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RESEARCH THAT MATTERS

THE IMPACT OF STIGMA AND DISCRIMINATION

Against LGBT People
in Ohio

October 2019

Christy Mallory
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EXECUTIVE SUMMARY

Ohio is home to an estimated 389,300 LGBT adults and 72,300 LGBT youth. LGBT people in Ohio lack important legal protections that have been extended in other states. For example, statewide statutes in Ohio do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Ohio also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Ohio ranks 25th in the nation on public support for LGBT rights and acceptance of LGBT people.

Figure 1. Social acceptance of LGB people, ranked by state



The legal landscape for LGBT people in Ohio likely contributes to an environment in which LGBT people experience stigma and discrimination. Stigma and discrimination can take many forms, including discrimination and harassment in employment and other settings; bullying, harassment, and family rejection of LGBT youth; overrepresentation in the criminal justice system; and violence. Research has linked stigma and discrimination against LGBT people to negative effects on individuals, businesses, and the economy.

In this study, we provide data and research documenting the prevalence of several forms of stigma and discrimination against LGBT adults and youth in Ohio, including discrimination and harassment in employment, housing, and public accommodations; bullying and harassment in schools; and family rejection of LGBT youth. We discuss the implications of such stigma and discrimination on LGBT

individuals, in terms of health and economic security; on employers, in terms of employee productivity, recruitment, and retention; and on the economy, in terms of health care costs and reduced productivity.

To the extent that Ohio is able to move toward creating a more supportive environment for LGBT people, it would likely reduce economic instability and health disparities experienced by LGBT individuals, which, in turn, would benefit the state, employers, and the economy.

KEY FINDINGS

Prevalence of Stigma and Discrimination against LGBT People

LGBT people in Ohio experience discrimination in employment, housing, and public accommodations.

- A 2016 survey of faculty, staff, and students at Kent State University found that LGBQ faculty were more likely than heterosexual faculty to say that they were uncomfortable with the climate in their department (23% v. 16%). LGBQ faculty and staff were also more likely to say that they were reluctant to bring up issues that concerned them out of fear that it would negatively impact their job (45% v. 35%) and to say that they have to work harder than their colleagues to achieve the same recognition (46% v. 37%). Among staff, LGBQ respondents were more likely than heterosexual respondents to say that they disagreed with the statement that senior administration is genuinely concerned with their welfare (40% v. 27%).¹
- The 2015 U.S. Transgender Survey found that of transgender respondents from Ohio who held or applied for a job in the prior year, 30% reported being fired, being denied a promotion, or not being hired for a job because of their gender identity or expression. In terms of housing discrimination, 25% of respondents from Ohio reported experiencing some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender, and 15% reported that they experienced homelessness in the past year because of being transgender. In addition, of those respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 32% experienced at least one type of mistreatment in the past year because of being transgender.²
- A 2014 community survey of LGBT people in Dayton found that a number of people had experienced discrimination based on their sexual orientation and gender identity. One-third (34%) of respondents said they had been denied an employment opportunity, 29% said they had been treated differently at a place of public accommodation, 16% said they had been treated

¹ RANKIN & ASSOCIATES, KENT STATE UNIVERSITY: CAMPUS CLIMATE RESEARCH STUDY 65, 122, 129, 142 (2017), <https://www.kent.edu/sites/default/files/file/Kent%20State%20University%20-%20Aggregate.pdf>.

² The survey used a non-probability sampling method. THE NATIONAL CENTER FOR TRANSGENDER EQUALITY & TRANS OHIO, U.S. TRANSGENDER SURVEY: OHIO STATE REPORT 1 (2017), *available at* <http://www.transequality.org/sites/default/files/docs/usts/USTSOHStateReport%281017%29.pdf>.

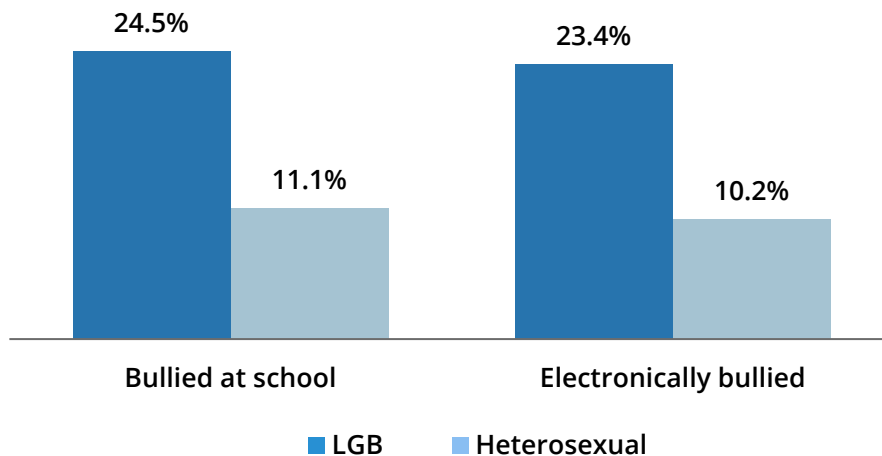
unfairly by a health care provider, and 11% said they had been denied an opportunity to rent or purchase a home because of their sexual orientation or gender identity.³

- In response to a 2016 poll, 57% of Ohio residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S., and 61% of Ohio residents said that they thought that transgender people experience a lot of discrimination in the U.S.⁴
- Analysis of aggregated public opinion data collected from 2011 through 2013 found that 79% of Ohio residents thought that LGBT people experience discrimination in the state.⁵
- Discrimination against LGBT people in Ohio has also been documented in a number of court cases and the media. Instances of employment discrimination documented in these sources involve private and public sector workers in a range of occupations. Examples of discrimination in housing and public accommodations have also been documented in these sources.

LGBT youth in Ohio experience bullying and harassment at school.

- The 2017 Youth Risk Behavior Surveillance Survey found that LGB students in Cleveland were more than twice as likely to report being bullied at school (24.5% v. 11.1%)⁶ and electronically bullied (23.4% v. 10.2%)⁷ in the year prior to the survey than heterosexual students.

Figure 2. Bullying of high school students in Cleveland, by sexual orientation in the past 12 months



³ DAYTON LGBT CENTER, 2014 GREATER DAYTON LGBT CENTER REDISCOVERING OUR COMMUNITY SURVEY 25, 26, 28, 36 (2014), <http://daytonlgbtcenter.org/wp-content/uploads/2018/01/2014-LGBT-Survey-Results.pdf>.

⁴ PRRI, American Values Atlas: Ohio, <http://ava.prri.org/#discrimination/2016/States/lgdism/US-OH> (under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes;” under dropdown menu for “Year” select “2016”).

⁵ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

⁶ Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MMWR 1, 169 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.

⁷ Id. at 166.

- In addition, LGB students in Cleveland were more likely than heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (15.5% v. 7.5%).⁸
- The 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 73% of respondents from Ohio said they had experienced verbal harassment based on their sexual orientation at school, and 60% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.⁹ Many students also reported experiencing physical harassment based on their sexual orientation (30%) or gender expression (26%) at school in the year prior to the survey.
- The 2015 U.S. Transgender Survey found that 57% of survey respondents from Ohio who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 27% reported experiencing physical assault, and 15% reported experiencing sexual violence while in school.¹⁰
- A 2016 survey of students, faculty, and staff at Kent State University found that transpectrum respondents (including transgender, non-binary, and other gender minority respondents) were more likely to report problems on campus than cisgender men and women students. For example, among all respondents (students, faculty, and staff), 39% of transpectrum respondents said that they had experienced exclusionary, intimidating, offensive or hostile conduct on campus compared to 17% of cisgender women respondents and 15% of cisgender men respondents.¹¹ Over half (54%) of transpectrum respondents who had these experiences said the exclusionary conduct was because of their gender identity.¹²

Impact of Stigma and Discrimination on LGBT Individuals

LGBT people in Ohio experience economic instability.

- Stigma and discrimination against LGBT workers can lead to economic instability, including lower wages and higher rates of poverty.
- Gallup polling data from 2015-2017 show that 33% percent of LGBT adults in Ohio reported that they did not have enough money for food compared to 16% of non-LGBT adults in the state. And, 33% of LGBT adults in Ohio reported having a household income below \$24,000, compared to

⁸ Id. at 172.

⁹ GLSEN, SCHOOL CLIMATE IN OHIO 1 (2017), https://www.glsen.org/sites/default/files/Ohio%20State%20Snapshot%20-%202017%20NSCS_0.pdf. The survey included 818 respondents from Ohio.

¹⁰ THE NATIONAL CENTER FOR TRANSGENDER EQUALITY & TRANS OHIO, U.S. TRANSGENDER SURVEY: OHIO STATE REPORT 1 (2017), <http://www.transequality.org/sites/default/files/docs/usts/USTSOHStateReport%281017%29.pdf>.

¹¹ RANKIN & ASSOCIATES, KENT STATE UNIVERSITY: CAMPUS CLIMATE RESEARCH STUDY 82 (2017), <https://www.kent.edu/sites/default/files/file/Kent%20State%20University%20-%20Aggregate.pdf>.

¹² Id.

