

LGBTQ Youths in the Juvenile Justice System

Youths' sexual orientations and gender identities are complex. Youths experience an ongoing process of sexual development as they mature into young adults. Adolescence presents a time in people's lives when they are unsure of themselves and begin to question who they are (Poirier et al. 2014; IOM 2011). Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youths may present unique challenges in the juvenile justice system. Research has shown that LGBTQ youths are more likely to confront certain barriers and environmental risk factors connected to their sexual orientations and gender identities. For example, compared with their heterosexual classmates and peers, LGBTQ youths are more likely to experience bullying at school (Mitchum and Moodie–Mills 2014), more likely to experience rejection or victimization perpetrated by their parents/caregivers (often resulting in youths' running away from home) [Friedman et al. 2011], more likely to face homelessness (Burwick et al. 2014), twice as likely to be arrested and detained for status offenses and other nonviolent offenses (Irvine 2010), and at higher risk for illicit drug use (Heck et al. 2014).

Definitions

Sexual orientation (lesbian, gay, or bisexual) is based on the gender of the person or persons someone is emotionally, physically, sexually, or romantically attracted to. A *lesbian* is a girl or woman who is emotionally, romantically, and sexually attracted to girls or women, while *gay* typically refers to an individual who is emotionally, romantically, and sexually attracted to individuals of the same sex, made more often in reference to boys or men. The term *bisexual* refers to an individual who is emotionally, romantically, and sexually attracted to both males and females (Irvine 2010).

Questioning means that an individual, usually a younger person, is exploring or unsure about his or her sexual orientation or gender identity (ACLU 2013). *Intersex* involves a physical disorder or sexual development. A person has gonads (testes or ovaries) of one sex but often ambiguous external genitalia (Hopkins and Dickson 2014).

Gender identity refers to an individual's internal sense of being male or female, or in between, regardless of the person's sex assigned at birth (Irvine 2010; ACLU 2013). *Gender expression* has to do with the manner in which a person expresses his or her gender identity, such as through clothing, mannerisms, or chosen name (Irvine 2010; ACLU 2013). *Gender nonconforming* refers to youths who have gender identities or gender expressions that break social norms (Irvine 2010).

Transgender is a term that encompasses a variety of ways people may identify or express their gender, usually in opposition to the biological sex (Hopkins and Dickson 2014). As Irvine explains: "[A]

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transgender girl is a girl whose birth sex was male but who understands herself to be female. A transgender boy is a boy whose birth sex was female but who understands himself to be male” (2010, 1). Transgender is not defined by whether a person has undergone surgery or hormone treatment to change his or her appearance or anatomy. Rather, it is defined by a person’s internal sense of feeling male or female (Shuster 2014).

Many of these terms may overlap in meaning. For example, gender nonconforming is a broad term that can include, but is not limited to, transgender youth. However, any youth that does not conform to the social norms or expectations of his or her gender (through mannerisms, behavior, or even clothing choices) may be considered gender nonconforming, although that individual may not necessarily be LGBTQ (*FindYouthInfo.gov* 2014).

The Number of LGBTQ Youths in the Juvenile Justice System

While they vary, some studies have estimated the prevalence of youths who identify as LGBTQ in the juvenile justice system. Available research has estimated that LGBT youths represent 5 percent to 7 percent of the nation’s overall youth population, but they compose 13 percent to 15 percent of those currently in the juvenile justice system (Hunt and Moodie-Mills 2012; Majd, Marksamer, and Reyes 2009).

