platform to help shape the national debate. CAP is designed to provide long-term leadership and support to the progressive movement. CAP's policy experts cover a wide range of issue areas, and often work across disciplines to tackle complex, interrelated issues such as national security, energy, and climate change. For more information, visit www.americanprogress.org.

Movement Advancement Project

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight, and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen efforts for maximum impact. MAP's policy research informs the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit www.lgbtmap.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.

Contact Information

Center for American Progress

1333 H Street, NW, 10th Floor
Washington, DC 20005
202-682-1611
www.americanprogress.com

Movement Advancement Project (MAP)

2215 Market Street
Denver, CO 80205
1-844-MAP-8800
www.lgbtmap.org

Youth First

c/o New Venture Fund
1201 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
www.youthfirstinitiative.org

This report was developed in partnership with:

Ceres Policy Research
Equality Federation Institute
Forward Together
GSA Network
Human Rights Campaign
Impact Justice
NCLR
National LGBTQ Task Force
True Colors Fund

See page 12 for more information about these organizations.

MAP is very grateful to the following major funders, whose generous support makes it possible for us to do our work:

David Bohnett Foundation
David Dechman & Michel Mercure
David Geffen Foundation
Ford Foundation
Gill Foundation
Esmond Harmsworth
Jim Hormel
Johnson Family Foundation
Andrew Lane
Amy Mandel & Katina Rodis
Weston Milliken, Kicking Assets Fund of the Liberty Hill Foundation
Ineke Mushovic
Jay Oppenheimer
The Palette Fund
Mona Pittenger
H. van Ameringen Foundation
Wild Geese Foundation

TABLE OF CONTENTS

INTRODUCTION	1
YOUTH INCARCERATION IN THE UNITED STATES	1
WHAT DO WE KNOW ABOUT LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM?	3
WHAT ARE THE EXPERIENCES OF INCARCERATED LGBTQ YOUTH?	4
Little Oversight for Youth Facilities	4
Inappropriate Placement	4
Abuse and Mistreatment by Staff	5
Abuse by Other Youth	6
Inadequate Health Care	6
Lack of Supportive Services	7
Challenges with Family Visitation	7
Inappropriate Community Supervision	7
CONCLUSION	8
RECOMMENDATIONS	8
ENDNOTES	10
PARTNER ORGANIZATION DESCRIPTIONS	12



INTRODUCTION

A growing body of research lays bare the overrepresentation of lesbian, gay, bisexual, transgender, and queer (LGBTQ) youth in the juvenile justice system in the United States.^a As shown in the infographic on the next page, LGBTQ and gender non-conforming youth are overrepresented in juvenile detention and correctional facilities in the juvenile system: the percentage of incarcerated LGBT youth 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. 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, status offenses, 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.¹ 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.

Despite 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.

In the juvenile and criminal justice systems, LGBTQ youth face bias in adjudication and mistreatment and abuse in confinement facilities. LGBTQ youth also lack supportive services when leaving the criminal and juvenile justice systems, often forcing them back into negative interactions with law enforcement.

Given that nearly 40% of incarcerated girls in identify as LGB and 85-90% of incarcerated LGBTQ youth are youth of color, it is crucial that any effort to change the way youth in the United States engage

with the juvenile justice system must consider the unique experiences of LGBTQ youth. This spotlight report highlights the experiences of LGBTQ youth incarcerated in the juvenile justice system. For more about the drivers of youth incarceration for LGBTQ youth and the experiences of LGBTQ following engagement with the juvenile justice system, please visit: <http://lgbtmap.org/criminal-justice-youth>.

YOUTH INCARCERATION IN THE UNITED STATES

On any given day, 50,000 youth are incarcerated in America's juvenile justice system.² One of the most harmful, ineffective, and expensive forms of incarceration is the youth prison, the signature feature of nearly every state juvenile justice system. States devote the largest share of their juvenile justice resources to youth prisons at an estimated annual cost of over \$5 billion per year.³ While youth incarceration has dramatically decreased over the past decade, almost all states still rely on these costly institutions and the harmful approach they embody.

