

running away from home compared with twenty-three percent of heterosexual girls.

6. Homelessness by Gender Conformity

Forty-three percent of gender non-conforming boys have been homeless after being kicked out of or running away from home compared with sixteen percent of gender conforming boys. Forty-one percent of gender non-conforming girls have been homeless after being kicked out of or running away from home compared with twenty-six percent of gender conforming girls.

B. LGB and Gender Non-Conforming Youths and Juvenile Detention

The survey asked respondents whether they had been detained within the past twelve months for crimes against persons, property crimes, drug and alcohol offenses, running away, missing school, prostitution or any other reason. In order to understand whether there are differences across sexual orientation, we used statistical analysis to determine whether LGB youths have different outcomes when compared with their heterosexual and 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.⁵⁰

Findings from the survey show that LGB and gender non-conforming youths are twice as likely to be held in secure detention for truancy, warrants, probation violations, running away and prostitution. Notably, there were no differences in the prevalence of detention for violent offenses, weapon charges, property offenses or alcohol or drug offenses. Instead, LGB and gender non-conforming youths are more likely to be detained for non-violent offenses with direct links to out-of-home placement and homelessness.

⁵⁰ 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 LGBT and gender non-conforming respondents.

1. Running Away by Sexual Orientation

Twenty-eight percent of gay, bisexual and questioning boys were detained for running away compared with twelve percent of their heterosexual peers. Thirty-seven percent of lesbian, bisexual and questioning girls were detained for running away compared with eighteen percent of their heterosexual peers.

2. Running Away by Gender Conformity

Twenty-two percent of gender non-conforming boys were detained for running away compared with twelve percent of their gender conforming peers. Thirty-three percent of gender non-conforming girls were detained for running away compared with twenty-one percent of their gender conforming peers.

3. Prostitution by Sexual Orientation

Ten percent of gay, bisexual and questioning boys were detained for prostitution compared with one percent of their heterosexual peers. Eleven percent of lesbian, bisexual and questioning girls were detained for prostitution compared with five percent of their peers.

4. Prostitution by Gender Conformity

Seven percent of gender non-conforming boys were detained for prostitution compared with one percent of their gender conforming peers. Six percent of gender non-conforming girls were detained for prostitution compared with seven percent of their gender conforming peers.

5. Truancy, Warrants and Violations of Probation by Sexual Orientation

Twenty-two percent of gay, bisexual and questioning boys were detained for truancy, warrants or violations of probation compared with twelve percent of their heterosexual peers. Fifteen percent of lesbian, bisexual and questioning girls were detained for truancy, warrants or violations of probation compared with nine percent of their peers.

6. Truancy, Warrants and Violations of Probation by Gender Conformity

There were no significant differences in detention for truancy, warrants or violations of probation by gender conformity. Notably, the numbers of gender non-conforming youths who had been detained for these reasons were very small. A larger sample size may yield significant results in this area in the future.

III. ADDRESSING THE NEEDS OF INCARCERATED LGB AND GENDER NON-CONFORMING YOUTHS

Juvenile justice professionals such as defense attorneys, prosecutors, judges and probation officers need accurate information about youths in the juvenile justice system in order to provide high quality defense, recommend appropriate alternatives to detention and treatment services, and assign appropriate terms of probation. Accurate data, however, is difficult to gather from LGB and gender non-conforming youths. Youths who do not want to disclose their sexual orientations or gender identities will not provide accurate histories related to family conflict, truancy and running away out of fear of reprisal.

Faced with this central dilemma, juvenile justice professionals can follow several best practices to reduce the use of incarceration for LGB and gender non-conforming youths caught in a cycle of family conflict and juvenile detention.

- NEVER ASSUME. The Office of Juvenile Justice and Delinquency Prevention reports that there were 92,854 youth juvenile offenders detained in the United States in 2006.⁵¹

⁵¹ MELISSA SICKMUND, T.J. SLADKY & WEI KANG, OFFICE OF JUV. JUST. & DELINQ. PREVENTION, CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT DATEBOOK (2008),

According to this Article, fifteen percent of this population, or 13,928 youths, is LGB or gender non-conforming. Again applying the findings of this Article, nine percent of this population, or 8,356 youths, is invisible to the juvenile justice system. Given these large numbers, juvenile justice professionals should never assume that they know the sexual orientation or gender identity of an individual youth. Instead, they should ask neutral questions such as, "Do you have a boyfriend or girlfriend?" They should find out if the youth is afraid for their safety while detained and why. They should ask about school attendance, and if the youth is not attending school, ask why. If a youth does not get along with family members, they should ask why. If a youth raises issues related to sexual orientation or gender identity, juvenile justice professionals should remain open and supportive, and explain that they will not reveal this information to anyone else unless the youth gives them permission.⁵²