A few studies have provided insight into the number of LGBTQ youths at particular stages of the juvenile justice system. Irvine (2010) conducted a study on pretrial detention and administered a survey of 2,100 youths in six juvenile justice jurisdictions across the country: Albuquerque, N.M.; Birmingham, Ala.; Las Vegas, Nev.; Minneapolis, Minn.; Portland, Ore.; and Santa Cruz, Calif. Youths in the pretrial detention population at each site were asked questions about demographics as well as histories of bullying and harassment, suspension and expulsion from school, and detention. Youths were categorized as LGB if they disclosed having a lesbian, gay, bisexual, or other sexual orientation; or they reported questioning their sexual orientation; or they had same-gender sexual attraction; or they had a history of running away or being kicked out of their home because of their gender identity or sexual orientation. The results from the survey showed that 11 percent of youths identified as being sexually attracted to individuals of the same gender and categorized as LGB (Irvine 2010).

With regard to adjudicated youth in custody, the Bureau of Justice Statistics (BJS) in 2012 conducted the *National Survey of Youth in Custody* to estimate the rates of sexual victimization in juvenile facilities. Responses were gathered from approximately 18,100 adjudicated youths placed in juvenile facilities across the country. Of those surveyed, 2,200 youths (about 12 percent) self-identified as nonheterosexual (that is, youths who identified their sexual orientation as gay, lesbian, bisexual, or other) [Beck et al. 2013], a rate similar to that reported in the 2010 study by Irvine.

Identifying the number of LGBTQ youths in the juvenile justice system is problematic. Reliable statistics are difficult to find, partially because they often rely on youths disclosing this information about themselves. However, youths may hide their gender identities and sexual orientation out of fear of reprisal from justice system officials, family members, or friends. In addition, many data collection systems do not include questions to record such information. When looking at the records

collected from six cities, Irvine (2010) found there were no jurisdictions collecting formal data on youths' sexual orientation and gender identity.

Risk and Protective Factors

Risk Factors

LGBTQ youths face many of the same everyday challenges related to growing up as their heterosexual peers (such as getting good grades, deciding which college to attend, or posting on various social media sites). But they also face additional obstacles related to their sexual orientation and gender identity, which heterosexual youths may not experience. A 2011 IOM report on health issues related to LGBT individuals stated:

LGBT youth face the same challenges as their heterosexual peers, but also stigma that may contribute to the identified disparities in health status between sexual- and gender-minority youth and heterosexual youth. [2011, 142]

Research has shown that adolescence is a time of heightened risk-taking behavior and, as indicated above, there are several unique risk factors that LGBTQ youths are more likely to experience, thus increasing the odds they will come into contact with the juvenile justice system.

At home, research has shown, LGBTQ youths are more likely than sexual nonminority youths to have experienced childhood sexual and physical abuse. For instance, a meta-analysis by Friedman and colleagues (2011) found that sexual minority adolescents (i.e., youths who experience same-sex attractions; or self-label as gay, lesbian, or bisexual; or engage in same-sex sexual activity) were 2.9 times more likely to report childhood sexual abuse, compared with sexual nonminority youths. This result was moderated by gender, as sexual minority boys were 4.9 times more likely to experience childhood sexual abuse, compared with sexual nonminority boys. Youths may also experience verbal and physical abuse from their family because of rejection of their sexual orientation or nonconforming gender behavior. As many as 30 percent of LGBTQ youths experience family violence after "coming out" to family members (Himmelstein and Brückner 2011). The Family Acceptance Project (a research initiative studying the influence of family reactions on the physical and mental health of LGB adolescents and young adults) examined the effect of family rejecting reactions to sexual orientation and gender expression during adolescence on later health problems (Ryan et al. 2009). The results showed that higher rates of family rejection were significantly associated with poor health outcomes. Specifically, LGB young adults who experienced higher levels of family rejection during adolescence were 8.4 times more likely to have reported attempting suicide, 5.9 times more likely to report high levels of depression, and 3.3 times more likely to use illegal drugs (Ryan et al. 2009). Countless LGBTQ youths are kicked out or "thrown away" by their family, and many decide to run away from home because of familial rejection. This can in turn lead to increased odds that a youth will be placed in a group home or foster care, or experience homelessness. One study found that LGB and gender nonconforming youth were twice as likely as their heterosexual and gender-normative peers to report they had been removed from their home by a social worker, had lived in a group or foster home, and had ever been homeless after being kicked out of their home or running away (Irvine 2010).