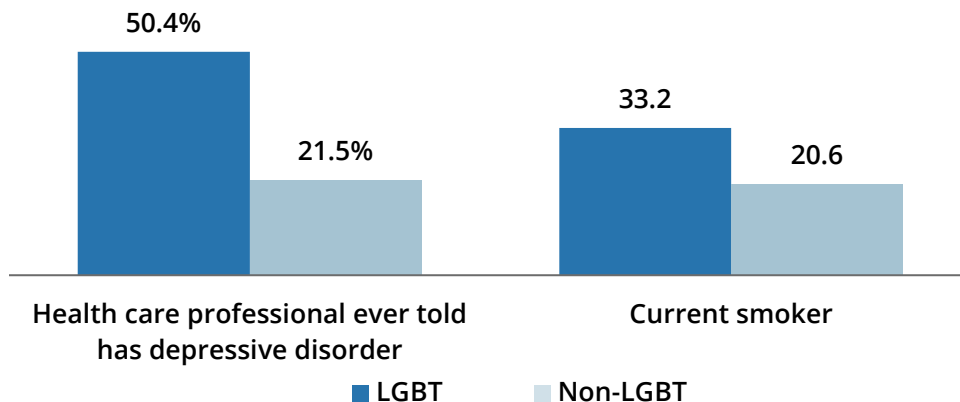
21% of non-LGBT adults. In addition, 11% of LGBT adults in Ohio reported being unemployed, compared to 5% of non-LGBT adults.¹³

- The 2015 U.S. Transgender Survey found that 16% of transgender respondents in Ohio were unemployed and 26% were living in poverty. In addition, 15% experienced homelessness in the past year because of being transgender.¹⁴

LGBT adults and youth in Ohio experience health disparities.

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT adults such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased likelihood of school dropout, suicide, and substance use among LGBT youth.
- LGBT adult respondents to the 2017 Ohio Behavioral Risk Factor Surveillance System survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGBT respondents (50.4% v. 21.5%). In addition, LGBT adults in Ohio were significantly more likely to report current smoking (33.2% v. 20.6%) than non-LGBT adults.

Figure 3. Health characteristics of adults in Ohio, by LGBT identity



- The 2017 Youth Risk Behavior Survey found that LGB students in Cleveland were more likely than heterosexual students to report that they have seriously considered suicide (36.1% v. 15.4%) and have attempted suicide (31.2% v. 16.6%) in the year prior to the survey. LGB students in Cleveland were also more likely than heterosexual students to report smoking cigarettes (15.0% v. 5.0%), drinking (41.3% v. 23.7%), and using marijuana (38.2% v. 23.4%) in the month prior to the survey.¹⁵

¹³ LGBT Data & Demographics: Ohio, Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=39#economic> (last visited Oct. 31, 2019).

¹⁴ THE NATIONAL CENTER FOR TRANSGENDER EQUALITY & TRANS OHIO, *supra* note 10.

¹⁵ Kann et al., *supra* note 6 at 190, 196, 208, 271, 289.

Economic Impacts of Stigma and Discrimination

Discrimination against LGBT people in employment and other settings has economic consequences for employers and the state government.

- **Productivity.** Unsupportive work environments can mean that LGBT employees are less likely to be open about their sexual orientation or gender identity at work, and more likely to be distracted, disengaged, or absent, and to be less productive. These outcomes could lead to economic losses for state and local governments, as employers, as well as private sector employers in the state. Given that an estimated 298,000 workers in Ohio identify as LGBT, the loss in productivity from a discriminatory environment could be significant.
- **Retention.** LGBT employees in less supportive work environments feel less loyal to their employers and are more likely to plan to leave their jobs. Given the average replacement costs of an employee, public and private employers risk losing \$9,640, on average, for each employee that leaves the state or changes jobs because of an unsupportive environment in Ohio.
- **Recruitment.** Many LGBT and non-LGBT workers, in particular those who are younger and more highly educated, prefer to work for companies with more LGBT-supportive policies, and in states with more supportive laws. To the extent that workers from other states perceive Ohio to be unsupportive of LGBT people, it may be difficult for public and private employers in the state to recruit talented employees from other places.

Bullying, harassment, and family rejection of LGBT youth negatively impact the economy.

- Bullying, harassment, and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or unemployed or underemployed.
- In response to the 2015 U.S. Transgender Survey, of those respondents from Ohio who said they had been harassed in school, 20% said the harassment was so severe that they had to leave school.¹⁶
- School drop-out and homelessness that arise due to bullying, harassment, and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Jim Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging out cohort.

¹⁶ THE NATIONAL CENTER FOR TRANSGENDER EQUALITY & TRANS OHIO, *supra* note 10.

Health disparities for LGBT people negatively impact the economy.

- A more supportive legal landscape and social climate for LGBT people in Ohio is likely to reduce health disparities between LGBT and non-LGBT people, which would increase worker productivity and reduce health care costs.
- We estimate that reducing the disparity in major depressive disorder between LGBT and non-LGBT people in Ohio by 25% to 33.3% could benefit the state’s economy by \$155.9 million to \$207.9 million, and reducing the disparity in current smoking by the same proportion could benefit the state’s economy by \$104.4 million to \$207.9 million in increased productivity and reduced health care costs each year. To the extent that a more supportive legal landscape would reduce other health disparities, the state’s economy would benefit even more.

Table 1. Reduction in costs associated with major depressive disorder and smoking in Ohio if LGBT disparities were reduced

Health characteristic	Reduction in disparity between LGBT and non-LGBT people in Ohio	LGBT individuals impacted	Annual reduction in costs (millions)
Major Depressive Disorder	25%–33.3%	9,600-12,800	\$155.9–\$207.9
Smoking	25%–33.3%	12,300-16,400	\$104.4–\$139.2

DEMOGRAPHICS AND LEGAL LANDSCAPE

Ohio is home to an estimated 389,300 LGBT adults and approximately 72,300 LGBT youth who reflect the diversity of the state's overall population. There are few legal protections for LGBT people in Ohio.¹⁷ Additionally, the state is ranked 25th in the nation on LGBT social climate, as measured by public support for LGBT rights and acceptance of LGBT people.¹⁸ Despite the lack of legal protections in the state, public opinion polls show that a majority of adults in Ohio support extending discrimination protections to LGBT people.¹⁹

DEMOGRAPHICS OF LGBT PEOPLE IN OHIO

LGBT Adults in Ohio

Ohio is home to an estimated 389,000 LGBT adults (4.3% of adults self-identify as LGBT),²⁰ including 39,950 transgender adults (0.45% of the adult population).²¹ They are diverse across many socio-demographic characteristics, including age, sex, race-ethnicity, and the presence of children in the household.

- Representative data from the combined 2015-2017 Gallup Daily Tracking Surveys indicate that LGBT adults in Ohio, like LGBT adults elsewhere across the United States, are younger than non-LGBT adults.²² As shown in Table I below, more than half of LGBT adults in Ohio are under the age of 35.
- While similar proportions of non-LGBT adults in Ohio are male as female, LGBT adults are more likely to be female.²³
- LGBT adults in Ohio are racially and ethnically diverse. Slightly less than one third of LGBT adults in Ohio are people of color, including 12.9% who are Black or African American, 5.7% who are Latino/a or Hispanic, 6.7% who are more than one race, and 3.6% who are another racial or ethnic group.²⁴ Comparatively, less than one in five non-LGBT adults in Ohio are people of color.

¹⁷ See Section I.B., *infra* for a discussion of the legal landscape for LGBT people in Ohio.

¹⁸ AMIRA HASENBUSH ET AL., WILLIAMS INST., THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN, & SOUTHERN STATES (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

¹⁹ Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, 2 RESEARCH & POLITICS 1 (2015).

²⁰ LGBT Data & Demographics: Ohio, *supra* note 13; LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAMS INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

²¹ ANDREW R. FLORES ET AL., WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

²² LGBT Data & Demographics: Ohio, *supra* note 13.

²³ *Id.*

²⁴ Individual proportions of respondents who reported identifying as Asian, American Indian or Alaska Native, or Native Hawaiian or Other Pacific Islander were combined because of limited sample size.

Table 2. Weighted Characteristics of Ohio Adult Participants in the 2015-2017 Gallup Daily Tracking Surveys by LGBT and non-LGBT Status (N=35,678)

	LGBT (n = 906)	Non-LGBT (n = 27,591)
	%	%
Age		
18-24	32.1	12.0
25-34	27.1	15.0
35-49	19.8	22.6
50-64	13.0	26.9
65+	8.0	23.5
Sex		
Female	58.0	50.7
Male	42.0	49.3
Race-ethnicity		
White	71.1	81.8
African-American/Black	12.9	9.8
Latino/a or Hispanic	5.7	2.8
More than one race	6.7	3.3
All other racial/ethnic groups	3.6	2.2
Children under 18 in household (among those ages 25+)	29.7	32.5

Many LGBT adults in Ohio are raising children, in the context of same- and opposite-sex relationships, married and unmarried, and as single parents. An estimated 29.7% of LGBT adults ages 25 and older in Ohio (approximately 79,100 individuals)²⁵ are raising children.²⁶ Data from the 2011-2013 American Community survey indicate that there were approximately 19,680 cohabiting same-sex couples living in Ohio, 17.7% of whom were raising children.²⁷ While different-sex married couples are more likely to be raising children than same-sex couples, among cohabiting couples with children, same-sex couples are about twice as likely to be raising adopted children as different-sex couples in the state (13% vs. 3%).²⁸

LGBT Youth in Ohio

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants that the Centers for Disease Control and Prevention (CDC) manages.

²⁵ Unpublished analyses conducted by The Williams Institute of data from the combined 2015-2017 Gallup Daily Tracking Poll multiplied by the estimated number of LGBT adult in Ohio, *supra* note 4.

²⁶ LGBT Data & Demographics: Ohio, Williams Inst., *supra* note 13.

