

Reflections on New National Data on LGBTQ/GNCT Youth in the Justice System

By Angela Irvine and Aisha Canfield

BIOGRAPHIES

Angela Irvine, PhD. For more than 20 years, Dr. Irvine has been working to change policy and erase disparities through education and systems reform. She is currently a Vice President at Impact Justice and is leading a project to identify risk factors that drive suspended students into the justice system. She has also led multiple research projects on the pathways that drive LGBTQ youth of color into the juvenile justice system. Raised in Santa Cruz, California, Angela earned her bachelor of arts from UC Berkeley, her secondary teaching credential from St. Mary's College of California, and her PhD in sociology from Northwestern University, while also serving as a National Science Fellow.

Aisha Canfield, MPP. After deciding to get an MPP from Mills College, Aisha steered her focus toward juvenile justice, particularly preventing system-involvement for LGBT/GNC youth of color and improving outcomes for those already caught in the system. Aisha has conducted national research on the disproportionate detention of LGBT/GNC youth, identifying systemic points of disparity, such as contact with child welfare. In addition to her research, Aisha trains juvenile probation departments across the state to implement data collection systems, and to address the intersectional identities of the youth they serve. She also evaluates community-based providers serving system-involved youth.

ABSTRACT

The purpose of this paper is to report new national data on the over-representation of lesbian, gay, bisexual, questioning, gender nonconforming, and transgender youth in the juvenile justice system and to provide recommendations for key justice stakeholders on how to best serve these youths. This paper is based on surveys collected from 1400 youth in seven juvenile detention halls across the country.

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INTRODUCTION

THE AUTHORS OF THIS ARTICLE partnered with seven juvenile detention centers across the country to obtain an

unprecedented snapshot of youth in custody to determine if lesbian, gay, bisexual, questioning, gender nonconforming, and transgender (LGBT/GNCT) youth are overrepresented in the juvenile justice system. Specifically, the authors

were interested in understanding how disparate system practices impacted youth with multiple identities across race, sexual orientation, gender identity, and gender expression (SOGIE).

Alameda and Santa Clara counties in California; Cook County, Illinois; Jefferson County, Alabama; Jefferson and New Orleans parishes, Louisiana; and Maricopa County, Arizona all participated in the study and provided the authors a total of 1400 completed, one-time surveys.

This paper presents new data from the surveys and provides recommendations for policy and practice reforms to promote fair and equitable treatment of LGBQ/GNCT youth in the juvenile justice system.

LITERATURE REVIEW

A growing body of literature suggests that LGBQ/GNCT youth—particularly those of color—are exposed to social and systemic experiences that drive their over-representation in the juvenile justice system.

One of the first articles on the over-representation of LGBQ/GNCT youth found that 15 percent of the justice-involved youth who participated in an anonymous survey indicated they identified as lesbian, gay, bisexual, questioning, gender nonconforming, or transgender. Moreover, 92 percent of the youth in the survey—whether straight or LGBQ/GNCT—were of color. These numbers are likely to be conservative because of the risks of harassment and abuse youth potentially face when coming out while incarcerated. Many youth may decide not to disclose a nonheterosexual identity or may falsely identify as heterosexual to protect themselves.

The following literature review provides an overview of research on the forces that drive this overrepresentation.

Highlighting Race and Birth Sex

Despite the national success of juvenile decarceration across all youth, the proportion of youth of color in the juvenile justice system continues to grow at a disproportionately alarming rate. Youth of color represented 43 percent of detained youth in 1985. That number rose to 56 percent in 1995, and to 80 percent in 2012. Overall, general population data shows that the number of black youth especially does not justify their incarceration numbers, nor does crime data show a spike in violent crime. In 2006, only 31 percent of incarcerated youth, including youth of color, were being punished for violent crimes. This means that 69 percent of detained youth were incarcerated for property crimes, drug offenses, probation violations, or status offenses such as curfew violations and truancy.

The court system further reinforces disparities. Data reveals white youth are less likely to be detained and formally processed in the juvenile justice system than youth of color who are charged with the same crime. Once a case makes it to court, blacks and Latinos receive harsher sentences than white people, and are more likely to receive gang enhancements, lengthening their stay in detention.