In school, LGBTQ youths face bullying and victimization from classmates and even from teachers or administrators. *The 2009 National School Climate Survey* conducted by the Gay, Lesbian, and Straight

Education Network found that 84.6 percent of LGBT students were verbally harassed (e.g., called names or threatened), 40.1 percent were physically harassed (e.g., pushed or shoved), and 18.8 percent were physically assaulted (e.g., punched, kicked, injured with a weapon) at school because of their sexual orientation (Kosciw et al. 2010). Further, the 2011 meta-analysis by Friedman and colleagues found that in school sexual minority students were 1.7 times more likely to report being threatened or injured with a weapon or otherwise assaulted, compared with sexual nonminority students, and 2.8 times more likely to report missing school because of fear. The hostile school environment can contribute to higher rates of truancy, absenteeism, and dropping out, in addition to lower academic scores/grades and psychological trauma (Mitchum and Moodie-Mills 2014). LGBTQ youths are also more likely to face harsh disciplinary actions, including expulsions, from school administrators (Himmelstein and Brückner 2011; Morgan et al. 2014).

In addition to increased victimization at home and at school, LGBTQ youths, especially those who are homeless, are more likely to engage in high-risk sexual behaviors, such as survival sex or other sex work, compared with heterosexual youths (Burwick et al. 2014). A 2013 report by the Institute of Medicine (IOM) and the National Research Council (NRC) found that being lesbian, gay, bisexual, or transgender was an individual-level factor that increases boys' and girls' vulnerability to commercial sexual exploitation and sex trafficking. The report identified numerous factors that contribute to this potential vulnerability, including several of those mentioned previously such as homelessness, physical and emotional abuse, and family rejection (IOM and NRC 2013).

Moreover, recent research suggests that LGBTQ youths are also at higher risk to experience dating violence. A 2014 study by Dank and colleagues found that significantly higher percentages of LGB youths reported being victims of physical, psychological, and cyber dating abuse, as well as sexual coercion, compared with heterosexual youths. However, the study also found that higher percentages of LGB youth reported perpetrating these forms of dating violence. Because previous studies on youth dating violence studies have not distinguished LGBTQ youth in their sample, it is unclear whether the study's findings are in line with prior research (Dank et al. 2014).

Finally, LGBTQ youths are also at higher risk for depression, mood and anxiety disorders, and suicidal ideation and attempts, compared with their heterosexual peers. On average, LGBTQ youths are 2 to 7 times more likely to have attempted suicide; are at higher risk for substance abuse disorders; and have higher rates of reported smoking, alcohol use, and drug use (IOM 2011; Craig, Austin, and Alessi 2013).

Protective Factors

Although a great deal of research has focused on the challenges and obstacles faced by LGBTQ youth, some research has focused on factors that can promote the health and well-being of youth. For example, although family rejection can have a negative impact on youths, especially those who have revealed their sexual orientation or gender identity, family acceptance can be an important protective factor. A 2010 study from the Family Acceptance Project found that LGBTQ young adults who reported high levels of family acceptance during adolescence had significantly higher scores on self-esteem, social support, and general health and significantly lower scores on measures of depression,

substance abuse, risky sexual behavior, suicidal thoughts, and suicidal attempts, compared with young adults who had reported low levels of family acceptance (Ryan et al. 2010).

School climate can also serve as a protective factor for LGBTQ youth. Schools that promote awareness and acceptance of youth, offer support and resources for students and teachers, and ensure the safety of students can promote positive outcomes for LGBTQ youth. For example, in 1993, Massachusetts established the Safe Schools Program for Gay and Lesbian Students (SSP). The initiative had four components:

1. Develop school policies to protect gay and lesbian students from harassment, violence, and discrimination.
2. Offer training to school personnel in crisis and suicide intervention.
3. Support the establishment of school-based support groups (e.g., Gay-Straight Alliances).
4. Provide school-based counseling for family members of gay and lesbian students. [Szalacha 2003]

Although the results were mixed, an evaluation of the initiative found that on average students in schools with even one of the recommendations of the SSP implemented believed that their school was a safer, less sexually prejudiced environment compared with students in schools that did not implement any component (Szalacha 2003).