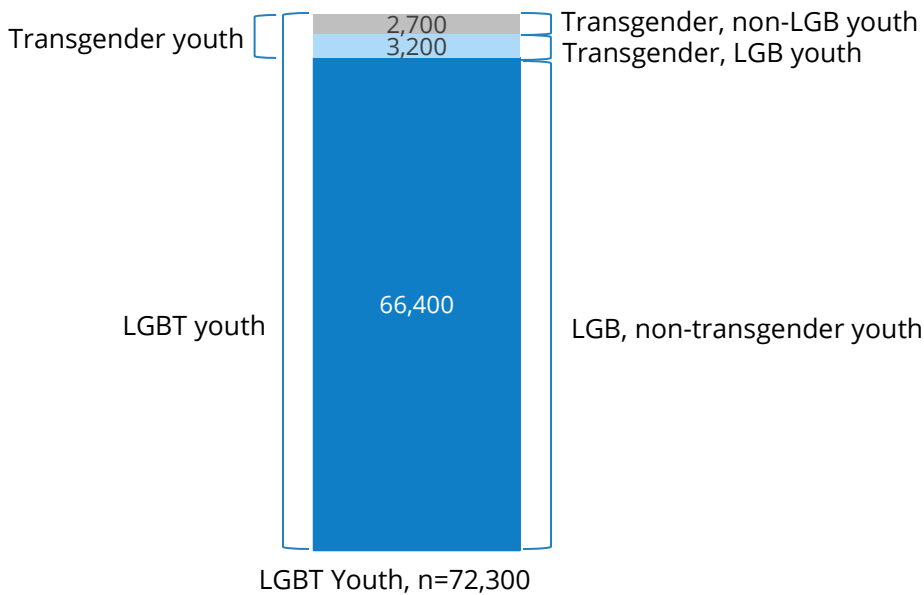
²⁷ *Id.*

²⁸ AMIRA HASENBUSH ET AL., *supra* note 18.

The YRBS is one of the few sources of data about LGB youth in grades 9 through 12.²⁹ In 2016 and 2018, the CDC published reports on the health and well-being of youth from states and large urban school districts that included measures of sexual orientation and behavior on the YRBS.³⁰ Based on these data, we estimate that 9.2% of youth in grades 9-12 identify as gay, lesbian, or bisexual in the United States.³¹

We estimate that there are 72,300 LGBT youth ages 13-17 in the state of Ohio, including approximately 69,500 LGB youth³² (3,200 of whom are also transgender³³) and approximately 2,700 transgender youth who are not LGB. There are a total of 5,900 youth in Ohio estimated to identify as transgender.³⁴

Figure I. Estimate of the LGBT Youth Population of Ohio ages 13-17



Sources: National YRBS, 2015 & 2017; BRFSS, 2015-2017; 2017 Population Estimates based on 2010 Census; American Community Survey, 2011-2013

²⁹ Questions to identify transgender participants were not included in the 2015 or 2017 YRBS surveys.

³⁰ Laura Kann et al., *supra* note 6; Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83.

³¹ In the 2015 YRBS, 8.0% of youth in the national sample identified as LGB. In the 2017 YRBS, 10.4% of youth in the national sample identified as LGB. We averaged the percentage of youth identifying as LGB across these two samples to produce a larger sample size and, thus, a more reliable estimate.

³² We assume the same distribution of sexual orientation across all youth, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

³³ Unpublished analyses conducted by The Williams Institute of data from the combined 2015-2017 Behavioral Risk Factor Surveillance System (BRFSS) restricted to transgender-identified participants ages 18-24 indicate that 46.3% identify as straight or other sexual orientation (i.e. non-LGB). Data on the percentage of transgender youth identifying as LGB are not currently available, and we believe that the BRFSS measure from young adults ages 18-24 provides a close approximation for youth ages 13-17. We applied this percentage among 18-24 year old adults to the estimated number of transgender youth ages 13-17 estimated in JODY L. HERMAN ET AL., *AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES*, WILLIAMS INST., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

³⁴ *Id.*

LGB youth are more likely to be female than male. Among national participants in both the 2015 and 2017 YRBS, male and female students were equally as likely to identify as gay or lesbian.³⁵ A larger percentage of female students identified as bisexual than male students in both years.³⁶

LEGAL LANDSCAPE FOR LGBT PEOPLE IN OHIO

Ohio's legal landscape reflects a history of state laws and policies that limit protections for LGBT people or discriminate against them. Although same-sex couples have been able to legally marry in the state since June 2015,³⁷ the state and many localities continue to lack protections from sexual orientation and gender identity discrimination in the workplace, housing, public accommodations, and other areas.

Historical Legal Landscape

Although Ohio's sodomy law is no longer enforceable marriage has been extended to same-sex couples in the state, historical anti-LGBT laws likely have lingering negative effects on the social climate for LGBT people.

Sodomy Laws. Enforcement of Ohio's sodomy law and other similar laws indicates a long history of discrimination against LGB people in the state. In 1885, the Ohio legislature enacted a law that specifically criminalized acts of sodomy and carried a 20-year prison sentence.³⁸ Records from Ohio Penitentiary show that 325 men were imprisoned on sodomy charges between 1885 and 1937.³⁹ Case law and statutory amendments after the 1885 enactment expound on what the anti-sodomy statute included. In 1922, the Supreme Court of Ohio likened gay intercourse to bestiality and pedophilia, disparaging homosexuals as moral degenerates and sexual perverts.⁴⁰

The Ascherman Act, commonly known as the "psychopathic offender" law, was passed in 1939 and aimed to afford the criminal courts a tool to deal with offenders who had mental illness.⁴¹ Under the law, individuals convicted of certain crimes were required to undergo a mental examination, and could be sent to institutions indefinitely until they were deemed cured.⁴² While the offenses covered by the Act were not limited to sexual offenses, the Act was often referred to as a "Sexual Psychopath" law due to its disproportionate effect on those who committed sexual crimes.⁴³ Consequently, those convicted under

³⁵ Laura Kann et al., *supra* note 6.

³⁶ *Id.*

³⁷ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

³⁸ George Painter, *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States*, Gay & Lesbian Archives of the Pacific Northwest, Aug. 10, 2004 at <https://www.glapn.org/sodomylaws/sensibilities/ohio.htm>, citing *Laws of Ohio*.

³⁹ *Id.*, citing the *Ohio Penitentiary Register of Prisoners*.

⁴⁰ *Barnett v. State*, 104 Ohio St. 298, 298, 135 N.E. 647, 649 (1922).

⁴¹ Marshall S. Gordon, et al., *A Case Closeup: The "Unrelated Crime" and the Ascherman Act*, National Criminal Justice References Service, 1973 at <https://www.ncjrs.gov/pdffiles1/Digitization/19431NCJRS.pdf>, citing OHIO REV. CODE ANN. § 2947.27; *supra* Note 10, citing *Ohio State Reformatory Historical and Conduct Records*.

⁴² *Id.*

⁴³ *Id.*

sodomy charges were at heightened risk of being committed to psychiatric institutions for indefinite sentences.

In 1961, the state enacted a law banning the solicitation of “unnatural sex act[s].”⁴⁴ However, an Ohio court struck down the statute as unconstitutional, finding that the language was vague and overbroad.⁴⁵ The legislature then rewrote the provision to ban the solicitation of “act[s] of sex perversion.”⁴⁶ Revisions to the criminal code in 1972 repealed the sodomy and solicitation laws, and a new, narrower solicitation law was enacted.⁴⁷ In 2002, the Ohio Supreme Court held in *State v. Thompson* that the state’s solicitation law violated the Equal Protection Clause of the federal and state constitutions.⁴⁸ This ruling marked the end of Ohio’s sodomy laws. Just one year later, the United States Supreme Court struck down sodomy laws nationwide in the landmark case, *Lawrence v. Texas*,⁴⁹ overturning its earlier decision in *Bowers v. Hardwick*.⁵⁰

Marriage Equality. In 2003, the Ohio legislature passed a bill restricting marriage to different-sex couples and further barring same-sex couples from receiving any legal benefits of marriage.⁵¹ Governor Bob Taft signed the bill in early 2004, stating, “Marriage is an essential building block of our society, an institution we must reaffirm.”⁵² In November 2004, Ohio voters approved a constitutional amendment that, like the statute, prohibited recognition of marriage and other legal relationship statuses for same-sex couples. The ballot measure passed by a margin of nearly 2-to-1.⁵³ In 2013 and 2014, several same-sex couples filed lawsuits challenging Ohio’s ban on recognizing marriages of same-sex couples performed in other jurisdictions.⁵⁴ After favorable decisions from federal district courts in Ohio, the cases were appealed to the Sixth Circuit Court of Appeals.⁵⁵ In 2014, the Sixth Circuit overturned the district court decisions, finding that the marriage bans did not violate the U.S. Constitution. The U.S. Supreme Court agreed to hear the cases out of Ohio, which had been consolidated with similar cases from three other states in the Sixth Circuit. In 2015, the U.S. Supreme Court held that state-level bans on marriage for same-sex couples were unconstitutional in *Obergefell v. Hodges*.⁵⁶

⁴⁴ Painter, *supra* note 38, citing *Laws of Ohio*.

⁴⁵ *State v. Sharpe*, 205 N.E.2d 113, 114 (Ohio Ct. App. 1965).

⁴⁶ Painter, *supra* note 38, citing *Laws of Ohio*.

⁴⁷ *Id.*

⁴⁸ *State v. Thompson*, 767 N.E.2d 251 (Ohio 2002).

⁴⁹ 539 U.S. 558 (2003).

⁵⁰ 478 U.S. 186 (1986).

⁵¹ H.B. 272, 125th Gen. Assem. (Ohio 2003).