For many young people, entering a youth prison closely resembles the experience of entering an adult prison. Uniformed guards bring in young people restrained in handcuffs and leg irons, pat-frisk or strip search them, issue them institutional undergarments and jumpsuits, and then lock them into cell blocks. The emphasis on order and control within youth prisons discourages normal adolescent behavior. In many facilities, youth are expected to walk in single file lines with their hands behind their backs and often cannot speak to each other when they walk or even when they eat. Youth who disobey rules can lose "privileges" such as recreation, showers, or phone calls home. Staff are often trained to manage youth who act out by using solitary confinement, physical restraints, or, in some cases, chemical restraints such as pepper spray. The closed nature of these facilities makes young people vulnerable to sexual and physical abuse. A Bureau of Justice Statistics survey found one in ten youth in youth prisons have been sexually victimized.⁴ The survey also found that youth identifying as LGB experienced youth-on-youth sexual assault ten times more frequently than heterosexual youth. Young people released from youth prisons have described some institutions as "fight clubs"

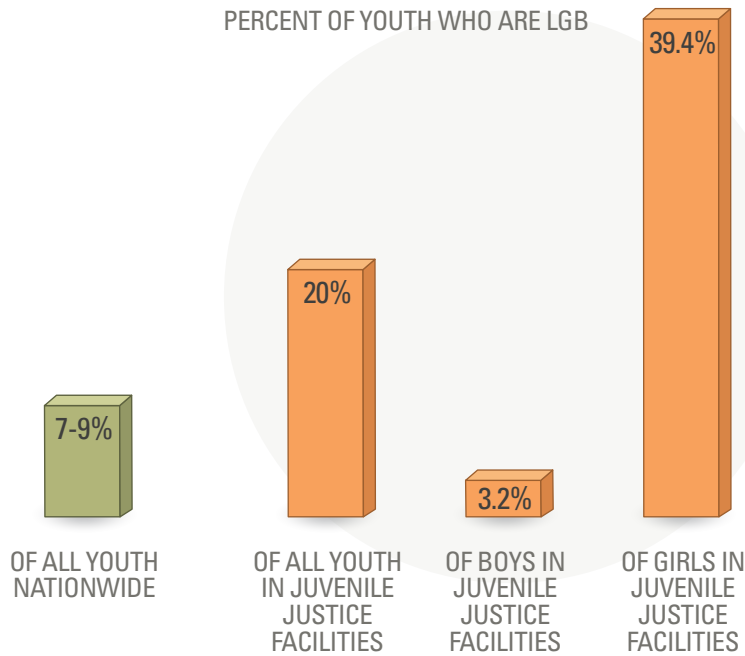
^a This report uses the acronym LGBTQ to refer to lesbian, gay, bisexual, transgender, and queer youth. There are instances where the report uses LGBT (without the Q) because the data being referenced do not allow youth to identify as queer.

LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM

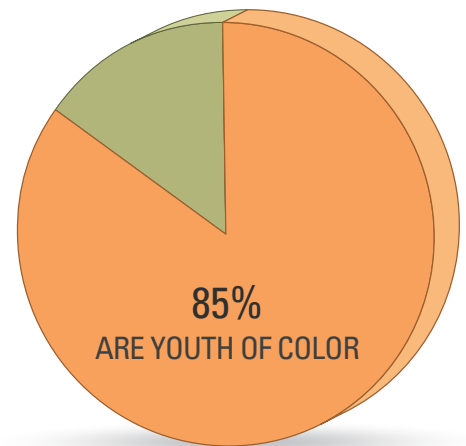
THE FACTS

LGB YOUTH OVERREPRESENTED IN THE CRIMINAL JUSTICE SYSTEM

PERCENT OF YOUTH WHO ARE LGB



OF LGBT AND GENDER NON-CONFORMING YOUTH IN JUVENILE JUSTICE FACILITIES



LGBTQ YOUTH IN JUVENILE JUSTICE FACILITIES

THE EXPERIENCE



Little Oversight of Facilities



Inappropriate Placement



Abuse by Other Youth



Inadequate Health Care



Lack of Supportive Services



Challenges with Family Visitation



Inappropriate Community Supervision

or “gladiator schools” where young people were expected to fight to avoid abuse or where staff actually set up altercations between youth.⁵