- **DEVELOP POLICIES TO ENSURE THE EQUITABLE TREATMENT AND SAFETY OF LGB AND GENDER NON-CONFORMING YOUTHS:** Juvenile justice professionals should insist on respect for LGB and gender non-conforming youths in the courtroom, law offices, probation departments and juvenile detention facilities. Juvenile justice professionals should also consistently respond to instances of discrimination based on sexual orientation, gender identity or gender expression.⁵³ In order to do this, they should adopt policies that enumerate ways to ensure the equitable treatment of LGB and gender non-conforming youths in the care of group homes, foster homes and secure detention.⁵⁴ Model anti-discrimination policies have been developed and implemented in New York and Hawaii.⁵⁵ Similar policies should be developed elsewhere.

<http://www.ojjdp.ncjrs.gov/ojstatbb/cjrp/> (follow "US & State Profiles," then select "Age on census date by sex") (last visited Feb. 5, 2010).

⁵² See MAJD ET AL., *supra* note 19, at 124.

⁵³ *Id.* at 139.

⁵⁴ For a model policy, see *id.* at 149-55, 159-65.

⁵⁵ See N.Y. STATE OFF. OF CHILD. AND FAM. SERVICES, POLICY ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH (PPM 3442.00) (Mar. 17, 2008), available at http://srtp.org/files/LGBTQ_Youth_Policy_PPM_3442_00.pdf.

- **PROVIDE TRAINING:** Juvenile justice professionals should be educated about the reasons that LGB and gender non-conforming youths are detained, how to provide services in a culturally competent way, the role that alternatives to detention can play in reducing youths' returns to detention and the benefits of resolving cases outside the formal court process.⁵⁶ Juvenile justice professionals should also require that all subcontracting direct service providers be trained in the same content areas.
- **DEVELOP FAMILY CRISIS PROTOCOLS:** Juvenile justice professionals should develop family crisis protocols for pre-trial detention. Family rejection is at the heart of many offenses committed by LGB and gender non-conforming youths. Yet, counseling and support for families can help mediate the negative effects of rejection and increase the well-being of LGB and gender non-conforming youths.⁵⁷ Family crisis protocols can be developed with community-based organizations that specialize in parent-teen mediation. These family crisis protocols should be developed for all youths. Such organizations help parents and teens communicate more effectively and help create safety plans for youths.⁵⁸ These organizations, however, should be trained on the needs of LGB and gender non-conforming youths. Such training should cover how to respectfully ask all youths about the source of conflict in their families and how to communicate specifically about conflict around sexual orientation or gender identity if these issues arise.
- **COLLABORATE:** In the search for solutions, juvenile justice professionals should create, lead or join community-based collaborations and task forces to reduce the detention

⁵⁶ See FRANCINE SHERMAN & ANGELA IRVINE, ANNIE E. CASEY FOUND., USING JDAI STRATEGIES TO REDUCE THE DETENTION OF GIRLS: A PRACTICE GUIDE TO JUVENILE DETENTION REFORM 46 (2010); MAJD ET. AL., *supra* note 19, at 137.

⁵⁷ Ryan et. al., *supra* note 39, at 351.

⁵⁸ Examples of family crisis protocols have been developed specifically for girls in the juvenile justice system with similar patterns of family conflict and runaway behavior. See SHERMAN & IRVINE, *supra* note 56, at 45. The Conflict Resolution Center in Santa Cruz County, C.A. provides an example of a community-based organization that specializes in teen-parent mediation. See Conflict Resolution Center, Restorative Justice: Parent Teen Mediation, <http://www.crcsantacruz.org/restorative-justice.html#PTM> (last visited Feb. 5, 2010).

of LGB and gender non-conforming youths. Collaborations that include juvenile justice stakeholders, mental and physical health providers, alcohol and drug abuse services, and community-based organizations can share a broader range of expertise about the needs of LGB and gender non-conforming youths.⁵⁹ Communities can also strengthen continua of services for LGB and gender non-conforming youths when organizations are regularly communicating with one another.⁶⁰