⁵² *Ohio Governor Signs “Super Doma”*, THE ADVOCATE, Feb. 7, 2004, <https://www.advocate.com/news/2004/02/07/ohio-governor-signs-quot-super-doma-quot-11244>.

⁵³ Ohio Sec. of State, State Issue 1: Nov. 2, 2004, <https://www.sos.state.oh.us/elections/election-results-and-data/2004-elections-results/state-issue-1-november-2-2004/> (last visited Aug. 12, 2019).

⁵⁴ *Obergefell v. Hodges*, 135 S. Ct. 1732; *Kasich*, No. 1:13-CV-501, 2013 U.S. Dist. LEXIS 102077 (S.D. Ohio July 22, 2019); *Compliant, Henry v. Wymyslo*, 1:14-CV-00129 (S.D. Ohio Feb. 10, 2014).

⁵⁵ *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014).

⁵⁶ *Obergefell v. Hodges*, 135 S. Ct. 1732 (2015).

Current Legal Landscape

Discrimination Protections. Ohio does not have any statewide non-discrimination statutes that expressly include sexual orientation or gender identity as protected characteristics in employment, housing, or public accommodations. Ohio's non-discrimination laws prohibit discrimination in employment, housing, public accommodations, education, and credit based on race, religion, sex, military status, national origin, disability, age, and ancestry.⁵⁷ Although sexual orientation and gender identity are not expressly included in the statutory language, the Ohio Commission on Civil Rights recommends that individuals who have experienced discrimination based on their sexual orientation or gender identity file discrimination complaints with the Commission.⁵⁸ The Commission states that it will take reasonable steps to determine whether the complaints allege a form of sex discrimination, such as sex stereotyping, prohibited under statute, and if so, will take action on the complaint.⁵⁹

In 2011, former Ohio governor John Kasich issued an executive order protecting state government employees from discrimination based on sexual orientation, among other personal characteristics.⁶⁰ In 2018, former Governor Kasich issued another order adding gender identity and expression to the list of protected characteristics.⁶¹ When Governor Mike DeWine took office in January 2019, he renewed the orders so the protections continue to be in effect.⁶² The executive orders protect approximately 185,000 state government employees in Ohio from discrimination based on sexual orientation and gender identity.⁶³

To date, at least forty-four Ohio cities and villages, as well as Cuyahoga County, have enacted local ordinances that prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations.⁶⁴ These ordinances protect approximately 30% of workers in Ohio from employment discrimination based on sexual orientation and gender identity.⁶⁵ An

⁵⁷ Ohio Rev. Code Ann. § 4112 (2018).

⁵⁸ *Discrimination Based on Sexual Orientation, Sex Stereotyping, and Gender Identity*, Ohio Civ. Rights Comm., <https://crc.ohio.gov/FilingCharge/LGBTQ.aspx> (last visited Aug. 13, 2019).

⁵⁹ *Id.*

⁶⁰ Jackie Borchart, *One of Kasich's Last Moves as Ohio Governor? Protect Transgender State Employees from Discrimination*, CINCINNATI.COM, Dec. 19, 2018, <https://www.cincinnati.com/story/news/politics/2018/12/19/gov-john-kasich-bans-state-employee-discrimination-basis-gender-identity/2368068002/>.

⁶¹ *Id.*

⁶² Ohio Exec. Or. No. 2019-05D (Ohio 2019).

⁶³ Calculated by authors using data from the American Community Survey, 2017 1-Year-Estimates, Ohio: *Sex by Class of Worker for the Civilian Population Aged 16 and Over*, FACTFINDER.COM, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B24080&prodType=table (last visited Oct. 17, 2019).

⁶⁴ *Ohio's Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality_maps/profile_state/OH (last visited Sept. 9, 2019).

⁶⁵ City data calculated by authors using class of worker by sex data by place from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2408/1600000US390100|1600000US3901672|1600000US3902736|1600000US3906278|1600000US3907972|1600000US3912000|1600000US3915000|1600000US3918000|1600000US3918868|1600000US3921000|1600000US3939872|1600000US3944856|1600000US3948790|1600000US3954040|1600000US3957834|1600000

estimated 298,000 workers in Ohio, aged 16 and older, identify as LGBT.⁶⁶ The ordinances further protect approximately 40% of adults in Ohio from housing and public accommodations discrimination based on sexual orientation and gender identity.⁶⁷

The ordinances differ in terms of scope, enforcement, and remedies.

- Twenty-seven ordinances offer comprehensive protections, prohibiting discrimination in employment, housing, and public accommodations based on both sexual orientation and gender identity. These localities are: Cuyahoga County, Akron, Athens, Beachwood, Bexley, Bowling Green, Cincinnati, Cleveland, Cleveland Heights, Columbus, Coshocton, Dayton, East Cleveland, Kent, Lakewood, Medina, Newark, Olmsted Falls, Oxford, Sandusky, Shaker Heights, South Euclid, Toledo, Worthington, Yellow Springs, and Youngstown.⁶⁸
- One locality, Springfield, prohibits discrimination based on sexual orientation in employment, housing, and public accommodations, but does not prohibit discrimination in these areas based on gender identity.⁶⁹
- One other locality, Canton, prohibits discrimination based on sexual orientation and gender identity in employment and housing, but not in public accommodations.⁷⁰
- The remaining 16 ordinances prohibit only housing discrimination; all 16 prohibit such discrimination based on sexual orientation and eight of them also include gender identity. These localities include: Amberley Village, Brook Park (sexual orientation only), Cuyahoga Heights (sexual orientation only), Euclid, Garfield Heights (sexual orientation only), Linndale, Lorain

US3959234|1600000US3966152|1600000US3970380|1600000US3972088|1600000US3974118|1600000US3974608|1600000US3977000|1600000US3985036|1600000US3986604|1600000US3986940|1600000US3988000 (last accessed Sept. 13, 2019). State data calculated by authors using class of worker by sex data by state from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2408/0400000US39 (last accessed Sept. 13, 2019). County data calculated by authors using class of worker by sex data by county from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2407/0500000US39035 (last accessed Sept. 13, 2019).

⁶⁶ LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAMS INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

⁶⁷ State data calculated by authors using sex by age data by state from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?_afpt=table (last accessed Sept. 13, 2019). County data calculated by authors using sex by age data by county from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/B01001/0500000US39035 (last accessed Sept. 9, 2019). City and village data calculated by authors using sex by age data by place from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/B01001/1600000US3901000|1600000US3901672|1600000US3902736|1600000US3906278|1600000US3907972|1600000US3912000|1600000US3915000|1600000US3918000|1600000US3918868|1600000US3921000|1600000US3939872|1600000US3944856|1600000US3948790|1600000US3954040|1600000US3957834|1600000US3959234|1600000US3966152|1600000US3970380|1600000US3972088|1600000US3974118|1600000US3974608|1600000US3977000|1600000US3985036|1600000US3986604|1600000US3986940|1600000US3988000 (last accessed Sept. 9, 2019). Note that the authors did not count cities with housing and public accommodations protections which are located within Cuyahoga County to avoid double-counting.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

(sexual orientation only), Maple Heights (sexual orientation only), Newburgh Heights (sexual orientation only), Oberlin, Reminderville (sexual orientation only), Sheffield Lake (sexual orientation only), Steubenville, University Heights, Warrensville Heights, and Wickliffe.⁷¹

The ordinances generally specify the municipal body or agent responsible for accepting and investigating reports of discrimination. In many municipalities, including Akron,⁷² Columbus,⁷³ Coshocton,⁷⁴ Cuyahoga County,⁷⁵ and Lakewood,⁷⁶ a commission is responsible for receiving and investigating complaints. In some municipalities, such as Athens, a commission may receive complaints and may engage in informal discussions with the affected parties but must “make referrals for mediation or investigation as appropriate.”⁷⁷ In Bexley, the Prosecuting Attorney has the ability to accept and in some cases investigate reports of discrimination.⁷⁸ In Bowling Green, a Municipal Administrator and an appointed Complaint Officer both receive and investigate complaints.⁷⁹

Many municipalities give the entity charged with investigating the complaint discretion in deciding how to remedy violations, including entering into conciliation agreements, pursuing injunctive relief, and prosecuting the violation as a municipal civil infraction. For example, in Cincinnati, the City Manager and one or more Complaint Officers receive and investigate complaints of discrimination and can pursue informal conciliation, a determination hearing, and an order to cease and desist.⁸⁰ The Complaint Officer may also refer complaints to the City Manager for criminal or civil enforcement.⁸¹

The dollar amounts of fines, and the discretion of a municipal body or agent when assessing fines, vary. For example, if a respondent has not committed an unlawful discriminatory practice in the past five years in Cleveland Heights, the administrative penalty is not to exceed \$10,000.⁸² If a respondent in Cleveland Heights has committed an additional violation in that same five-year period, the administrative remedy increases to a \$25,000 cap.⁸³ By contrast, in East Cleveland, each violation can result in no more than a \$500 fine with no increased penalty for repeat violations.⁸⁴

⁷¹ *Id.*

⁷² AKRON, OHIO, CODE § 38.07 (2019).

⁷³ COLUMBUS, OHIO, CODE § 2331.05 (2019).

⁷⁴ COSHOCTON, OHIO, CODE § 159.07 (2019).

⁷⁵ CUYAHOGA COUNTY, OHIO, CODE § 1501.03-1501.04 (2018).

⁷⁶ LAKEWOOD, OHIO, CODE § 516.12 (2019).

⁷⁷ ATHENS, OHIO, CODE § 3.07.66 (2019).

⁷⁸ BEXLEY, OHIO, CODE § 637.05 (2019).

⁷⁹ BOWLING GREEN, OHIO, CODE § 39.07 (2019).

