

for not being masculine enough. There were too few respondents to conduct an analysis for differences among race and ethnic identities.

D. Sexual Orientation

We asked a series of questions to measure respondents' sexual orientations. As with gender identity, researchers face a number of challenges around the accurate collection of data on sexual orientation.³⁰ Some youths resist disclosing their sexual orientation if they are not heterosexuals. Other youths may not identify with distinct sexual orientation categories. Our first question provided the option of reporting traditional categories of sexual orientation: straight, lesbian/gay, bisexual, questioning and other. A second question asked respondents whether they are sexually attracted to boys/men, girls/women or other.

A third question asked respondents, "Have you ever been bullied or harassed at school because of your sexual orientation (being lesbian, gay, etc.)?" We also asked, "Have you ever been kicked out of your home or ran away because of your gender identity (being transgender) or sexual orientation (being lesbian, gay, etc.)?" We added these questions so that youths who were uncomfortable disclosing their sexual orientations or who do not identify with distinct sexual orientation categories could identify themselves as existing outside societal norms around sexual orientation.

When you compile the results from respondents who answered "yes" or "no" to questions regarding sexual orientation, eighty-nine percent of respondents can be categorized as heterosexual while eleven percent of respondents are LGB, sexually attracted to the same gender, have been bullied or harassed by peers for their perceived sexual orientations or have been kicked out of their home or ran away due to their sexual orientations. These eleven percent of participants will from this point forward be referred to as LGB.

Responses on sexual orientation vary by gender. While eight percent of boys are gay, bisexual or questioning, twenty-four percent of girls and eighty percent of youths who do not identify as either boy or girl are LGB.

These responses also vary by race and ethnic identity. Ten percent of white, Latino and African American respondents are LGB. This means that an equal proportion of white, Latino, and African American youths

³⁰ See *supra* Part I.

disclosed LGB sexual orientations. Youths outside of these racial identities have higher disclosure rates: twelve percent of Asian, twenty-four percent of Native American and eighteen percent of respondents with multiple race and ethnic identities are LGB.

E. Combining Gender Identity, Gender Expression and Sexual Orientation Data

Combining the data on gender identity, gender expression and sexual orientation, we can estimate the number of LGB and gender non-conforming youths who enter the juvenile justice system. We arrive at this data by completing two steps. First, we combine gender identity and expression into one category: gender conformity. For this Article, youths who have non-conforming identities or express themselves in non-conforming ways are considered "gender non-conforming." We then separate gender conformity from sexual orientation. We do this because of the complex ways that gender identity and expression interact with sexual orientation. For example, a girl could identify as a lesbian and conform to gender norms while a boy could identify as heterosexual but express himself in a feminine way. In order to present the data in an easily digestible way, we create four distinct categories: heterosexual and gender conforming; heterosexual and gender non-conforming; LGB and gender conforming; and LGB and gender non-conforming. Table 1, *infra*, reports the number and percentage of respondents who fall into each of these four categories:

TABLE 1: Number and Percentage of Respondents by Sexual Orientation and Gender Conformity

	Heterosexual	LGB ³¹
Gender Conforming	85% n=1638	9% n=167
Gender Non-conforming ³²	3% n=66	3% n=53

These results provide a superficial snapshot of the four combinations that sexual orientation and gender identity can take. Nevertheless, this data provides an estimate of the number of LGB and gender non-conforming youths in the system. In this case, the number equates to those youths who are not heterosexual and gender conforming. Adding the number of LGB youths who are gender conforming, the number of LGB youths who are gender non-conforming, and the number of heterosexual youths who are gender non-conforming, we find that fifteen percent of youths can be categorized as LGB or gender non-conforming.

This data also helps us understand the ways that LGB youths might enter and exit the juvenile justice system without being noticed. Gender non-conforming youths are the most likely to be noticed. Only three percent of youths who are LGB are also gender non-conforming. The same percentage of youths (three percent) has heterosexual sexual orientations and do not conform to gender norms. However, a much larger percentage of youths (nine percent) are LGB and gender conforming. This is the group that is most likely to enter the juvenile justice system and remain invisible.

Lesbian, bisexual, questioning and gender non-conforming girls remain more invisible than gay, bisexual, questioning and gender non-conforming boys. Tables 2 and 3, *infra*, separate the data for respondents

³¹ Respondents were categorized as LGB if they disclosed having a lesbian, gay, bisexual or other sexual orientation, questioning their sexual orientation, having same-gender sexual attraction, having a history of running away or being kicked out of their home because of their gender identity or sexual orientation or having been bullied or harassed at school because of their sexual orientation.