- **ALTERNATIVES TO DETENTION:** Alternatives to detention should be developed for all youths who are not a risk to the community or at risk of running away. Alternatives to detention, such as evening reporting centers, can keep young people tied to their communities, build positive relationships with adults and peers, and keep youths monitored at the lowest necessary level of supervision. Some of these alternatives can be designed to serve LGB and gender non-conforming youths specifically. Coordinators of these alternative initiatives should train staff on the needs of LGB and gender non-conforming youths, since most LGB and gender non-conforming youths will not disclose their sexual orientation or gender identity.⁶¹
- **REVIEW DATA IN AN ONGOING WAY:** Decisions on system reforms should be based on a systemic review of data.⁶² Data on LGB and gender non-conforming youths, however, can be difficult to collect. Juvenile justice professionals should use caution when collecting information about sexual orientation or gender identity, avoiding data that can be linked to individual youths. Anonymous surveys and needs assessments can provide jurisdictions with concrete information about their own cities that can guide the creation of alternatives to detention as well as prevention programs.

⁵⁹ Examples of multi-agency collaborations include Girls Task Forces and the Santa Cruz County Queer Youth Task Force. See SHERMAN & IRVINE, *supra* note 56, at 41; The Diversity Center, Queer Youth Taskforce, <http://diversitycenter.org/programs/affiliates/lgbtiq-youth-task-force/> (last visited Feb. 5, 2010).

⁶⁰ See MAJD ET AL., *supra* note 19, at 138.

⁶¹ See SHERMAN & IRVINE, *supra* note 56, at 42.

⁶² See SHERMAN & IRVINE, *supra* note 56, at 8; STEINHART, *supra* note 26, at 13.

APPENDIX A: DATA COLLECTION INSTRUMENT**Juvenile Detention Alternatives Survey: Information Sheet**

Your county is participating in a research project and would like your help.

Why is this study being done?

We want to understand what happens to lesbian, gay, bisexual, questioning and/or transgender youth in the juvenile justice system.

Why did you choose me?

We are surveying every youth who enters juvenile detention facilities.

What will my involvement be?

We would like you to complete this survey. After you are finished, fold the survey and put it in the locked survey box.

What will happen to the survey and interview data?

A researcher named Angela Irvine, who doesn't work for your Probation Department, will complete a report that will be shared with juvenile detention facilities across the country as well as the Annie E. Casey Foundation, who is funding the study. Your answers will help improve services for all youths.

Who will know what answers I give?

We are not asking for your name. Only the researcher will see the answers to this survey. She will not know who filled out which survey. Please do not put your name on the survey.

What if I choose not to take part?

You don't have to finish this survey if you don't want to. If you refuse, just put the blank survey in the secured box. If you decide to complete this survey, you may stop at any time without giving a reason. Your participation will not affect your treatment during detention.

A1. How old are you?	_____ years
A2. What county do you live in?	_____ County
A3. What is your gender (circle all that apply)?	male female other (explain)_____
A4. What is your sexual orientation (circle all that apply)?	straight lesbian/gay bisexual questioning other (explain)_____
A5. Who are you attracted to (circle all that apply)?	boys/men girls/women other (explain)_____
A6. What is your race/ethnic identity (circle all that apply)?	Latino/ African Native White Asian other (explain)_____ Hispanic American American

B1. How many times have you been suspended from school?	0 1 2 3 4 5 6 7 8+
B2. How many times have you been expelled from school?	0 1 2 3 4 5 6 7 8+
B3. Have you ever been removed from your home by a social worker?	yes no not sure
B4. Have you ever been kicked out of your home or run away because of your gender identity (being transgender) or sexual orientation (being lesbian, gay, etc.)?	yes no not sure
B5. Have you ever lived in a group home or foster home?	yes no not sure
B6. Have you ever been bullied or harassed at school because of your sexual orientation (being lesbian, gay, etc.)?	yes no not sure

B7. Have you ever been bullied or harassed at school because people don't think you are masculine enough or feminine enough?	yes	no	not sure
B8. Have you ever been homeless after being kicked out of home or running away?	yes	no	not sure

C1. In the past 12 months, have you been held in juvenile detention for:			
a violent offense (hurting someone)?	yes	no	not sure
a weapon charge (possession of a weapon)?	yes	no	not sure
a property offense (stealing something)?	yes	no	not sure
an alcohol or drug offense (possession, dirty test)?	yes	no	not sure
running away from where you live?	yes	no	not sure
having sex with someone of the same gender?	yes	no	not sure
prostitution?	yes	no	not sure
skipping school?	yes	no	not sure
other (please explain):			
C2. If you have been held in juvenile detention, how many times have you been held in the last year?			