⁸⁰ CINCINNATI, OHIO, CODE § 914-9 (2019).

⁸¹ CINCINNATI, OHIO, CODE § 914-9 (2019).

⁸² CLEVELAND HEIGHTS, OHIO, CODE § 749.20 (2019).

⁸³ CLEVELAND HEIGHTS, OHIO, CODE § 749.20 (2019).

⁸⁴ EAST CLEVELAND, OHIO, CODE § 558.17 (2019).

Additionally, Ohio municipalities differ in whether they provide a private right of action. Many municipal ordinances are silent on whether a private right of action exists, while others, like Springfield,⁸⁵ expressly provide complainants the right to sue.

Parenting Rights. Until recently, Ohio law presented unique barriers to family formation for same-sex couples. Prior to the *Obergefell* ruling, single LGBT individuals in Ohio could legally adopt a child, but same-sex couples in Ohio were unable to jointly adopt a child.⁸⁶ Same-sex couples were precluded from jointly adopting as a result of language in Ohio's adoption laws stating that a "husband and wife together" or an "unmarried adult" could adopt a child.⁸⁷ Additionally, same-sex partners could not use step-parent adoption to gain legal rights to a partner's child because, absent a legal marriage, the adoption would sever the existing rights of the individual parent.⁸⁸ The U.S. Supreme Court's 2015 decision in *Obergefell v. Hodges* guaranteed same-sex couple the right to marry, and thereby gave same-sex couples the ability to adopt jointly and as step-parents.⁸⁹ Further, the Ohio Supreme Court has issued guidance replacing gendered terms with gender-neutral terms on administrative forms related to marriage, divorce, child, support, and adoption.⁹⁰

Safe Schools and Youth. Ohio's anti-bullying law requires that school districts adopt and enforce policies against bullying of students.⁹¹ Unlike many state anti-bullying laws, Ohio's statute does not include an enumerated list of personal characteristics based on which students are likely to be bullied, such as race, sex, sexual orientation, or gender identity.⁹²

Gender Marker and Name Changes. Ohio is one of three states that does not allow individuals to change their gender marker on their birth certificates.⁹³ In 2018, several transgender people in Ohio filed a lawsuit against the state arguing that the birth certificate policy violates the First and Fourteenth Amendments to the U.S. Constitution.⁹⁴ The case has not yet been decided.

Ohio does allow transgender individuals to change their name on their birth certificates, and both their name and gender marker on their driver's license. In order to change a name on a birth certificate, the

⁸⁵ SPRINGFIELD, OHIO, CODE § 173.16 (2019).

⁸⁶ *Ohio Adoption Law*, HRC.COM, Dec. 14, 2009.

⁸⁷ OHIO REV. CODE ANN. § 3107.03.

⁸⁸ *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998).

⁸⁹ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). See Rita Price, *Supreme Court's Same-Sex Marriage Ruling To Allow Parental Equality*, COLUMBUS DISPATCH, July 5, 2015, at <https://www.dispatch.com/content/stories/local/2015/07/05/parental-equality.html>; *Adoption and Parentage Actions for Married Same-Sex Couples*, Shinn Law Firm, <https://www.shinnlawfirm.com/practice-areas/adoption-shared-custody/> (last visited Aug. 13, 2019).

⁹⁰ Bret Crow, *Gender-Specific Terms Replaced in Ohio Supreme Court Rules*, Court News Ohio, Mar. 14, 2016, at http://www.courtnewsOhio.gov/happening/2016/genderTerms_031416.asp.

⁹¹ OHIO REV. CODE ANN. § 3313.666.

⁹² *Id.*

⁹³ Julie Moreau, *Four Transgender People Sue Ohio over State's Birth Certificate Policy*, NBCNEWS.COM, Apr. 3, 2018, <https://www.nbcnews.com/feature/nbc-out/four-transgender-people-sue-ohio-over-state-s-birth-certificate-n862411>.

⁹⁴ Complaint, Ray v. Himes, No. 2:18-cv-00272-MHW-CMV (S.D. Ohio Mar. 29, 2018).

individual must first obtain a court order granting the name change.⁹⁵ Upon receiving a certified copy of the court order, the Ohio Department of Health will issue an updated birth certificate.⁹⁶ In order to change a gender marker on a driver's license, the individual must fill out and submit the Ohio Bureau of Motor Vehicle's Declaration of Gender Change form, which requires a treating physician or therapist to certify that the individual is undergoing a full time and permanent gender change.⁹⁷ If approved, the individual may obtain the new license at any local Bureau agency. To change a name on a driver's license, the individual must first obtain a court order granting the name change, and then take the order to a local Bureau agency to process the change.⁹⁸

Other protections. Ohio lacks several other legal protections for LGBT people that have been enacted in other states, including, for example, a hate crimes law that includes sexual orientation and gender identity, a ban on professional health care providers from using conversion therapy on youth,⁹⁹ and a law that requires health care providers to offer coverage for gender-affirming medical care.¹⁰⁰

PUBLIC OPINION

In 2014, Williams Institute scholars created the LGB Social and Political Climate Index to characterize the social environment in which LGB people reside.¹⁰¹ The Index summarizes four items about acceptance of LGB people and attitudes toward LGB rights: 1) approval of marriage for same-sex couples; 2) approval of adoption rights for same-sex couples; 3) approval of laws that protect lesbians and gay men from employment discrimination; and 4) belief that homosexuality is a sin.¹⁰² The Index provides climate scores for each state and the District of Columbia, denoting relative levels of social and political support for LGBT people across the U.S., with higher index scores indicating greater levels of social acceptance of LGB people and lower scores indicating lower acceptance. Of the twelve states in the Midwest, Ohio is the 5th, near the center of the Midwestern states. Acceptance in Ohio is about equivalent to the national average.

⁹⁵ Changing or Correcting a Birth Record, Ohio Dep't of Health, <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/vital-statistics/changing-correcting-birth-record> (last visited Aug. 14, 2019).

⁹⁶ *Id.*

⁹⁷ Declaration of Gender Change, Ohio Bureau of Motor Vehicles, <http://ai.eecs.umich.edu/people/conway/TS/News/US/OhioBMVGenderChangeForm2009.pdf> (last visited Aug. 14, 2019).

⁹⁸ Ohio Name Change Forms – How to Change Your Name in OH, EFORMS.COM, <https://eforms.com/name-change/oh/#AdultNameChange> (last visited Aug. 14, 2019).

⁹⁹ 14 states in the U.S. and the District of Columbia have such bans, which generally prohibit therapists and other medical professionals from trying to change a youth's sexual orientation or gender identity (research on file with the authors).

¹⁰⁰ At least 15 states and the District of Columbia have such laws (research on file with the authors).

¹⁰¹ HASENBUSH ET AL., *supra* note 18 at 5 (2015).

¹⁰² *Id.* at 6.

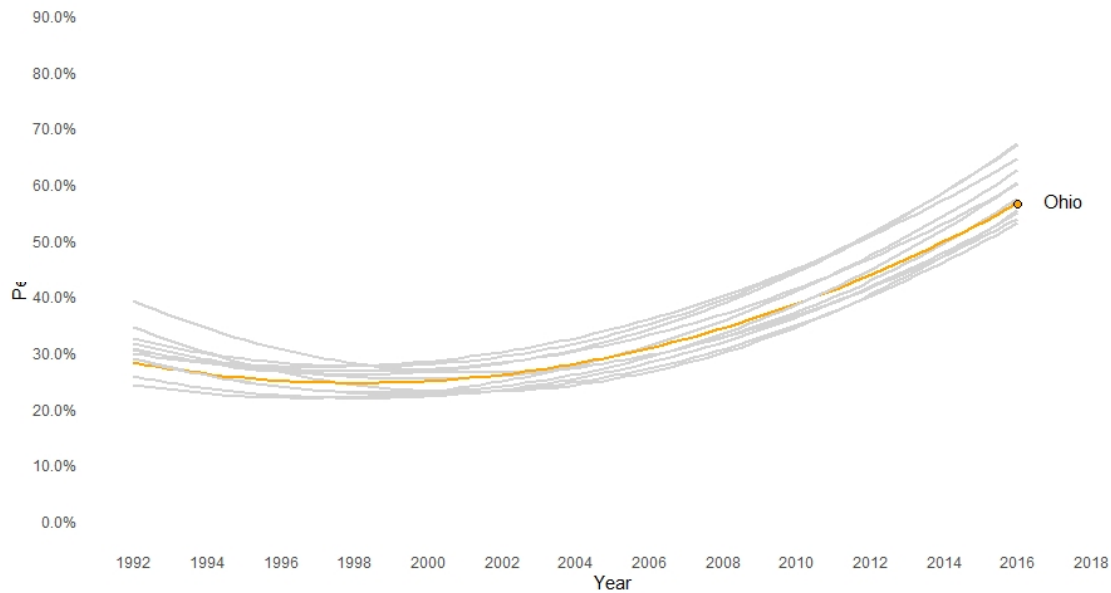
Figure 5. State rankings on LGB Social & Political Climate Index scores, 2014



Although Ohio ranks below 24 states in terms of support for LGB people, attitudes toward LGB people in the state are improving over time. Figure 6 shows an increase in acceptance of marriage for same-sex couples in Ohio, among other Midwestern states, from 1992 to 2016.¹⁰³ In 1999, only 28% of Ohio residents supported marriage equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise. A poll of Ohioans conducted by the Cooperative Congressional Election Survey in November 2016 showed the state as decidedly in favor of marriage equality at 57%.¹⁰⁴

¹⁰³ Longitudinal changes in support for marriage equality are rooted in two causes: generational change and attitude change. ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST., TRENDS IN PUBLIC SUPPORT FOR MARRIAGE SAME-SEX COUPLES BY STATE (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Support-for-Same-Sex-Marriage-2004-2014.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. Gregory B. Lewis and Charles W. Gossett, Changing Public Opinion on Same-Sex Marriage: The Case of California, 36 POLITICS AND POLICY 4 (2008).

