



Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts

Executive Summary

The juvenile justice system is at a crossroads. After more than 20 years of increasingly punitive responses to youthful offending, reform efforts are underway in many jurisdictions to develop more fair and effective juvenile courts. Notably absent from these efforts, however, has been a focus on the unique experiences of lesbian, gay, bisexual and transgender (LGBT) court-involved youth. The lack of leadership and professional guidance for juvenile justice professionals working with these youth is cause for concern. LGBT youth continue to face harmful discrimination in their homes, schools, and communities. These experiences can place LGBT youth at risk of juvenile court involvement and affect the course of their delinquency case. Without a firm grasp on the ways in which LGBT-related bias can impact youth's behavior and service needs, juvenile justice professionals remain unprepared to effectively serve these youth and fulfill their responsibilities to treat them fairly.

Hidden Injustice represents the first effort to examine the experiences of LGBT youth in juvenile courts across the country. The report is based on information collected from 414 surveys and 65 interviews of juvenile justice professionals, including judges, defense attorneys, prosecutors, probation officers, detention staff, and other juvenile justice advocates; focus groups and interviews of 55 youth with relevant firsthand experience; and an extensive review of relevant social science and legal research findings. Specifically, the report is intended to:

- (1) educate professionals working in the juvenile justice system about the continuing stigma against LGBT youth, the relevance of sexual orientation and gender identity in juvenile justice contexts, and the experiences of LGBT youth in the system;
- (2) identify obstacles to fair and equitable treatment of LGBT youth in delinquency and status offense cases; and
- (3) recommend concrete practice and policy reforms that will protect the rights of LGBT youth and ensure the system responds to them effectively.

Several themes emerged from our data collection efforts. While a handful of jurisdictions and individuals are working to enhance their capacity to work with LGBT youth, these are the exception rather than the rule. As we discuss in the pages that follow, LGBT court-involved youth across the country often face denials of due process, unduly punitive responses, harmful services and programs, and unsafe conditions of confinement.

BARRIERS TO FAIR AND EFFECTIVE JUVENILE JUSTICE SYSTEMS

❖ Common misconceptions about—and biases against—LGBT youth negatively impact how the juvenile justice system responds to them.

The juvenile justice system is characterized by a profound lack of acceptance of LGBT identity based in large part on misconceptions about sexual orientation and gender identity. These include myths that youth, by virtue of their age, cannot be LGBT or that LGBT youth simply do not exist within the juvenile justice population. In reality, for many individuals, sexual orientation and gender identity are established at young ages, and emerging research indicates that approximately 13% of youth in detention facilities across the country are LGBT. The failure of some juvenile justice professionals to recognize the existence of LGBT youth has left them ill-equipped to meet the needs of this largely hidden population.

Another harmful myth is that sexual orientation and gender identity are matters of personal choice and therefore can be changed. This myth is refuted by the scientific research that finds sexual orientation and gender identity are deep-seated, inherent aspects of personal identity. Attempts to change either are futile and dangerous.

The lack of understanding of transgender youth is particularly striking. Some professionals do not understand the difference between transgender youth and lesbian, gay, or bisexual youth. Transgender individuals have a gender identity (i.e., a deeply-held, internal sense of being male, female, or other) that differs from their assigned birth sex. According to medical experts, allowing transgender youth to express their core gender identity is critically important for their well-being. Yet some professionals mistake expressions of gender-nonconformity (through choice of hairstyle, clothing, mannerisms, and name) as rebellious behavior to be corrected rather than what it is: an appropriate reflection of core identity.

❖ Professionals in the juvenile justice system attempt to change, control, or punish LGBT adolescent sexual orientation and gender identity.

Perhaps the most damaging misconceptions about LGBT youth are those—which the medical and mental health professions have roundly rejected—that equate LGBT identity with sexual deviance and mental illness. These biases can cloud decisions related to arrest, charging, adjudication, and disposition, with the cumulative effect of punishing or “criminalizing” LGBT adolescent sexuality and gender identity. For example, evidence exists that police regularly target LGBT youth for arrest and selectively enforce laws against them. In particular, LGBT youth are disproportionately charged with—and adjudicated for—sex offenses in cases that the system typically overlooks when heterosexual youth are involved. Even in cases involving non-sexual offenses, courts sometimes order LGBT youth to submit to sex offense risk assessments or undergo sex offender treatment programs based merely on their sexual orientation or gender identity. Similarly, LGBT youth sometimes are ordered to participate in dangerous counseling sessions or programs that use unscrupulous measures in an attempt to force youth to change their sexual orientation or gender identity. The medical and mental health professions have unequivocally condemned such efforts because they are both ineffective and damaging.