Additionally, incarcerated youth often experience dangerous facility conditions such as physical and chemical restraints, high suicide risk, sexual and physical abuse, and solitary confinement.⁶

More can and should be done for youth who come into contact with the law. If youth prisons were closed, tens of millions of dollars could be freed up for community-based, non-residential alternatives to youth incarceration, and other youth-serving programs. In October 2016, the National Institutes of Justice, in partnership with the Annie E. Casey Foundation and the Harvard Kennedy School, published a comprehensive model rejecting the harmful, ineffective, and excessively expensive youth prison model in favor of investment in community-based alternatives that work for all youth.⁷

^b 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.

WHAT DO WE KNOW ABOUT LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM?

There are more than 73 million youth in the United States under the age of 18.⁸ When older youth under the age of 25 are added, youth comprise approximately one-third (33%) of the U.S. population.^{9, b} 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.¹⁰ 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).¹¹ 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.¹²

Within juvenile justice facilities, LGBTQ and gender non-conforming youth are again overrepresented, as shown on the infographic on page 2. Analysis of the federal National Survey of Youth in Custody by the Williams Institute found that 39% of girls and 3.2% of boys in juvenile detention and correctional facilities self-identified as lesbian, gay, or bisexual compared to the estimated 7-9% of youth who identify as LGBTQ nationally.¹³ In a survey of seven juvenile detention and correctional facilities across the United States, 20% of incarcerated youth identified as LGBT or gender non-conforming.¹⁴ 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. A 2016 survey of juvenile detention and correctional facilities in California found that 19% of incarcerated youth identified as LGBTQ or gender non-conforming, 50% of girls identified as LGBT or gender non-conforming, and 90% of these youth were youth of color.¹⁵

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; black youth are four times as likely as white youth to be incarcerated, Latino youth are 1.5 times as likely to be incarcerated, and Native American youth were nearly three times as likely to be incarcerated¹⁶—with even greater disparities in some states.¹⁷

WHAT ARE THE EXPERIENCES OF INCARCERATED LGBTQ YOUTH?

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.¹⁸ The other three-quarters of youth were placed under supervision but were allowed to return to their homes. Many juvenile detention and correctional facilities in the juvenile justice system resemble prisons in their design and operation, with isolation cells, locked cellblocks, razor wire, and frequent use of restraints.¹⁹ 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.²⁰

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.²¹

The Prison Rape Elimination Act (PREA) helps set some basic standards for the treatment of incarcerated youth (including lesbian, gay, bisexual, and transgender youth and intersex youth), though implementation of PREA standards has been inconsistent, with some states opting out altogether. In general, PREA standards establish that transgender and intersex 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 to states to prevent youth from being involved in the juvenile justice system and for evaluating and improving youth facilities. For example, young people adjudicated delinquent 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 in some states. 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.²² 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.²³ 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.²⁴

A 2017 report by Children’s Rights, Lambda Legal, and the Center for the Study of Social Policy, examined the extent to which state laws and policies ensured fair treatment for LGBTQ youth in the juvenile justice system.²⁵ Their analysis found that there is great variation across the country—both because some states have clear laws and policies, while others have county-based systems where each county develops their own guidelines and procedures for addressing LGBTQ youth. Only 21 states and the District of Columbia have explicit sexual orientation and gender identity nondiscrimination protections in their juvenile justice system.

Inappropriate Placement

Despite PREA’s standards for the determining the placement of transgender and intersex youth, for many incarcerated 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 medically necessary transition-related care. 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. In their 2017 report, Children’s Right, Lambda Legal, and the Center for the Study of Social Policy reviewed state laws and policies and found that forty states lack juvenile justice system standards permitting youth to dress and express themselves in accordance with their gender identity.²⁶

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. PREA regulations limit the use of "protective isolation" for LGBT and intersex youth. Research also finds a link between isolation and risk of suicide for youth.²⁷ 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.²⁸

Abuse and Mistreatment by Staff

Several surveys of incarcerated young people find high rates of sexual misconduct and assault by staff. Of all youth incarcerated in juvenile detention and correctional facilities in the juvenile justice system, half of those reporting sexual assault identified facility staff as their assailant.²⁹ Incarcerated LGBTQ youth are particularly vulnerable to sexual assault by staff. In the Williams Institute analysis of the National Survey of Youth in Custody, 15.1% of gay and bisexual boys and 8.9% of lesbian and bisexual girls reported sexual contact with

SPOTLIGHT



An Informed Approach in the Santa Clara Juvenile Division

Santa Clara County (CA) has taken significant steps toward improving 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.