¹⁰⁴ Stephen Asolabehere & Brian F. Schaffner, CCES Common Content, 2016, doi: 10.7910/DVN/GDF6Z0, Harvard Dataverse, V. 1 (2017).

Figure 6. Public support for same-sex marriage in the Midwest, 1992-2016

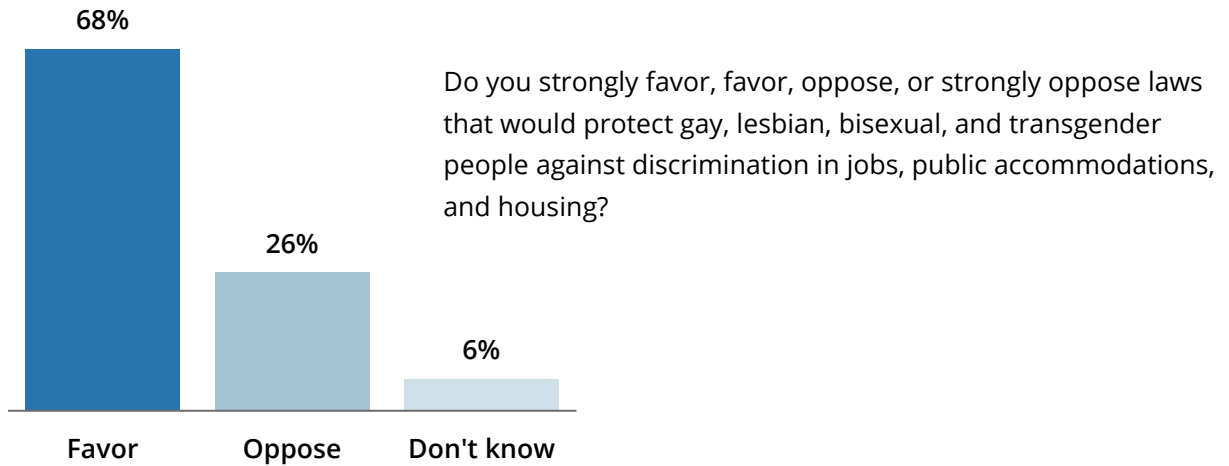
In addition, recent public opinion surveys also indicate that the majority of Ohioans support expanding non-discrimination protections to include LGBT people. The 2018 American Values Survey, a survey of over 50,000 Americans across the U.S., found that public attitudes in Ohio have remained clearly in favor of policies that would protect LGBT people from discrimination, with 68% supporting such policies and 26% opposing them.¹⁰⁵ A majority (60%) of Ohio residents in this same survey also reported that they were opposed to policies that would allow small businesses to refuse service to lesbian and gay people for religious reasons.¹⁰⁶ In addition, estimates based on a 2011 survey of the American public found that 76% of people from Ohio were supportive of Congress passing laws to protect LGBT people from employment discrimination.¹⁰⁷

¹⁰⁵ Of the survey, 1,541 respondents were Ohio residents. Public Religion Research Institute. *2018 Methodology*, PUBLIC RELIGION RESEARCH INSTITUTE, <http://ava.prii.org/methodology-2018>.

¹⁰⁶ *Id.*

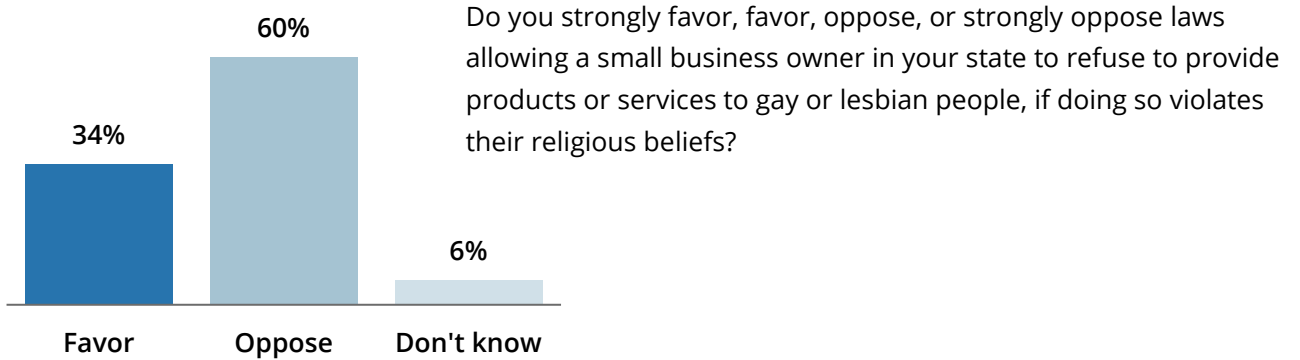
¹⁰⁷ Andrew R. Flores, Jody L. Herman & Christy Mallory, Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness, *RESEARCH & POLITICS* 1 (Oct.-Dec. 2015).

Figure 7. Support among people in Ohio for LGBT-inclusive non-discrimination policies



Source: American Values Survey, 2018

Figure 8. Support among people in Ohio for laws permitting small businesses to refuse services to gay and lesbian people



Source: American Values Survey, 2018

In summary, Ohio is close to the national average in terms of support for LGBT people, and residents of Ohio have become more supportive of LGBT people and issues over time.

STIGMA AND DISCRIMINATION

LGBT adults in Ohio experience discrimination in employment, housing, and public accommodations. The existence and prevalence of such discrimination has been documented in a variety of sources, including surveys, court cases, and anecdotal reports to the media. Additionally, bullying and harassment of LGBT youth in Ohio has been documented in surveys and anecdotal reports to the media. Research also suggests that a number of LGBT youth in Ohio, like LGBT youth elsewhere in the country, face rejection by their families.

DISCRIMINATION AND HARASSMENT: SURVEYS, COURT CASES, AND ANECDOTAL REPORTS

Employment, Housing, and Public Accommodations

Discrimination against LGBT people in the U.S. has been well documented. For example, a 2016 survey conducted by the Center of American Progress found that 25% of LGBT people had experienced some type of discrimination within the past year.¹⁰⁸ Similarly, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents in the U.S. reported that they had been treated unfairly by an employer in hiring, pay, or promotions and 23% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.¹⁰⁹ Another national survey conducted in 2017 by NPR, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health found that 20% of LGBTQ respondents reported being discriminated against when applying for jobs and 22% of LGBTQ respondents reported being discriminated against when trying to rent an apartment or buy a house because of their sexual orientation or gender identity.¹¹⁰ LGBTQ people of color were more likely to report experiencing employment discrimination in response to the survey than white LGBTQ respondents.¹¹¹ Further, 16% of LGBTQ respondents said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity, and 18% said they had avoided going to a doctor or seeking health care because they were afraid of discrimination.¹¹²

¹⁰⁸ SEJAL SINGH & LAURA E. DURSO, CENTER FOR AM. PROGRESS, WIDESPREAD DISCRIMINATION CONTINUES TO SHAPE LGBT PEOPLE'S LIVES IN BOTH SUBTLE AND SIGNIFICANT WAYS (2017), <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

¹⁰⁹ A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES, PEW (2013), <https://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

¹¹⁰ NPR, ROBERT WOOD JOHNSON FOUNDATION & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS 1 (2017), https://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2017/rwjf441734.

¹¹¹ *Id.* at 11.

¹¹² *Id.* at 1.

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey found that 27% of respondents in the U.S. who held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression, and 15% reported being verbally harassed, physically attacked, and/or sexually assaulted at work in the year prior to the survey because of their gender identity.¹¹³ Further, 23% of transgender respondents nationwide reported experiencing some form of housing discrimination in the past year and 31% reported experiencing at least one type of mistreatment in a place of public accommodation in the past year.¹¹⁴

Surveys of LGBT individuals in Ohio also find discrimination and harassment:

- A 2016 survey of faculty, staff, and students at Kent State University found that LGBQ faculty were more likely than heterosexual faculty to say that they were uncomfortable with the climate in their department (23% v. 16%).¹¹⁵ LGBQ faculty and staff were also more likely to say that they were reluctant to bring up issues that concerned them out of fear that it would negatively impact their job (45% v. 35%) and to say that they have to work harder than their colleagues to achieve the same recognition (46% v. 37%).¹¹⁶ Among staff, LGBQ respondents were more likely than heterosexual respondents to say that they disagreed with the statement that senior administration is genuinely concerned with their welfare (40% v. 27%).¹¹⁷ Further, 22% of all respondents (including faculty, staff, and students) said they had observed exclusionary, intimidating, offensive, or hostile conduct on campus, and of those respondents, 20% said the conduct was based on gender or gender identity and 13% said it was based on sexual orientation.¹¹⁸
- The 2015 U.S. Transgender Survey documented evidence of discrimination against transgender people in a range of areas, including employment, housing, and public accommodations. The survey found that of transgender respondents from Ohio who held or applied for a job in the prior year, 30% reported being fired, being denied a promotion, or not being hired for a job because of their gender identity or expression. Nineteen percent of respondents who were employed reported being verbally harassed and 1% reported being sexually assaulted at work in the prior year because of their gender identity. Additionally, 17% of respondents who had ever been employed reported losing a job at some point in their lives because of their gender identity or expression.”¹¹⁹

¹¹³ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

¹¹⁴ *Id.* at 13, 16.