³² Gender non-conforming respondents responded “yes” to the question, “Have you ever been bullied or harassed at school because people don’t think you are masculine enough or feminine enough?” or reported that they have neither a boy nor girl gender identity.

with girl and boy gender identities. Comparing these two groups, we see that a high number of girls fall into the three categories used to estimate the numbers of LGB and gender non-conforming youths³³: twenty-seven percent of girls compared with eleven percent of boys can be categorized as lesbian, bisexual and questioning and gender non-conforming. In addition, a higher proportion of these girls fall into the category of youths that are most likely to remain invisible; nineteen percent of girls are lesbian, bisexual and questioning girls and gender conforming compared to six percent of boys.

Notably, even though the percentages of gay, bisexual, questioning and gender non-conforming boys are lower than girls, the numbers are higher. This happens because the juvenile justice system detains many more boys than girls.³⁴ Combining the data on girls and boys in all of the categories we use to measure the number of LGB and gender non-conforming youths, our six research sites detained 286 LGB and gender non-conforming respondents over the course of two months.

³³ See *infra* Part I.E.

³⁴ In 2001, girls represented 19% of detained youths. See SHERMAN, *supra* note 26, at 10.

TABLE 2: Number and Percentage of Girl Respondents by Sexual Orientation and Gender Conformity

	Heterosexual	LGB ³⁵
Gender Conforming	73% n=285	19% n=76
Gender Non-conforming ³⁶	4% n=15	4% n=17

TABLE 3: Number and Percentage of Boy Respondents by Sexual Orientation and Gender Conformity

	Heterosexual	LGB ³⁷
Gender Conforming	89% n=1353	6% n=91
Gender Non-conforming ³⁸	3% n=50	2% n=29

³⁵ See *supra* note 31.

³⁶ See *supra* note 32.

³⁷ See *supra* note 31.

³⁸ See *supra* note 32.

II. DETENTION PATTERNS OF LGB AND GENDER NON-CONFORMING YOUTHS

In addition to estimating the numbers of LGB and gender non-conforming youths in the juvenile justice system—an estimate of fifteen percent—findings from this study allow us to determine whether the juvenile justice system detains LGB and gender non-conforming youths for different reasons when compared with heterosexual and gender conforming youths. Findings from the survey data document that LGB and gender non-conforming youths in the juvenile justice system are twice as likely to have experienced child abuse, group and foster home placement and homelessness when compared with their heterosexual and gender conforming peers. Findings also show that LGB and gender non-conforming youths are more likely to be held in pre-trial detention for truancy, warrants, probation violations, running away and prostitution. This suggests that LGB and gender non-conforming youths are caught in a pernicious cycle of abuse, family rejection and detention.

The findings from our study reinforce existing research on LGB and gender non-conforming youths. Previous research on LGB and gender non-conforming youths uncovered high rates of child abuse, homelessness and conflict with parents.³⁹ For example, one study found that over thirty percent of gay men and lesbians reported suffering physical violence at the hands of a family member as a result of their sexual orientation.⁴⁰ When this occurs, these youths may be removed by child protective services. Another study found that twenty-six percent of gay adolescents were forced to leave home after disclosing their sexual orientation.⁴¹ In both cases, conflict with family members leaves LGB and gender non-conforming youths more dependent on other social institutions such as group homes, foster homes or

³⁹ See COLLEEN SULLIVAN, SUSAN SOMMER & JASON MOFF, LAMBDA LEGAL DEF. & EDUC. FUND, *YOUTH IN THE MARGINS: A REPORT ON THE UNMET NEEDS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ADOLESCENTS IN FOSTER CARE* 11 (2001); NICHOLAS RAY, NAT'L GAY & LESBIAN TASK FORCE POL'Y INST. & THE NAT'L COALITION FOR THE HOMELESS, *LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS* 17–21 (2006); Caitlin Ryan, David Buebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Youth Adults*, 123 *PEDIATRICS* 346, 350 (2009).

⁴⁰ SULLIVAN, SOMMER & MOFF, *supra* note 39, at 11.

