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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. 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. 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. 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. 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. 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”

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* 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: 7.9%, 20%, 3.2%, 39.4%

- **OF LGBT AND GENDER NON-CONFORMING YOUTH IN JUVENILE JUSTICE FACILITIES**
  - 85% are youth of color

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

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.

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. When older youth under the age of 25 are added, youth comprise approximately one-third (33%) of the U.S. population. 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. 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). 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.

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. 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. 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.

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 incarcerated—with even greater disparities in some states.
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. 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. 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.

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.

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.

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 Rights, 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.
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. 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.

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. 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.
Incarcerated LGBTQ youth also report that staff frequently overreact to displays of affection, between girls in particular. 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. In some instances, staff may “blame the victim” of a sexual or physical assault for being open about their sexual orientation or gender identity.

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. 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 compared to just 1.9% of heterosexual boys, as shown in Figure 2. 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.

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. 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.

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. 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.
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 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. 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.

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. 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.
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.
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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.nclr.org.

National LGBTQ Task Force
The National LGBTQ Task Force works to secure full freedom, justice and equality for lesbian, gay, bisexual, and transgender 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.
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