LGBTQ Youths in the Juvenile Justice System

Studies have suggested that LGBTQ youths are disproportionately represented in the juvenile justice system. For example, Himmelstein and Brückner (2011) found that youths who self-identified as LGB were significantly more likely to be stopped by police than youths who identified as heterosexual. The 2010 study by Irvine found that LGB and gender-nonconforming youths were twice as likely to have been previously held in secure detention for truancy, warrants, probation violations, running away, and prostitution compared with their heterosexual and gender-normative peers. However, there were no differences when comparing the prevalence of detention for serious charges such as violent offenses, weapon charges, property offenses, and alcohol or drug offenses. Rather, the results seemed to suggest that LGB and nonconforming youths were detained for nonviolent offenses that could be linked to occurrences of out-of-home placements and homelessness (Irvine 2010).

Majd, Marksamer, and Reyes (2009) surveyed more than 400 juvenile justice professionals (including judges, defense attorneys, prosecutors, and probation officers) and found that LGBTQ youth may face higher risks of detention or residential placement for numerous reasons. For example, a perceived lack of family support was found to be a significant factor in the courts' decisions to detain youth. Judges or court personnel may believe youths lack the support from family members to return home, or believe it is in the youths' best interest to remove them from what could be a hostile environment at home. Instead, kinship care, foster care, or even detention is viewed as a more appropriate option

(Majd, Marksamer, and Reyes 2009). Unfortunately, biases and misconceptions about LGBTQ youths' behavior may also factor into detention decisions. LGBTQ youths may come across as aggressive or hostile, and court personnel may view them as at greater risk of reoffending. One public defender who was interviewed noted criticism of her state's risk-screening instrument because "it scores youth as 'higher risk' if they have had sexual experiences with someone of the same sex" (Majd, Marksamer, and Reyes 2009, 97).

In secure detention or correctional facilities, LGBTQ youths face harassment, emotional abuse, physical and sexual assault, and prolonged periods spent in isolation (Majd, Marksamer, and Reyes 2009). Passed in 2003, the Prison Rape Elimination Act (PREA) requires the U.S. Department of Justice (DOJ) to gather data on the incidence of prison rape and recommend national standards for facilities holding individuals in the adult and juvenile justice systems. In the final summary of PREA regulations, DOJ "recognized 'the particular vulnerabilities of inmates who are [lesbian, gay, bisexual, transgender and, intersex] LGBTI or whose appearance or manner does not conform to traditional gender expectations'" (ACLU 2013, 1). For instance, LGBTI individuals may be placed against their will in highly isolating and restrictive settings to keep them "safe" from victimization by other inmates (Majd, Marksamer, and Reyes 2009). However, isolation may not keep them entirely safe (particularly from abuse perpetrated by staff), and it may cause damage to their health or mental health, as well as prevent opportunities for early release because of limited access to reentry programming (ACLU 2013).

With regard to victimization, the *National Survey of Youth in Custody*, conducted by BJS, showed that nonheterosexual youths reported a significantly higher rate of youth-on-youth sexual victimization (10.3 percent) compared with youths who identified as heterosexual (1.5 percent); however, there were similar rates of reported sexual victimization from staff for both nonheterosexual and heterosexual youths (7.5 percent versus 7.8 percent) [Beck et al. 2013].

PREA created protections to address the issues surrounding LGBTI individuals in custody. For example, correctional agencies are now required to make individualized housing and program placements for all transgender and intersex individuals. This is a departure from previous practice, when people were assigned to male or female facilities based solely on genital characteristics or birth assigned at sex (ACLU 2013).