❖ **Family rejection of LGBT youth increases the risk of their involvement in the juvenile justice system and negatively impacts their case.**

While many families support their LGBT children, studies indicate that numerous LGBT youth of all races and ethnicities experience family rejection because of their sexual orientation or gender identity. Family rejection has negative health and mental health outcomes and can lead to homelessness; these factors, in turn, can increase youth's risk of court involvement. In particular, youth who experience conflicts at home because they are LGBT are at risk of entering the system for status offenses (particularly ungovernability and running away), domestic disturbances, and survival crimes, such as shoplifting and prostitution.

Once LGBT youth have contact with the system, lack of family support increases the likelihood of formal processing rather than diversion, detention, and punitive dispositions. It comes as little surprise, then, that more than 90% of survey respondents identified lack of family support as a serious problem for LGBT youth in the juvenile justice system.

❖ **As with family rejection, pervasive harassment of LGBT youth at school impacts their involvement in the juvenile justice system.**

School environments are often particularly hostile for LGBT students. The pervasive bullying and harassment that LGBT students experience—and school officials' related failures to keep students safe—have been well-documented. To avoid victimization, many LGBT youth skip school only to find themselves facing truancy charges. Other LGBT students end up in the juvenile justice system on disorderly conduct or assault charges when they try to defend themselves against attacks by their classmates. In other instances, school officials target LGBT youth disproportionately for punishment, referring them to juvenile court for minor misconduct that could more appropriately be handled at school.

Left unaddressed, the problems that LGBT youth have at school can unnecessarily prolong their involvement in the system and expose them to more restrictive dispositions. For example, conditions of probation commonly include a requirement that youth regularly attend school. LGBT youth who feel unsafe at school are forced to decide between skipping school to protect themselves and complying with the terms of probation.

❖ **At every stage of the process, services and placements competent to serve LGBT youth are lacking.**

Programs and placements that are competent to serve LGBT youth meet their needs, keep them safe, and treat them fairly and respectfully. Report findings indicate that juvenile justice professionals across the country are aware of few such programs, which undermines LGBT youth's prospects for rehabilitation. There are few mental health professionals with expertise in the unique issues facing LGBT youth, and even fewer resources for families who experience conflict over their child's sexual orientation or gender identity. The lack of trained professionals and appropriate programs and

placements pushes LGBT youth deeper into the justice system and subjects them to unnecessarily punitive treatment. In many jurisdictions, for example, youth are detained or incarcerated not because they pose a threat to the community but because less restrictive out-of-home placements will not accept LGBT youth.

❖ **LGBT youth are unnecessarily and disproportionately detained pending trial because of a lack of understanding of their life experiences.**

Pretrial detention is associated with significant harms, including risk of abuse, injury, and suicide, more restrictive dispositions, and increased recidivism. Statutes and professional standards provide that pretrial detention should be imposed only when a child poses a risk of flight or risk of danger to self or others. LGBT youth, however, are often detained in situations in which these legal standards are not met. Report findings indicate that decision-makers sometimes detain youth based on biases that LGBT youth are sexually predatory or cannot be kept safe in the community. In cases in which parents refuse to assume custody of their LGBT children, courts rely on detention as a default without considering possible alternative placements. In other instances, courts detain youth who have been subjected to abuse and harassment in prior placements. For example, probation officers and courts may view youth as flight risks when they have run away from prior placements, even if they fled to escape LGBT-related harassment. Inadequate access to competent counsel who may be able to address these issues further exacerbates these problems.

❖ **LGBT youth experience egregious conditions of confinement in detention and other secure facilities.**

Overwhelmingly, the youth and professionals we interviewed for this report agreed that secure facilities are particularly dangerous and hostile places for LGBT youth. Without anti-discrimination policies and training pertaining to LGBT youth, facilities are often unprepared to provide competent and equitable services to LGBT youth. As a result, staff and other youth regularly subject LGBT youth to shocking physical, sexual, and emotional abuse on the basis of their actual or perceived sexual orientation and gender identity. Facility staff also punish and ridicule youth based on their actual or perceived sexual orientation or gender identity. Many facilities inflict additional harm to youths' physical and emotional well-being by failing to provide transgender youth with medically necessary transition-related medical care.

