



A CAMPAIGN OF THE JUVENILE JUSTICE & DELINQUENCY PREVENTION COALITION

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FACT SHEET: LGBTⁱ YOUTH & JUVENILE JUSTICE

What is the JJDPA?

The Juvenile Justice and Delinquency Prevention Act (JJDPA), the major vehicle for juvenile justice reform at the federal level, was first passed in 1974 and most recently reauthorized in 2002.ⁱⁱ The JJDPA embodies a partnership between the federal government and the U.S. states, territories and the District of Columbia to protect children and youth in the juvenile and criminal justice system, to effectively address high-risk and delinquent behavior, and to improve community safety.

It is the only federal law that sets out national standards for the custody and care of youth in the juvenile justice system, provides direction and support for state juvenile justice system improvements, and supports programs and practices that have significantly contributed to the reduction of juvenile crime and delinquency.

Why should the JJDPA be updated to include explicit provisions protecting youth from discrimination based on sexual orientation, gender identity, and gender expression (SOGIE) and addressing the needs of LGBT youth in the juvenile justice system?

- LGB youth are overrepresented in the juvenile justice system; they make up just 5-7% of the overall youth population, but represent 20% of those in the juvenile justice systemⁱⁱⁱ
- 85% of LGB and gender non-conforming youth in juvenile detention are youth of color^{iv}
- Research has shown 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^v
- Despite the disproportionately high rates of gay and transgender youth entering the juvenile justice system, our nation's schools, law enforcement officers, district attorneys, judges, and juvenile defenders are not equipped to manage the unique experiences and challenges that these young people face. As a consequence, the system often does more harm by unfairly criminalizing these youth—imposing harsh school sanctions, labeling them as sex offenders, or detaining them for minor offenses—in addition to subjecting them to discriminatory and harmful treatment that deprives them of their basic civil rights^{vi}
- Research suggests that harsh school discipline policies cycle LGBT youth and students of color into the juvenile justice system at alarming rates.^{vii}

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- LGB youth, particularly gender-nonconforming girls, are up to three times more likely to experience harsh disciplinary treatment by school administrators than their non-LGB counterparts.^{viii}
- Research shows that gay and transgender youth entering the juvenile justice system are twice as likely to have experienced family conflict, child abuse, and homelessness as other youth.^{ix}
- Gay and transgender youth represent up to 40 % of the homeless youth population even though they only compose 5 -7% of the youth population overall, and 39 % of homeless gay and transgender youth report being involved in the juvenile justice system at some level.^x

How should the JJDPa address the disparities that LGBT youth in the juvenile justice system face?

Congress should protect the interests and rights of LGBT youth in the juvenile justice system by:

- Amending the findings sections of the JJDPa to include the existing data on the disproportionate representation of LGBT youth in the juvenile justice system.
- Amending the JJDPa to eliminate the Valid Court Order exception for Status Offenders
- Amending the JJDPa to include a provision stating that no funding will be allotted to any programs that discriminate based on race, sex, gender, religion, national origin, disability, age, sexual orientation, gender identity, or gender expression
- Amending the JJDPa to require that JJDPa State Advisory Groups include experts on LGBT youth
- Amending the JJDPa by adding an additional core requirement that each state must make a plan to assess to what extent, if any, LGBT youth are disproportionately represented in the juvenile delinquency system, and, if they are, to develop a plan to address such disproportionate representation
- Passing federal protections against discrimination in all settings based on actual or perceived sexual orientation and gender identity and creating incentives for States to appropriately and effectively respond to LGBT youth involved in the justice system^{xi}
- Creating incentives for States to reduce the inappropriate detention of LGBT youth and address decision makers' lack of understanding of this population

OJJDP should protect the interests and rights of LGBT youth in the juvenile justice system by:

- Requiring all programs funded under JJDPa and other OJJDP incentive grants to adopt policies prohibiting discrimination based on actual or perceived sexual orientation, gender identity, and gender expression^{xiii}
- Not providing funding to any system or program engaged in reparative therapy or any efforts to attempt to change a youth's sexual orientation or gender identity
- Including prohibitions on discrimination based on sexual orientation, gender identity, and gender expression in any new RFPs issued
- Issuing an RFP to make training and technical assistance on the experiences of this population available for any juvenile justice system

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ⁱ This fact sheet uses the acronym “LGBT” in the broadest sense possible. While there are many other initials that reflect a more nuanced understanding of the breadth of identities that exist (e.g. LGBTQQIAA2-S), some choices had to be made in order to create uniformity. Because terminology is constantly evolving and because certain groups may gravitate to certain terms and abbreviations over others, it is difficult to come to a commonly agreed upon acronym that reflects all perspectives. Please understand that the Equity Project’s use of “LGBT” is intended to be as inclusive of all other identities as possible, unless otherwise specified, such as with regard to research that focuses on particular demographics.

ⁱⁱ The JJDPA was most recently authorized by the 21st Century Department of Justice Appropriations Authorization Act through FY2007 (P.L. 107-273).

ⁱⁱⁱ Berwick, Oddo, Durso, et al., *Identifying and Serving LGBTQ Youth: Case Studies of Runaway and Homeless Youth Program Grantees*, Final Report, February 14 2014, Mathematica Policy Research (“National Longitudinal Study of Adolescent Health found that 7.4 percent of boys and 5.3 percent of girls in grades 7–12 reported same-sex romantic attraction, and results of a recent nationally representative survey of U.S. adults indicate that approximately 3.4 percent identify as LGBT (Russell et al. 2001; Gates and Newport 2012)”, available at: http://www.aspe.hhs.gov/hsp/14/lgbt-rhy/rpt_LGBTQ_RHY.pdf). See Angela Irvine, 2014, *Dispelling Myths: Understanding the incarceration of lesbian, gay, bisexual, and gender nonconforming youth*, upcoming working paper, National Council on Crime and Delinquency, Oakland, CA.

^{iv} *Id.*

^v Angela Irvine, *We’ve Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-conforming Youths in the Juvenile Justice System* [hereinafter *We’ve Had Three of Them*], 19 Colum. J. Gender & L. 675, 693 (2010).

^{vi} Jerome Hunt and Aisha C. Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, Center for American Progress June 29, 2012.

^{vii} Preston Mitchum and Aisha C. Moodie-Mills, *Beyond Bullying: How Hostile School Climate Perpetuates the School-to-Prison Pipeline for LGBT Students of Color*, Center for American Progress, February 27, 2014.

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*

^{xii} *Id.*