Outcome Evidence

There are only a handful of programs that are designed to target the specific needs of LGBTQ youth, and even fewer evaluations examining the effectiveness of such efforts.

One school-based intervention that attempts to promote positive health outcomes for LGBTQ youth is the Gay-Straight Alliance (GSA). GSAs are student-led organizations that try to create a supportive school environment for all students, regardless of sexual orientation or gender identity, by reducing prejudice, discrimination, and harassment of sexual minority students (Mitchum and Moodie-Mills 2014; Heck et al. 2014). GSAs exist in more than 4,000 U.S. schools and colleges (Walls, Wisneski, and Kane 2013). They send a message that biased language and harassment will not be tolerated, offer support and resources to LGBTQ youths and their allies, and attempt to challenge the

institutionalized bias that many sexual minority youths experience at school. A recent study asked adolescents who identified as LGBT, or as another sexual/gender minority identity, to complete an online survey and answer questions about factors and experiences that contributed to certain mental health and substance use outcomes. The study showed that youths who attended schools *without* GSAs were more likely to report lifetime use/misuse of illicit substances overall. Further, these youths were at increased odds of reporting lifetime use of cocaine, marijuana, hallucinogens, and prescription pain medication compared with youths who attended schools with GSAs (Heck et al. 2014). Other studies have also shown the positive influence that GSAs can have in school. For example, Walls, Wisneski, and Kane (2013) found that the presence of GSAs in a school or college was associated with decreased suicidality, while actual membership in GSAs was associated with decreased substance use and increased comfort with gender expression among a sample of sexual minority youths and young adults. The results suggest that GSAs may be useful tools to help reduce the stressors that LGBTQ youth may experience at school.

Some research has begun to identify the importance of adapting treatment and services for LGBTQ youths, to properly address the particular risk factors that they experience differently from their heterosexual peers. For example, Craig, Austin, and Alessi (2013) argue that the increased risk for negative or maladaptive behaviors among sexual minority youth can be explained by the minority stress theory. Minority stress theory contends that lesbian, gay, and bisexual individuals encounter constant stress owing to their experiences of prejudice, discrimination, and stigmatization, which may cause higher rates of psychiatric disorders among this group (IOM 2011). Sexual minority youths in particular face constant stress because of the possibility of total rejection from their families and no ongoing support. Craig, Austin, and Alessi (2013) believe that cognitive-behavioral therapy approaches can better handle the needs of sexual minority youth by incorporating gay affirmative practices, which focus on affirming sexual minority identities and empowering youth by using a strengths-based perspective. In addition, Goldbach and Steiker (2011) contend that substance abuse prevention programs should be tailored to consider substance use risk factors that are shown to be higher for LGBTQ youth. They examined the adaptation of an evidence-based prevention program that was tailored based on guidance from LGBT youth at a drop-in center; however, a formal evaluation of either program has not yet been conducted.

Overall, the research on services and treatment for LGBTQ youth, including adaptations of evidence-based programs, is still being developed. There are few rigorous evaluation studies (with an appropriate comparison group) that have been conducted to determine the efficacy of interventions specifically targeting LGBTQ youths, especially those in the juvenile justice system. The research that has been conducted suffers from several limitations, including lack of comparison groups, small sample sizes, short follow-up periods, and selection bias (Craig, Austin, and Alessi 2013; Goldbach and Steiker 2011; Craig, Austin, and McInroy 2014).

Recommendations to Reform Policies and Practices

Several reports have come out providing guidance and recommendations for policymakers and practitioners who work with LGBTQ youth in the juvenile justice system. The reports have concentrated on changing how system-involved LGBTQ youths are handled and on encouraging

reforms to policies and practices to ensure equitable treatment and effective responses to LGBTQ youth (Majd, Marksamer, and Reyes 2009).