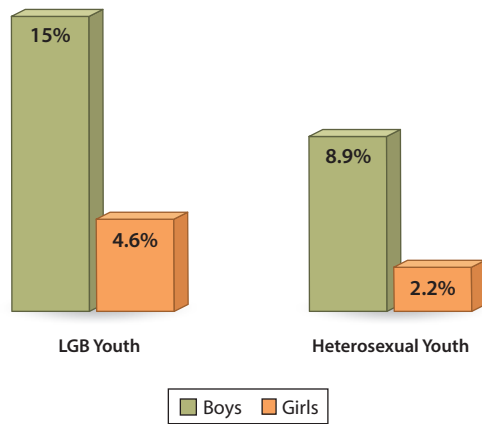
The policy workgroup first created a policy for housing and services to trans youth in the juvenile hall, and then created a broader policy for LGBTQ youth across the system. The Juvenile LGBT Policy released in 2013 outlined core principles and detailed policies. One important aspect of the policy is 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.

Figure 1: LGB Youth Report Higher Rates of Sexual Contact with Staff



Source: Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence*, 2017.

staff, as shown in *Figure 1*.³⁰ Incarcerated LGBTQ youth also report that staff frequently overreact to displays of affection, between girls in particular.³¹ They report being unfairly disciplined compared to other youth.

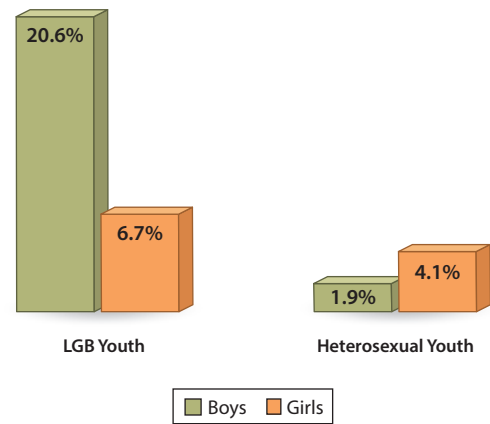
Abuse by Other Youth

Physical assault and sexual violence are an enormous problem in juvenile detention and correctional facilities in the juvenile justice system. Studies find that incarcerated girls in particular report incredibly high rates of sexual violence, and they rarely receive adequate support or protection within facilities.³² In some instances, staff may "blame the victim" of a sexual or physical assault for being open about their sexual orientation or gender identity.³³

In a national survey of incarcerated youth in 205 juvenile detention and correctional facilities conducted between 2003 and 2005, more than one-quarter (29%) of incarcerated youth reported being a victim of physical assault or facing threats of physical violence during their stay.³⁴ Four percent of incarcerated 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 the National Survey of Youth in Custody by the Williams Institute found that 20.6% of gay and bisexual boys experienced sexual assault by a peer

Figure 2: LGB Youth Report High Rates of Peer Sexual Assault



Source: Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence*, 2017.

compared to just 1.9% of heterosexual boys, as shown in *Figure 2*.³⁵ 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 incarcerated in juvenile detention and correctional facilities in the juvenile justice system.³⁶

Inadequate Health Care

While in juvenile detention and juvenile correctional 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.³⁷ In some instances, LGBTQ youth are required to undergo sex-offender counseling based solely on their sexual orientation or gender identity.³⁸ Research finds that the sexual and reproductive healthcare needs of LGBTQ youth often go unmet, resulting in high rates of sexually transmitted infections and HIV stigma.³⁹

Medical care for incarcerated transgender youth 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.⁴⁰ Medically necessary care for youth may include transition-related hormones or hormone blockers to delay puberty. However, incarcerated young transgender people may have to seek a court order, with the assistance of legal counsel, to receive this medical care.