¹¹⁵ RANKIN & ASSOCIATES, *SUPRA* NOTE 1 AT 65.

¹¹⁶ *Id.* at 122, 129.

¹¹⁷ *Id.* at 142.

¹¹⁸ *Id.* at 96-97.

¹¹⁹ The survey used a non-probability sampling method. NATIONAL CENTER FOR TRANSGENDER EQUALITY & TRANS OHIO, *supra* note 2.

In terms of housing discrimination, 25% of respondents from Ohio reported experiencing some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender, and 15% reported that they experienced homelessness in the past year because of being transgender. Of those who had experienced homelessness, 28% said they avoided staying in a shelter because they feared being mistreated as a transgender person.¹²⁰

In addition, of respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 32% experienced at least one type of mistreatment in the past year because of being transgender. Forms of mistreatment experienced by respondents included being denied equal treatment or service (16%), verbal harassment (26%), and physical assault (1%).¹²¹

- A 2014 community survey of LGBT people in Dayton found that a number of people had experienced discrimination based on their sexual orientation and gender identity. One-third (34%) of respondents said they had been denied an employment opportunity, 29% said they had been treated differently at a place of public accommodation, 16% said they had been treated unfairly by a health care provider, and 11% said they had been denied an opportunity to rent or purchase a home because of their sexual orientation or gender identity.¹²² Several respondents also reported incidents of violence and physical harassment: 36% said they had been sexually harassed, 17% said they had been sexually assaulted, 16% said their home or property was damaged, and 13% said they had experienced physical violence because of their sexual orientation or gender identity.¹²³ Among all respondents to the survey, 95% said that they believe that discrimination based on sexual orientation and gender identity still occurs.¹²⁴
- In response to a 2016 poll, 57% of Ohio residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S., and 61% of Ohio residents said that they thought that transgender people experience a lot of discrimination in the U.S.¹²⁵
- Analysis of aggregated public opinion data collected from 2011 through 2013 found that 79% of Ohio residents thought that LGBT people experience discrimination in the state.¹²⁶

¹²⁰ Id. at 2.

¹²¹ Id. at 2.

¹²² DAYTON LGBT CENTER, *supra* note 3 AT 26, 28, 36.

¹²³ Id. at 19-21.

¹²⁴ Id. at 30.

¹²⁵ PRRI, *supra* note 4 (under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes;” under dropdown menu for “Year” select “2016”).

¹²⁶ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

Instances of discrimination against LGBT people in Ohio have also been documented in a number of court cases and in the media. Examples include:

- In 2019, a transgender resident of Ohio reported to the local media that she has been fired from jobs and rejected by potential employers because of her gender identity.¹²⁷ The woman said that at one job, she was forced to clock out and go to a convenience store down the street to use the restroom.
- In 2019, Ohio's Senate Judiciary Committee heard testimony from a transgender woman who stated that she routinely faces discrimination when she tries to rent an apartment.¹²⁸
- In 2019, an elderly lesbian couple filed a fair housing complaint before the Newark Housing Commission alleging that they had been denied transitional housing because of their sexual orientation.¹²⁹
- In 2019, a transgender woman testified before Ohio's Senate Judiciary Committee that she struggled to find a store clerk willing to fit her for her wedding dress.¹³⁰
- In 2018, a gay man who delivered newspapers filed a lawsuit against the paper alleging that he experienced harassment and discrimination because of his sexual orientation.¹³¹ The employee argued that sexual orientation discrimination is a form of sex discrimination prohibited by both Title VII of the Civil Rights Act of 1964 and the state's non-discrimination law. The employee said that his supervisors and co-workers harassed him for years, including by calling him f-ggot and refusing to help with his route when he was sick or injured. According to the employee, three of his coworkers screamed at him and his daughter when he was at the loading docks and one co-worker told him, "Your f-ggot as can walk the newspapers there," when he tried to move his car. The employee was fired by his supervisors the day after that incident. The court denied the newspaper's motion to dismiss. The case remains ongoing.
- In 2017, a gay man who worked at a manufacturing plant filed a lawsuit against his former employer alleging that he had been harassed and terminated because of his sexual orientation, among other claims.¹³² The employee argued that discrimination based on sexual orientation is a form of sex discrimination prohibited by Title VII. The employee received an excellent performance evaluation and had no issues at work until his co-workers discovered that he was gay. According to the employee, he was "outed" at work by one of his co-workers and was then

¹²⁷ Bob Vitale, *The Fight against LGBTQ Discrimination Reaches Columbus Suburbs*, COLUMBUS ALIVE (Aug. 7, 2019), <https://www.columbusalive.com/news/20190807/fight-against-lgbtq-discrimination-reaches-columbus-suburbs>.

¹²⁸ Andy Chow, *LGBTQ Ohioans Use Senate Hearing to Share Stories of Discrimination*, STATEHOUSE NEWS BUREAU (May 22, 2019), <https://www.stateneews.org/post/lgbtq-ohioans-use-senate-hearing-share-stories-discrimination>.

¹²⁹ Gwendolyn Smith, *A Transitional Home Forced out a Lesbian Couple, Citing their Catholic Funding*, LGBTQ NATION (Mar. 15, 2019), <https://www.lgbtqnation.com/2019/03/transitional-home-forced-lesbian-couple-citing-catholic-funding/>.

¹³⁰ Andy Chow, *LGBTQ Ohioans Use Senate Hearing to Share Stories of Discrimination*, STATEHOUSE NEWS BUREAU (May 22, 2019), <https://www.stateneews.org/post/lgbtq-ohioans-use-senate-hearing-share-stories-discrimination>.

¹³¹ Varner v. APG Media of Ohio, No. 2:18-cv-706, 2019 U.S. Dist. LEXIS 4109 (S.D. Ohio Jan. 9, 2019).

¹³² Grimsley v. Am. Showa, No. 3:17-cv-24, 2017 U.S. Dist. LEXIS 133350 (S.D. Ohio Aug. 21, 2017).

subjected to disparaging comments and harassment. The employee was transferred to a new department after he complained to management about the mistreatment. The supervisor of his new department took his management authority away, stating that she did not think he could “be objective” when supervising another male employee. When the employee requested a transfer back to his former department, he was terminated. The court granted the defendant’s motion to dismiss the employee’s sex discrimination claim, holding that discrimination based on sexual orientation is not an actionable form of discrimination based on sex under Title VII.

- In 2017, a transgender woman who had been employed as a truck driver in Ohio filed a lawsuit alleging that she had been subjected to discrimination and harassment on the job. The driver began working for the company in 2009.¹³³ Shortly after she was promoted in 2012, she informed her supervisor that she was undergoing a gender transition. According to the employee, the supervisor responded, “You had better be ready to be picked on,” and then he began to write her up for not executing her job duties and for non-existent or minor errors. She was also harassed by several of her co-workers, who made derogatory comments about her gender identity, such as, “Can’t you just dress like a man?” and “you make for an ugly woman,” and started a rumor that she was in a romantic relationship with another co-worker. In 2013, the driver was sexually assaulted by one of her co-workers. The co-worker was terminated, but the driver received less favorable assignments at work following the incident. In 2014, the driver was demoted to a lower paid position and one of her harassers received a promotion to her original position. The driver was terminated after complaining of unfair treatment. The driver filed suit in federal court alleging that she had been discriminated against based on sex and disability in violation of state and federal laws. The court found that the driver had established a viable claim of sex discrimination, as the Sixth Circuit had recently held that discrimination against transgender people is a form of sex discrimination prohibited by Title VII.
- In 2017, a gay man reported that he decided to seek employment in Columbus, in part because of the city’s non-discrimination protections, after he feared discrimination by his employer in Zanesville.¹³⁴ The man reported that he had previously worked for a small insurance company in Zanesville where his boss would pull him into his office to discuss his belief that marriage should only be between one man and one woman and repeat Bible verses to him. The employee said that he was not terminated from his job, but feared discrimination because the state and city lacked inclusive non-discrimination laws.
- In 2016, a transgender woman filed a lawsuit against the Cuyahoga Metropolitan Housing Authority (CMHA) and several government officials alleging that she had been harassed and evicted from a public housing complex based on her gender identity.¹³⁵ The woman obtained

¹³³ Parker v. Strawser Constr., 307 F. Supp. 3d 744, 747 (S.D. Ohio 2018).

¹³⁴ Danae King, *Sexual Orientation is Protected in Columbus but Not at State or Federal Levels*, THE COLUMBUS DISPATCH (Dec. 31, 2017), <https://www.dispatch.com/news/20171231/sexual-orientation-is-protected-in-columbus-but-not-at-state-or-federal-levels>.

¹³⁵ Jane v. Patterson, No. 1:16-CV-2195, 2017 U.S. Dist. LEXIS 55952 (N.D. Ohio Apr. 12, 2017).

housing in the public housing complex in 2015, after being homeless. According to the woman, she was harassed by the building manager and other residents because of her gender identity throughout her entire residency. The manager tried to evict the woman and CMHA became aware of the abuse and discrimination during the eviction hearing. The CMHA found no basis for eviction, and the woman continued to live in the building. In 2016, one of the residents pretended to befriend her and took her to the beach for the day. Upon their return, the resident was joined by a group of other residents who attacked and beat the woman. She was hospitalized for three days following the attack. While she was in the hospital, the manager issued several citations against her for not “tidying her room” among other things, and initiated another eviction hearing upon her return. The woman then began living out of her car and was attacked again by the CMHA residents a few months later. The woman filed a lawsuit against CMHA alleging violations of statutory and constitutional rights. Several of her claims withstood a motion to dismiss, however no further information about the case is available.