Few studies exist showing how race, gender, and sexual orientation combine to drive young people into the juvenile justice system, though there are a few exceptions. Author and social justice scholar Monique Morris addresses the intersection of race and birth sex, finding that girls of color are becoming overrepresented in the juvenile justice

system, and now have some of the highest rates of suspension and incarceration amongst their peers. She attributes these patterns to a cycle in which black girls are victimized at home or school, respond to the trauma publicly in ways that are perceived as disruptive, and are then punished through school discipline and the justice system rather than being referred to support services.

How Social Responses to Sexual Orientation, Gender Identity, and Gender Expression Drive Youth Involvement in the Juvenile Justice System

LGBQ/GNCT youth are also driven into the justice system along a pathway from trauma to punishment. Research reveals a pathway of trauma, family conflict, social isolation, and exposure to multiple punitive systems. LGBQ/GNCT youth experience higher rates of neglect, abuse, and rejection from family members than their straight counterparts. These youth are also more likely to be removed from their home for abuse or neglect, suspended or expelled from school, and to be homeless.

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Rejection of youths' SOGIE by parents, guardians, or placements in the foster care system leads to high rates of running from home and homelessness among LGBQ/GNCT youth. Once youth are on the street, they may engage in sex work or other informal economies for survival. Survival crimes expose LGBQ/GNCT youth to the possibility of juvenile justice involvement. In fact, when it comes to juvenile justice system involvement, Kathryn Himmelstein and Hannah Brückner found that youth who experience same-sex attraction and youth who self-identify as lesbian, gay, or bisexual are more likely to be stopped by police, arrested, and convicted of crimes when engaging in the same behaviors as straight youth.

How Disparate System Responses Exacerbate the Overincarceration of LGBQ/GNCT Youth

For many LGBQ/GNCT youth of color, run-ins with law enforcement are not out of the ordinary. Many LGBQ/GNCT youth of color tell traumatic stories of run-ins with law enforcement. Gender nonconforming and transgender youth of color are harassed more often than their white and gender-conforming peers. For example, police are more likely to use homophobic and transphobic slurs when interacting with transgender people of color, and more likely to arrest transgender people of color when they are calling for help. Additionally, gender nonconforming black girls are stopped for assumed gang affiliation or drug possession. It is thus submitted that racial and SOGIE stereotypes exacerbate the experiences of system-involvement for LGBQ/GNCT youth of color.

Once LGBQ/GNCT youth are brought into a secure juvenile facility, they may

be subject to verbal and physical assaults and discrimination by facility staff and other youth residents. Bureau of Justice Statistics statistician Allen Beck found that 10 percent of LGBT youth were sexually assaulted by other youth in facilities, compared to 1.5 percent of straight youth. Problems often arise because departments do not commit to training staff on how to protect LGBQ/GNCT youth in confinement. When a youth enters a facility, probation uses actuarial instruments to collect data about romantic relationships, linkages to school, and family conflict. This information is designed to guide placement decisions and the selection of treatment programs that can help address the difficulties youth are facing. Unfortunately, fewer than 25 jurisdictions use instruments that ask questions that allow youth to disclose nonheterosexual identities and same-sex relationships. Probation officers miss a crucial opportunity to learn if a young person's identity places them at risk for abuse or harassment in the facility, and if the behavior that warranted their arrest is rooted in conflict around their SOGIE.

LGBQ/GNCT youth are also susceptible to other harmful practices while in detention. For example, standard practice for facilities is to house all inmates and residents according to their sex assigned at birth (i.e., their genitalia). This forces transgender and gender nonconforming youth to be placed in housing units with the opposite gender, wear clothing that does not reflect their present gender identity, and places them at risk for harassment because their gender expression does not match that of the other inmates or residents in the housing unit. Some facilities may not place transgender and gender nonconforming

youth with other youth at all, and instead house them alone in isolation where they have limited interaction with other youth and staff to avoid conflict.