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.”

Lack of Supportive Services

Juvenile detention and correctional facilities are required to offer educational programming to youth in their care. This is vitally important, particularly for incarcerated 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.⁴¹ Yet a 2015 survey by the Council of State Governments finds that in many states, incarcerated youth do not receive access to the same educational and vocational services as youth who are not in state facilities.⁴²

Challenges with Family Visitation

Some incarcerated LGBTQ youth have had negative experiences with their families or may be 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 incarcerated LGBTQ youth, 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.⁴³ Additionally, when youth rely on families of choice rather than biological families for support, these chosen family members may not be permitted to visit incarcerated youth due to limitations in visitation policies.

Inappropriate Community Supervision

Once youth leave secure facilities, they are often assigned to community-based gender-specific programs according to their birth sex. This practice was developed with the best intentions: to provide supportive programming for girls who were excluded from traditional justice programs that had been developed for boys. However, youth do not fit neatly into a gender binary. As with housing decisions and access to clothing and grooming products, assignment to community-based programming based on birth sex can undermine the well-being of gender nonconforming and transgender youth.⁴⁴

CONCLUSION

LGBTQ youth, particularly LGBTQ youth of color, are overrepresented in the juvenile justice system. When LGBTQ youth are pushed into the juvenile 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.

RECOMMENDATIONS

Given the high rates of incarceration 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. These recommendations 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.

Close youth prisons and create community-based alternatives to youth incarceration.

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. 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.
3. Reduce the use of pre-adjudication detention.
4. Reduce the number of youth held in juvenile facilities and limit their use to the small number of youth who pose a serious risk to public safety and may need secure care.

Reduce discrimination in the juvenile justice system.

1. Federal and state governments should fund and provide cultural competency training for

judges, public defenders, district attorneys, probation officers, and other justice stakeholders. Cultural competency training may help reduce discrimination and stigma in the youth court.

Improve safety of and resources available to LGBTQ youth in youth facilities and community supervision.

1. Intake procedures should be individualized and compliant 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. Intake staff should receive training in how to talk with youth about sexual orientation and gender identity, and to work with youth to assess safety concerns.
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 and other sexually transmitted infection treatment and prevention services, transition-related health care for transgender youth, and mental health care. Facility policies, including staff training, should reflect the need for LGBTQ-affirming services. 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 youth, but who have a family-like relationship, to visit.
8. Apply PREA standards to community supervision. Within secure facilities, PREA recommends that youth be assigned to housing and have access to clothing and grooming products that match their current gender identity. Similarly, youth should have access to community-based programming based on their gender identity rather than birth sex. Protocols for referrals to community-based gender-specific programming should be developed by each department to ensure consistent and supportive decisions are made to affirm youth gender identity.