The Coalition for Juvenile Justice (2013) recently created the *National Standards for the Care of Youth Charged With Status Offenses*. Some of the standards address the particular challenges facing LGBTQ youth charged with status offenses and provide recommendations for juvenile justice system professionals to address such issues. For example, system professionals are encouraged to take the following steps to ensure fair treatment of LGBTQ youth:

- Ensure that LGBTQ youths have access to care consistent with best practices for these populations.
- On an individual level, professionals must treat all youths, including those who identify as LGBTQ or nongender conforming, with respect and fairness.
- Ensure that LGBTQ youths receive appropriate services – such as connecting youths to affirming social, recreational, and spiritual opportunities – and that confidentiality is respected.
- Recognize and acknowledge that experiences at home, in placement, in school, in the community, and in the juvenile justice system may have been traumatic, and that LGBTQ youth may need support, intervention, or treatment for trauma.
- Identify when youths are entering the juvenile justice system because of alienation, exclusion, or persecution they have experienced at home, in foster care, in group homes, in the community, or at school owing to their sexual orientation or gender identity. Ensure that steps are taken to preserve youths' safety and well-being, which includes protecting confidentiality, rather than forcing them back into a hostile environment.
- In situations where family rejection is an issue because parents/caregivers reject the youths based on their sexual orientation or gender identity, ensure that counseling and other services are offered to the whole family, that every effort is made to keep children with their families, and that alternative supportive residential arrangements are made when caregivers are unwilling to reengage despite being offered or participating in appropriate interventions. [CJJ 2013, 43–44]

In addition, the Equity Project is a multiyear initiative aimed at ensuring that LGBT youths involved in the justice system are treated with dignity, respect, and fairness. The 2009 report *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* concentrates on the juvenile court process, from arrest through postdisposition, and provides numerous recommendations targeted at court personnel. Among the core recommendations, the report suggests:

- Juvenile justice professionals must treat all LGBT youths with fairness, dignity, and respect, including prohibiting any attempts to ridicule or change youths' sexual orientation or gender identity.
- Juvenile justice professionals must promote the well-being of transgender youths by allowing them to express their gender identity through choice of clothing, name, hairstyle, and other means of expression and by ensuring that they have access to appropriate medical care if necessary.
- Juvenile justice professionals must receive training and resources regarding the unique societal, familial, and development challenges confronting LGBT youth and the relevance of these issues to court proceedings.
- Juvenile justice professional must develop individualized, developmentally appropriate responses to the behavior of each LGBT youth, tailored to address the specific circumstances of his or her life.
- All agencies and offices involved in the juvenile justice system must develop, adopt, and enforce policies that explicitly prohibit discrimination and mistreatment of youth on the basis of actual or perceived sexual orientation and gender identity at all stages of the juvenile justice process, from initial arrest through case closure. [Majd, Marksamer, and Reyes 2009, 137–38]

Conclusion

More research is still needed to further understand risk/protective factors, prevalence, experiences, and outcomes of LGBTQ youth involved in the juvenile justice system. For example, youths' experiences are rarely influenced by one factor in their lives, but rather they represent the intersection between various demographic or sociodemographic characteristics (sexual orientation/gender identity, race/ethnicity, gender, age, etc.). Research studies are merely beginning to explore the impact of this intersection on youths. For instance, studies have begun to examine the experiences of LGBTQ youths who are part of a racial minority group (Dank, et al. 2014).

Although more research is needed, there has been an increased emphasis and recognition of the specific needs of this population in recent years. For example, federal agencies have begun to recognize and develop policies that focus on guaranteeing the rights and safety of system-involved LGBTQ youth, such as the DOJ's PREA (ACLU 2013) and the Supportive School Discipline Initiative, which is a collaboration between DOJ and the U.S. Department of Education targeting school disciplinary policies that push youth out of school and into the justice system (Morgan et al. 2014). Resources and guides from various government agencies and organizations are also available for family members, friends, or other individuals who wish to offer support to youths (Ryan et al. 2009; Poirier et al. 2014). Additional research will continue to build awareness and knowledge about LGBTQ youth and the juvenile justice system.

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