Release from secure facilities offers little reprieve from harassment and abuse. As LGBT youth are more likely to have languished in detention for longer than their heterosexual and cisgender peers, they are at increased risk of abuse, injury, and trauma. Gender expression was not considered in this study. LGBT youth may also have difficulty successfully meeting their probation terms, such as obeying their parents/guardians, attending school on time every day, and attending a community-based organization. Terms of probation can be challenging for LGBQ/GNCT youth who may not have supportive families or are experiencing SOGIE-related abuse at home, are unsafe at school due to bullying, and cannot find community-based organizations that are affirming of their multiple identities and prepared to address their system experiences. It is suggested that for LGBQ/GNCT youth, meeting their probation terms may require surviving in unsafe spaces.

NEW NATIONAL SURVEY FINDINGS

This article reports on findings from an updated national survey of detention halls around the country. The survey results show that, overall, 20 percent of youth in the detention centers that were surveyed identified as LGBQ/GNCT. The differences across current gender identity, however, are stark: while 13 percent of boys identify as GBQ/GNCT, 40 percent of girls identify as LBQ/GNCT. Additionally, 85 percent of these LGBQ/GNCT youth are of color.

Methods

Probation departments administered surveys within their own halls, ranches, and camps. Probation chiefs were tasked with identifying staff members to serve as research liaisons for their departments. Each liaison participated in a training facilitated by the authors that provided context for the need to conduct this research and how to administer the research while protecting the participants.

Following the trainings, each site determined an appropriate time to survey each youth in their facilities according to their size, programming, and staff availability. Incoming youth were surveyed four to eight hours after entering the facility, and the other youth were surveyed on one day either during school or mealtime.

The one-page survey instrument and a one-page consent form sheet were written at a fifth-grade reading level and were offered in both English and Spanish. The consent forms were read aloud by the research liaisons and only required youth to mark an "X" in a box in lieu of their signatures to maintain anonymity and ensure protection. Youth were not required to complete the survey at all or in its entirety, and were not required to disclose their decision to participate to the research liaisons. Once the youth completed the surveys, they folded them up and sealed them in envelopes, which were mailed back to the authors.

From a research perspective, it was important that the facilities offer the opportunity to every youth to participate in the survey for two reasons. The first reason was to avoid making assumptions about, and ostracizing, youth staff believed to be LGBQ/GNCT. The second was that the authors wanted to also

capture the experiences of heterosexual youth who may identify as or be perceived to be gender nonconforming as this puts them at risk for similar treatment of LGBQ youth.

Research sites were Alameda and Santa Clara counties, California; Cook County, Illinois; Jefferson County, Alabama; Jefferson and New Orleans parishes, Louisiana; and Maricopa County, Arizona. Each site collected surveys during a period of two to four months, or until they collected a minimum of 200 youth surveys. Surveys were collected during 2013 and 2014.

Respondents varied across gender, race/ethnicity, and sexual orientation:

- The majority of respondents identified as cisgender males. Seventy-seven percent of respondents identified as cisgender males, 22.4 percent of respondents identified as cisgender female identity, and 0.6 percent of respondents had a different gender identity.
- Youth of color are overrepresented within the incarcerated LGBQ/GNCT population: 85 percent of respondents were youth of color. Broken down, 37.9 percent of respondents were African American or Black, 1.7 percent of respondents were Asian, 32.6 percent of respondents were Latino, 2.3 percent of respondents were Native American, 13.1 percent of respondents were white, 11.8 percent of respondents had a mixed race or ethnic identity, and 0.6 percent of respondents had another race or ethnic identity.
- Youth of color disclosed being LGBQ/GNCT at the same rate as white youth.
- Twenty percent of respondents

identified as either lesbian, gay, bisexual, questioning, gender nonconforming, or transgender.

- ▶ 7.5 percent of respondents were straight and gender nonconforming or transgender;
- ▶ 4.8 percent of respondents are lesbian, gay, or bisexual, and gender nonconforming or transgender;
- ▶ and 7.7 percent of respondents were lesbian, gay, or bisexual, and gender conforming.