ENDNOTES

- 1 Kathryn E.W. Himmelstein and Hannah Brückner, "Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study," *Pediatrics* 127, no. 1 (January 1, 2011): 49–57, doi:10.1542/peds.2009-2306.
- 2 Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. "OJJDP Statistical Briefing Book: 1997-2014" (August 3, 2016), <http://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2014>.
- 3 Justice Policy Institute, "The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense," (May 2009), http://www.justicepolicy.org/images/upload/09_05_rep_costssofconfinement_jj_ps.pdf.
- 4 Allen J. Beck et al., "Sexual Victimization in Juvenile Facilities Reported by Youth, 2012," (Bureau of Justice Statistics, June 2013), <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.
- 5 Amnesty International and Human Rights Watch, "The Rest of Their Lives: Life Without Parole for Child Offenders in the United States," 2005, <https://www.hrw.org/reports/2005/us1005/TheRestoftheirLives.pdf>.
- 6 The Annie E. Casey Foundation, "Maltreatment of Youth in U.S. Juvenile Correctional Facilities," (2015) <http://www.aecf.org/m/resource/aecf-maltreatmentyouthcorrections-2015.pdf>.
- 7 Patrick McCarthy et al., "The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model. New Thinking in Community Corrections Bulletin," (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016), <https://www.ncjrs.gov/pdffiles1/nij/250142.pdf>.
- 8 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.
- 9 *Ibid.*
- 10 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), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.
- 11 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-toMentoring-Programs.pdf>; Same-sex Couple and LGBT Demographic Data Interactive. (May 2016). Los Angeles, CA: The Williams Institute, UCLA School of Law.
- 12 Mallory et al., "Ensuring Access to Mentoring Programs for LGBTQ Youth."
- 13 Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence*, 2017.
- 14 Angela Irvine, "Dispelling Myths: Understanding the Incarceration of Lesbian, Gay, Bisexual, and Gender Nonconforming Youth," Unpublished (Oakland, CA: National Council on Crime and Delinquency, 2014).
- 15 Angela Irvine et al., "Lesbian, Gay, Bisexual, Questioning, and/or Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide," (Impact Justice and NCLR, January 2017) http://www.nclrights.org/wp-content/uploads/2017/02/cpoc.lgbq_gnct_practice_guide_8feb2017.pdf.
- 16 The W. Haywood Burns Institute, "Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change," (May 2016) http://www.burnsinstitute.org/wp-content/uploads/2016/05/Stemming-the-Rising-Tide_FINAL.pdf.
- 17 The W. Haywood Burns Institute, "Unbalanced Juvenile Justice," (February 2016) <http://data.burnsinstitute.org/#comparison=2&placement=1&racess=2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2013&view=map>.
- 18 Melissa Sickmund and Charles Puzanchara, "Juvenile Offenders and Victims: 2014 National Report" (Pittsburgh, PA: National Center for Juvenile Justice, December 2014), <http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf>.
- 19 "The 54,000," Youth First Initiative, accessed August 5, 2016, <http://www.youthfirstinitiative.org/the54000>.
- 20 Richard A. Mendel, "No Place for Kids: The Case for Reducing Juvenile Incarceration" (Baltimore, Maryland: The Annie E. Casey Foundation, 2011), <http://www.aecf.org/m/resource/aecfNoPlaceForKidsFullReport-2011.pdf>.
- 21 United States Government Accountability Office, "Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges," May 2008, <http://www.gao.gov/assets/280/275275.pdf>.
- 22 U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, "Sight and Sound Separation, 2014," OJJDP Statistical Briefing Book, April 27, 2015, http://www.ojjdp.gov/ojstatbb/structure_process/qa04306.asp?qaDate=2014.
- 23 "Fact Sheet: Jail Removal and Sight & South Core Protections" (Act 4 Justice, August 2014), <http://act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Core%20Protection%20Jail%20Removal%20and%20Sight%20Sound%20Aug%202014%20FINAL.pdf>.
- 24 OJJDP Statistical Briefing Book. Online. Available: http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2015. Released on April 29, 2016.
- 25 Christina Wilson Remlin et al., "Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care," (Children Rights, Lambda Legal, Center for the Study of Social Policy, April 2017) http://www.childrensrightrights.org/wp-content/uploads/2017/04/TGNC-Policy-Report_2017_final-web.pdf.
- 26 *Ibid.*
- 27 Fatos Kaba et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Public Health* 104, no. 3 (March 2014): 442–47, doi:10.2105/AJPH.2013.301742; Sarah Bergen et al., "Toward Equity: A Training Curriculum for Understanding Sexual Orientation, Gender Identity, and Gender Expression, and Developing Competency to Serve LGBT Youth in the Juvenile Justice System" (The Equity Project, 2015), http://www.equityproject.org/wp-content/uploads/2015/01/Equity_Curriculum_Complete.pdf.
- 28 "Report and Recommendations Concerning the Use of Restrictive Housing," U.S. Department of Justice, Office of the Deputy Attorney General, January 27, 2016, <http://www.justice.gov/restrictivehousing>.
- 29 Sickmund and Puzanchara, "Juvenile Offenders and Victims."
- 30 Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence*, 2017.
- 31 Bergen et al., "Toward Equity."
- 32 Malika Saada Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story" (Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women, 2015), http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf.
- 33 Shannan Wilber, "Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System," A Guide to Juvenile Detention Reform (Juvenile Detention Alternatives Initiative, The Annie E. Casey Foundation, 2015), http://www.nclrights.org/wp-content/uploads/2015/09/AECF_LGBTinJJS_FINAL2.pdf; Rudy Estrada and Jody Marksamer, "The Legal Rights of Young People in State Custody: What Child Welfare and Juvenile Justice Professionals Need to Know When Working With LGBT Youth" (Lambda Legal and National Center for Lesbian Rights, June 2006), http://www.nclrights.org/wp-content/uploads/2013/07/LegalRights_LGBT_State_Custody.pdf.
- 34 Sickmund and Puzanchara, "Juvenile Offenders and Victims."
- 35 Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," *Journal of Youth & Adolescence*, 2017.