Without proper training and policies, facility staff regularly make inappropriate decisions regarding the classification and housing of LGBT youth. Some facilities automatically segregate LGBT or place them in solitary confinement. Whether these practices are implemented to protect youth or based on the unfounded fear that LGBT youth will sexually prey on others, isolating LGBT youth solely on the basis of their sexual orientation or gender identity violates their constitutional rights and seriously compromises their emotional well-being. Transgender youth face an additional challenge because they are often placed in sex-segregated facilities according to their birth sex, rather than their gender identity. For transgender girls, in particular, automatic placement in boys' facilities places them at great risk of sexual abuse by other residents and facility staff.

❖ **Delinquency courts fail to protect the due process rights of LGBT youth, particularly the right to effective counsel.**

Defense counsel plays a critical role in protecting the rights of youth at every stage of a delinquency case, from the initial hearing through post-disposition. In addition to the well-documented failures of juvenile indigent defense systems that affect all juvenile respondents, a lack of LGBT-sensitive advocacy deprives many LGBT youth of their due process rights. Lack of education about LGBT youth undermines defenders' abilities to build effective attorney/client relationships. Some defenders allow their own biases about sexual orientation and gender identity, rather than their client's expressed interests, to guide their advocacy. These actions violate defense attorneys' ethical responsibilities to their clients. The failure to ensure LGBT youth receive quality legal representation at all stages of their case makes them vulnerable to uncounseled guilty pleas, unnecessary detention and incarceration, and inappropriate services at disposition.

CORE RECOMMENDATIONS

Despite the significant barriers that exist, enhancing the capacity of juvenile justice professionals to ensure fair and effective decision-making is possible. The core recommendations below and the strategies for reform set forth in the final chapter of this report are designed to guarantee due process protections and improve outcomes for all youth in delinquency proceedings, including LGBT youth. To help ensure the rights of youth and meet their rehabilitative needs in delinquency and status offense cases, we offer the following:

1. Juvenile justice professionals (including judges, defense attorneys, prosecutors, probation officers, and detention staff) must treat—and ensure others treat—all LGBT youth with fairness, dignity, and respect, including prohibiting any attempts to ridicule or change a youth's sexual orientation or gender identity.
2. Juvenile justice professionals must promote the well-being of transgender youth by respecting their expressions of gender identity and ensuring they have access to appropriate medical care, if necessary.
3. Juvenile justice professionals must receive training and resources regarding the unique societal, familial, and developmental challenges confronting LGBT youth and the relevance of these issues to court proceedings. Trainings must be designed to address the specific professional responsibilities of the audience (i.e., judges, defense attorneys, prosecutors, probation officers, and detention staff).
4. Juvenile justice professionals must develop individualized, developmentally-appropriate responses to the behavior of each LGBT youth, tailored to address the specific circumstances of his or her life.
5. All agencies and offices involved in the juvenile justice system (including courts, as well as prosecutor, defender, and probation offices, and detention facilities) 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.

6. Juvenile courts must commit to using the least restrictive alternative necessary when intervening in the lives of youth and their families and avoid unnecessary detention and incarceration.
7. Juvenile courts must collaborate with other system partners and decision makers to develop and maintain a continuum of programs, services, and placements competent to serve LGBT youth, ranging from prevention programs to alternatives to detention to non-secure and secure out-of-home placements and facilities. Programs should be available to address the conflict that some families face over the sexual orientation and gender identity of their LGBT child.
8. Juvenile justice professionals and related stakeholders must ensure adequate development, oversight and monitoring of programs, services, and placements competent to serve LGBT youth.
9. Juvenile courts must ensure the timely appointment of qualified and well-resourced counsel to provide zealous defense advocacy at all stages of delinquency proceedings.
10. Juvenile justice professionals must take responsibility for protecting the civil rights, and ensuring the physical and emotional well-being and safety, of LGBT youth placed in out-of-home placements.
11. Juvenile justice professionals must adhere to all confidentiality and privacy protections afforded LGBT youth. These protections must prohibit disclosure of information about a youth's sexual orientation and gender identity to third parties, including the youth's parent or guardian, without first obtaining the youth's consent.

Hidden Injustice will soon be available at www.equityproject.org. For additional information or to request training on these topics, please contact project staff at info@equityproject.org.

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