Gender Differences

We explain these differences in disclosure rates across gender in more detail below.

Boys

Disaggregating sexual orientation from gender identity provides a more detailed description of incarcerated youth. Chart 1 splits boys into four groups:

- **86.4 percent** of boys are straight, gender conforming, and cisgender (these are straight boys who behave and/or dress in the way that society expects them to);
- **7.3 percent** of boys are straight and gender nonconforming (these are straight boys who behave and/or dress in a way that is more feminine than society expects them to);
- **3.5 percent** of boys are gay, bisexual, and questioning, gender conforming, and cisgender (these are gay boys who behave and/or dress in the way society expects them to); and
- **2.8 percent** of boys are gay, bisexual, and questioning, and gender nonconforming (these are gay boys who behave and/or dress in a way that is more feminine than society

expects them to);

- Added up, this is **13.6 percent** of boys that are GBQ/GNCT.

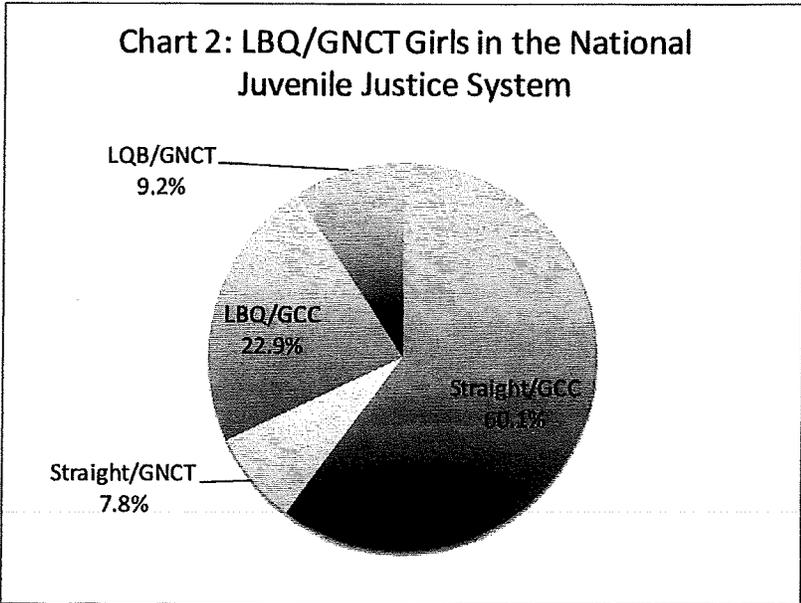
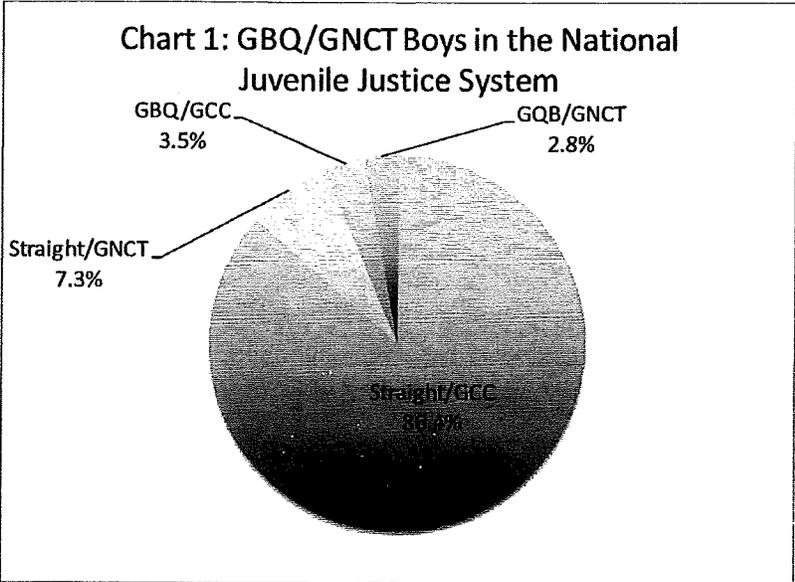
Girls