- ³⁶ Equal Justice Initiative, "All Children Are Children: Challenging Abusive Punishment of Juveniles," accessed September 17, 2015, http://www.eji.org/files/AllChildrenAreChildren_0.pdf.
- ³⁷ Christian L. Rummell and Jeffrey M. Poirier, "NDTAC Fact Sheet: Improving Services for Youth Who Are LGBT in Juvenile Justice Systems" (National Evaluation and Technical Assistance Center for Children and Youth Who Are Neglected, Delinquent, or At-Risk, 2014), http://www.neglected-delinquent.org/sites/default/files/docs/NDTAC_LGBT_FS_508_2014.pdf.
- ³⁸ *Ibid.*
- ³⁹ Catherine Hanssens & Rene Bennett-Carlson, *Juvenile Injustice: The Unfulfilled Rights of Youth in State Custody to Comprehensive Sexual Health Care* (The Center for HIV Law and Policy, 2010); Ctrs. for Disease Control and Prevention, *HIV Among Youth: Prevention Challenges* (2017).
- ⁴⁰ Katayoon Majd, Jody Marksamer, and Carolyn Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts" (Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights, October 16, 2009), <http://www.modelsforchange.net/publications/237>.
- ⁴¹ "Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth" (The Council of State Governments Justice Center, November 2015), https://csjjusticecenter.org/wp-content/uploads/2015/11/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf.
- ⁴² *Ibid.*
- ⁴³ Wilber, "Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System."
- ⁴⁴ Nikki Jones and Angela Irvine, . "Taking the Girl out of Gender-Specific Programming in the Juvenile Justice System," Forthcoming article in *Annual Review of Criminology*.

PARTNER ORGANIZATION DESCRIPTIONS

This report was developed in partnership with:

Ceres Policy Research

Ceres Policy Research advances youth and community well-being through research and strategic planning. We use a healing-informed approach to build pathways away from exclusionary school discipline and the juvenile justice system. Our work aims to reduce disparities across race, gender identity, gender expression, and sexual orientation. For more information, visit www.cerespolicyresearch.com.

Equality Federation Institute

Equality Federation is the movement builder and strategic partner to state-based organizations advocating for LGBTQ people. We amplify the power of the state-based LGBTQ movement. We work collaboratively on critical issues—from advancing workplace fairness and family recognition to defeating anti-transgender bathroom bans and HIV criminalization laws—that affect how LGBTQ people experience the world from cradle to grave. Together with our partners we work on cross-cutting issues impacting our community such as racial equity, reproductive justice, and immigration. For more information, visit www.equalityfederation.org.

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.

GSA 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.

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.

Impact Justice

Impact Justice is an innovation and research center, tapping into bold, original ideas to reduce incarceration and shining a spotlight on existing efforts that need to be embraced. Impact Justice is committed to fostering a more humane, responsive, and restorative system of justice in our nation. Our bedrock belief is that to build a better justice system, we must first imagine a better system. For more information, visit www.impactjustice.org.

NCLR

National Center for Lesbian Rights (NCLR) is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, legislation, policy, and public education. For more information, visit www.nclrights.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.

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.

This page intentionally left blank

Center for American Progress



1333 H Street NW, 10th Floor
Washington, DC 20005
202-682-1611
www.americanprogress.org



c/o New Venture Fund
1201 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
www.youthfirstinitiative.org



movement advancement project ▶

2215 Market Street
Denver, CO 80205
1-844-MAP-8800
www.lgbtmap.org