⁴¹ *See id.*

homeless shelters.⁴² However, only three previous studies have directly linked these variables to the involvement of LGB and gender non-conforming youths in the juvenile justice system.⁴³

The methodology used in this study also strengthens the existing literature. Given the difficulty in identifying LGB and gender non-conforming youth in the juvenile justice system, the three existing studies on this topic relied on convenience samples.⁴⁴ In other words, researchers from these previous studies contacted LGB-and-gender-non-conforming-youth-serving agencies and interviewed youths who had previously disclosed their sexual orientations or gender identities.⁴⁵ However, this represents only a small minority of LGB and gender non-conforming youths. Moreover, these studies do not document the experience of heterosexual and gender conforming youths, and therefore, fail to provide a comparison between LGB and gender non-conforming youths and their peers.⁴⁶ Surveys that include heterosexual and gender conforming youths provide helpful baseline data to judge the severity of LGB and gender non-conforming youth outcomes.⁴⁷

We base the findings of this Article on a larger sample of youths that includes heterosexual, gender conforming, LGB and gender non-conforming youths. This sample includes LGB and gender non-conforming youths who have not disclosed their sexual orientations or gender identities. By surveying the general juvenile justice population, we can develop more accurate links between home removal, group and foster home placement, homelessness and juvenile justice involvement for LGB and gender non-conforming youths. We can compare the experiences of heterosexual and

⁴² See RAY, *supra* note 39, at 17–21.

⁴³ See FEINSTEIN ET AL., *supra* note 22, at 11; see also MAJD ET AL., *supra* note 19, at 93–144; Curtin, *supra* note 3, at 287–288.

⁴⁴ See FEINSTEIN ET AL., *supra* note 22, at 57; see also MAJD ET AL., *supra* note 19, at 17; Curtin, *supra* note 3, at 288.

⁴⁵ See FEINSTEIN ET AL., *supra* note 22, at 57; see also MAJD ET AL., *supra* note 19, at 17; Curtin, *supra* note 3, at 288.

⁴⁶ See FEINSTEIN ET AL., *supra* note 22, at 57; see also MAJD ET AL., *supra* note 19, at 17; Curtin, *supra* note 3, at 288.

⁴⁷ For a longer discussion of the importance of control groups and the history of experimental and quasi-experimental research designs, see William R. Shadish & Thomas D. Cook, *The Renaissance of Field Experimentation in Evaluating Interventions*, 60 ANN. REV. PSYCHOL. 607, 608 (2009).

gender conforming youths to LGB and gender non-conforming youths in these areas. This particular survey also collects information about the specific reasons youths are detained, allowing us to compare LGB, gender non-conforming, heterosexual and gender conforming youths.

A. Measuring Home Removal, Group and Foster Home Placement and Homelessness

Our survey asked respondents three questions related to child abuse, home removal and homelessness. In order to determine whether youths had ever been removed from their homes for child abuse, we asked, "Have you ever been removed from your home by a social worker?" In order to measure whether youths had ever been placed in a group or foster home, we asked, "Have you ever lived in a group or foster home?" In order to measure whether youths had ever been homeless, we asked, "Have you ever been homeless after being kicked out of home or running away?"⁴⁸

In order to understand whether there are differences across sexual orientation, we used statistical analysis to determine whether LGB and gender non-conforming youths have different outcomes when compared with their heterosexual and gender conforming peers. In order to understand whether there are differences across gender, we used statistical analysis to compare gender non-conforming boys and girls to their gender conforming peers. ⁴⁹ Results show that LGB and gender non-conforming youths are more than twice as likely as their heterosexual and gender normative peers to answer "yes" to these questions.

1. Home Removal and Sexual Orientation

Twenty percent of gay, bisexual and questioning boys have been removed from their home because someone was hurting them compared with nine percent of heterosexual boys. Thirty-three percent of lesbian, bisexual and questioning girls have been removed from their home because

⁴⁸ See *infra* app. A.

⁴⁹ Comparisons across race and ethnic identity were not possible due to a large number of race and ethnic identity categories and a small number of LGB and gender non-conforming respondents.

someone was hurting them compared with nineteen percent of heterosexual girls.

2. Home Removal and Gender Conformity

Twenty-three percent of gender non-conforming boys have been removed from their home because someone was hurting them compared with nine percent of gender conforming boys. Forty-two percent of gender non-conforming girls have been removed from their home because someone was hurting them compared with twenty percent of gender conforming girls.

3. Group Home and Foster Home Placements by Sexual Orientation

Twenty-five percent of gay, bisexual and questioning boys have lived in a group or foster home compared with seventeen percent of heterosexual boys. Forty-five percent of lesbian, bisexual and questioning girls have lived in a group or foster home compared with twenty-seven percent of heterosexual girls.

4. Group Home and Foster Home Placements by Gender Conformity

Thirty-four percent of gender non-conforming boys have lived in a group or foster home compared with sixteen percent of gender conforming boys. Forty-seven percent of gender non-conforming girls have lived in a group or foster home compared with thirty percent of gender conforming girls.

5. Homelessness by Sexual Orientation

Thirty-two percent of gay, bisexual and questioning boys have been homeless after being kicked out of or running away from home compared with sixteen percent of heterosexual boys. Forty percent of lesbian, bisexual and questioning girls have been homeless after being kicked out of or