Chart 2 uses the same methodology for girls:

- **60.1 percent** of girls are straight, gender conforming, and cisgender;
- **7.8 percent** of girls are straight and gender nonconforming or transgender;
- **22.9 percent** of girls are lesbian, bisexual, and questioning, gender conforming, and cisgender and;
- **9.2 percent** of girls are lesbian, bisexual, questioning, and gender nonconforming or transgender;
- Added together, this is **39.9 percent** of girls who are LBQ/GNCT.
- Additionally, the survey found that LGBQ/GNCT youth are approximately twice as likely to have a history of running away and homelessness—prior to entering the justice system—compared with their straight, gender conforming, and cisgender peers.

RECOMMENDATIONS TO POLICY RESEARCHERS AND ADVOCATES

LGBQ/GNCT youth of color are resilient. They exude confidence, authenticity, and courage each day they step outside of their doors. However, they also carry the heavy burden that comes along with being LGBQ/GNCT. LGBQ/GNCT youth endure threats to their safety, well-being, and healthy development by family rejection, school bullying, and system involvement. It is imperative that juvenile justice stakeholders do no further harm to these youths while they



are in custody, and that they seek to be affirming of both their racial/ethnic identities and their SOGIE.

There are several measures that juvenile justice stakeholders, practitioners, and community-based organizations can take to successfully respond to the unique needs of system-involved LGBTQ/GNCT youth of color. These suggestions are in detail below.

Developing Anti-Discrimination Policies that Promote Equitable Treatment of LGBTQ/GNCT Youth

Juvenile probation departments should partner with local LGBT centers or advocates to draft and adopt anti-discrimination policies that enforce the safety of LGBTQ/GNCT youth in the system, and ensure their equitable and respectful treatment. Policies must protect LGBTQ/GNCT youth from harassment and abuse by other youth, residents, staff, and contracted services providers on the basis of their actual or perceived SOGIE. A comprehensive policy should include:

- Respectful communication with and about LGBTQ/GNCT youth.
- Meaningful and accessible grievance procedures for youth to confidentially report abuse, harassment, or discrimination without risk of retaliation.
- Use of preferred names and pronouns.
- Housing and placement decisions on a case-by-case basis that consider youths' current gender identities rather than the sex assigned at birth. This is particularly important for transgender youth who have transitioned to a gender other than their birth sex.
- Pat downs and searches of transgender and gender nonconforming

youth by staff members that are of the youths' same gender identity.

- Accommodations that ensure the privacy and safety of transgender youth in showers, changing clothes, etc.
- Provision of transition-related medical needs of transgender youth.

Policies should be developed in collaboration with advocates/community members, line staff, and decision-makers. Advocates have a deep understanding of the experiences of LGBTQ/GNCT youth and can provide context and insight into the unique needs of LGBTQ/GNCT youth outside of confinement. Buy-in from line staff is equally important as implementation and adherence to the policy is more likely to be successful if staff have been given meaningful roles in the policy's development.

Additionally, agencies and organizations should align their policies with state and federal laws and regulations. For example, the Prison Rape Elimination Act (PREA) is a set of federal standards that have identified lesbian, gay, bisexual, transgender, and intersex (LGBTI) inmates and residents as a priority population for protection from sexual victimization. The standards provide detailed guidance on the appropriate treatment of LGBTI searches, housing, clothing, medical treatment and programming. PREA does not include questioning or queer inmates as part of the identified priority population.

Improving Intake Assessments to Include SOGIE Questions

Juvenile facilities, probation departments, and community-based organizations commonly assume they are not serving LGBTQ/GNCT youth. It is imper-

ative that these entities know how the youth in their care identify to effectively respond to their needs, understand the complexity of their experiences, and ensure that any referrals are culturally affirming. Additionally, jurisdictions that collect SOGIE data can make better, data-driven decisions to mitigate disparities and ensure reform efforts target populations that are most in need.

Jurisdictions should consider updating their intake and booking processes to include SOGIE data questions which would guarantee that each youth is asked how they identify when they enter a facility. It is important that the youth who cycle in and out of the secure confinement are asked each time they return as answers may change between stays.

Asking questions about SOGIE is particularly important as most LGBQ youth are gender conforming. This means they do not fit the physical stereotypes of someone who identifies as gay or lesbian and may go unnoticed when it comes to appropriate referrals. By universally asking all youth about their sexual orientation and gender identity, a systematic practice with several benefits can be created. The onus of starting the conversation about SOGIE should be placed on the adult professionals rather than burdening youth with the risks of self-disclosing. Finally, as youth begin to disclose more frequently, the visibility of LGBQ/GNCT youth is increased, making justice agencies even safer.

Providing Training and Technical Assistance to all Probation Personnel

Juvenile justice reform that is affirming of youths' race/ethnicity and SOGIE cannot happen without ongoing education and training for facility staff. Staff often want to "do the right thing," but feel out

of touch with the community or believe it is inappropriate to discuss youths' SOGIE. Juvenile probation departments can support their staff in becoming comfortable and skilled at interacting with LGBQ/GNCT youth in custody by providing training to all department staff by a skilled trainer/facilitator.

Training and coaching should cover a variety of topics that would increase general understanding of LGBQ/GNCT youth including: general background on the experiences of LGBQ/GNCT; including risk factors for systems involvement; respectful language, engagement, and nonverbal communication; collecting SOGIE data; biases, fears, and misunderstandings; the intersections of race/ethnicity, SOGIE, class, and system-involvement; and identifying and vetting services to ensure appropriate placement of LGBQ/GNCT youth. Technical assistance should be offered following the training so that facilities have real-time access to expert advice as challenges arise.

Expanding Gender Responsive Programming to be Affirming of Various Gender Expressions

In the mid-2000s, the field of juvenile justice began to promote "gender-specific" or "gender-responsive" programming with the intention of improving services for girls. Researchers argued that programs were inappropriately geared towards boys and needed to be specifically tailored for girls. One excellent example is Girls Circle. This curriculum was developed to provide support groups for girls in the justice system. Each meeting is structured to have a welcome ritual and to then dive into discussions of relationships, drug use, and trauma. The same organization has more

recently developed a similar curriculum for boys called One Circle.

Typically, youth are referred to gender-specific programs based on their birth sex. In contrast, under the Prison Rape Elimination Act Standards, justice professionals make housing decisions for youth based on their current gender identity—which may not match a young person’s birth sex. The field of community supervision has not yet followed the practice of making decisions based on gender identity or expression.

There are unintended consequences to sending a gender-nonconforming young person to a gender-specific program based on birth sex. While all youth should have some agency in deciding what programs they are referred to, it is especially important that gender-nonconforming and transgender youth be given the opportunity to participate in activities or programs that align with their current gender identities. For example, a gender nonconforming girl who must take parenting classes may not identify as her child’s “mother” and would feel more comfortable and supported in a parenting class designed for fathers. Every effort should be made to enroll her into a class and an environment that speaks to her identity and sets her up for success.

GLOSSARY

For the purposes of this paper, the terms below are defined as the following. The authors acknowledge that language varies across region and generation and that this list is not fully representative of the LGBTQ/GNCT community.

Bisexual is defined as an individual who is romantically, emotionally, and physically attracted to both men and women.

Gay is defined as a man who is romantically, emotionally, and physically attracted to other men.

Gender expression refers to how one performs their gender through dress, speech, behavior, etc. Gender expression is not indicative of sexual orientation.

Gender nonconforming refers to someone who does not perform their gender through dress, speech, and behavior in a way that meets society’s expectations of how their birth sex should be expressed.

Intersex is a medical condition in which an individual’s chromosomal make up or anatomy is not easily distinguishable as solely male or female.

Lesbian is defined as woman who is romantically, emotionally, and physically attracted to another woman.

Sexual orientation is defined as who you are physically or romantically attracted to.

Transgender refers to someone who does not presently identify as the sex they were assigned at birth.

Questioning refers to someone who is still exploring their sexual and gender identity.

End notes are to be found online at: <http://www.hkslgbtq.com/>.