- In 2016, a nurse filed a lawsuit against her employer, a health care clinic, arguing that she was harassed and discriminated against based on her gender identity, among other claims.¹³⁶ According to the nurse, her co-workers referred to her using male pronouns, despite her asking them not to, touched her breast to “see if [it] felt real,” and accused her of engaging in a sexual relationship with a patient. The court allowed the employee’s sexual harassment claim to proceed, holding that the nurse had established a valid claim of harassment based on her transgender status or gender non-conformity, which may be actionable forms of sex discrimination under Ohio law. The court did not allow the discrimination claim to proceed, finding that the nurse had not established that she was treated less favorably because of her sex.
- In 2015, an employee of the Ohio Department of Transportation (ODOT) filed a lawsuit against the agency alleging that she had been discriminated against because of her sexual orientation.¹³⁷ The employee argued that sexual orientation discrimination is a form of sex discrimination prohibited by both Title VII and Ohio’s non-discrimination law. The employee was hired by ODOT as a highway technician in 2009. She stated that on her first day of work, her co-worker announced in the common area, “So Mustkigum County has a new lesbian resident... everybody knows what happened to the last lesbian that tried to work here.” Approximately two years after she started at ODOT, she was transferred to another location, but did not want to go because a male coworker there “had a reputation for disliking gay people and women who worked in traditionally male roles.” According to the employee, she was subjected to harassment based on her sex and sexual orientation as soon as she arrived at the new facility. For example, she said that she was criticized for not dressing femininely and one of her female co-workers told their male co-workers that she “doesn’t want what you got between your legs...she wants what I got between mine.” She also stated that she was yelled at for using the restroom too frequently.

¹³⁶ Holub v. Saber Healthcare Group, No. 1:16cv02130, 2018 U.S. Dist. LEXIS 35458 (N.D. Ohio Mar. 2 2018).

¹³⁷ Spellman v. Ohio DOT, 244 F. Supp. 3d 686 (S.D. Ohio 2017).

Eventually the employee reported the behavior to the ODOT's Equal Opportunity Office and an investigation followed. The Equal Opportunity Office took disciplinary action against two of the co-workers who had been harassing the employee. The employee was on administrative leave during the investigation, but returned after her co-workers were disciplined. She testified that she continued to be harassed when she returned, and was told that she could not take time off for the death of her partner's mother, even though other employees had received time off in similar circumstances. The court recognized that discrimination and harassment based on sexual orientation are forms of discrimination and harassment based on sex prohibited by Title VII. However, the court ultimately granted summary judgment in favor of the agency, finding that the employee's harassment complaint could not survive because the agency took appropriate disciplinary action against the offending employees and that the discrimination claim could not survive because the employee did not face an adverse employment action within the meaning of the law.

- In 2015, Bexley, Ohio, expanded its public accommodations non-discrimination law to include sexual orientation after a lesbian couple was turned away by a local wedding videographer.¹³⁸
- In 2015, a teacher filed a lawsuit against a public school alleging that he was harassed and terminated because of his sexual orientation.¹³⁹ The teacher argued that sexual orientation discrimination is a form of sex discrimination prohibited by Title VII. According to the teacher, his supervisor addressed him with "expletives and threats concerning [his] sexual orientation" in his classroom. The employee said that he was replaced by a substitute and then terminated after filing a complaint with the human resources department and a union grievance. The court dismissed the employee's suit, holding that sexual orientation discrimination is not a form of sex discrimination prohibited by Title VII.
- In 2014, a former employee of T.J. Maxx filed a lawsuit against the company alleging that she had been discriminated against based on her sexual orientation.¹⁴⁰ The employee argued that discrimination based on sexual orientation is a form of sex discrimination prohibited by Title VII. According to the employee, she was called into the assistant manager's office and asked about her sexual orientation. Thereafter, she was constructively discharged. The court dismissed the complaint, holding that sexual orientation discrimination is not a form of sex discrimination under Title VII.

¹³⁸ Bob Vitale, *The fight against LGBTQ discrimination reaches Columbus suburbs*, COLUMBUS ALIVE (Aug. 7, 2019), <https://www.columbusalive.com/news/20190807/fight-against-lgbtq-discrimination-reaches-columbus-suburbs>. See also Jareen Imam, *Ohio same-sex couple accuses videographer of discrimination*, CNN (Apr. 7, 2015), <https://www.cnn.com/2015/03/16/living/same-sex-wedding-videographer-feat-irpt/index.html>.

¹³⁹ Currie v. Cleveland Metro. Sch. Dist., No. 1:15-CV-262, 2015 U.S. Dist. LEXIS 87311 (N.D. Ohio July 6, 2015).

¹⁴⁰ Milot v. T.J. Maxx, No. 1:14-cv-00759, 2015 U.S. Dist. LEXIS 21436 (S.D. Ohio Feb. 23, 2015).

- In 2013, an Ohio Court of Appeals affirmed a lower court's decision that sexual orientation discrimination is not a form of sex discrimination under the state's non-discrimination law in a case brought by an employee against his local government employer.¹⁴¹
- In 2013, a private school teacher was fired when the school became aware of her same-sex partner through her mother's obituary.¹⁴² The teacher had been with the school for 19 years.¹⁴³ The teacher and the school reached a confidential settlement.¹⁴⁴
- In 2013, a worker at an auto parts warehouse in Ohio reported to the New York Times that he avoided socializing with co-workers and ate lunch in his car to prevent accidentally revealing any information that would indicate his sexual orientation.¹⁴⁵ Because he knew that he was not protected by state or federal law, and his co-workers used gay slurs on a regular basis, he chose to avoid any potentially volatile situations that could lead to management firing him.
- In 2012, Ohio Bell Telephone Company settled a discrimination lawsuit brought by an employee who alleged that he had been discriminated against based on nonconformity with sex stereotypes.¹⁴⁶ The openly gay sales consultant for the company was fired after taking time off for his father's death. The consultant's supervisor had allegedly previously refused to call him by his married name, stating that she would not recognize his same-sex marriage.¹⁴⁷ When the consultant's father passed, despite his union representative's assurance that he was allowed to take the time off, his supervisor counted most of his absences as unexcused, which resulted in his subsequent firing.¹⁴⁸
- In 2011, Cuyahoga County settled a lawsuit with a lesbian employee of the County Child Support Enforcement Agency for \$100,000.¹⁴⁹ The child support worker stated that she was passed over for at least 12 promotions and then learned that the positions were given to less qualified heterosexual applicants.¹⁵⁰
- In 2009, a global industrial adhesives manufacturing company settled a sexual harassment lawsuit brought by one of their quality assurance managers.¹⁵¹ The manager worked for the company for over 20 years and had received the Circle of Excellence honor six times when he

¹⁴¹ *Inskip v. Western Reserve Transit Auth.*, No. 12 MA 72, 2013 Ohio App. LEXIS 798 (Ohio Ct. App. Mar. 8, 2013).

¹⁴² Denise Yost, *Fired Bishop Watterson Teacher Carla Hale Reaches Agreement with Diocese*, NBC4I.COM, Aug. 15, 2013, available at <http://www.nbc4i.com/story/23148165/fired-bishop-watterson-teacher-carla-hale-reaches-agreement-with-diocese>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Tara Siegel Bernard, *Fired for Being Gay? Protections Are Piecemeal*, N.Y. TIMES, May 31, 2013, available at <http://www.nytimes.com/2013/06/01/your-money/protections-for-gays-in-workplace-are-piecemeal.html?pagewanted=1>.

¹⁴⁶ Settlement, *Koren v. Ohio Bell Tel. Co.*, No. 1:11CV02674 (N.D. Ohio Sept. 7, 2012).

¹⁴⁷ *Koren v. Ohio Bell Tel. Co.*, 894 F. Supp. 2d 1032, 1034 (N.D. Ohio 2012).

¹⁴⁸ *Id.* at 1034-35.

¹⁴⁹ Settlement, *Shari Hutchinson v. Cuyahoga Cnty. Bd. of Comm'rs, et al.*, No. 08-CV-02966, 2011 WL 7560489 (N.D. Ohio Sept. 28, 2011).

¹⁵⁰ *Id.*

¹⁵¹ Order Dismissing Case, *Taylor v. H.B. Fuller Co.*, No. 1:06-cv-00854-MRB (S.D. Ohio Jan. 16, 2009).

transferred to a facility in a different city.¹⁵² At the new facility, he faced severe and pervasive harassment from co-workers including being groped and humped, witnessing co-workers repeatedly watching the male-on-male rape seen from the movie *Deliverance*, and having his car vandalized with spray paint on several occasions.¹⁵³ After the manager reported safety violations to the Occupational Safety and Health Administration (OSHA), a newspaper clipping about gay marriage was left in his office with the words “DIE OSHA FAG,” written across it in red letters.¹⁵⁴ After repeated failed attempts to resolve the harassment internally, the manager filed suit and was subsequently fired.¹⁵⁵ Despite his claims that the harassment was based on his nonconformance with gender stereotypes, the court dismissed the sexual harassment part of the lawsuit in 2008, claiming that the harassment was based on sexual orientation, which is not a protected characteristic under federal or state law.¹⁵⁶ The court allowed the manager’s retaliation claims for his firing after he filed suit to continue.¹⁵⁷

- In 2009, a transgender attorney alleged that her supervisors told her that she “no longer looked like a male,” and that they did not think that her appearance was good for the law firm’s image. Her supervisors allegedly offered the attorney a choice: quit or face the partners to explain herself. The attorney opted to quit, and as of 2016 she still struggled to find a job, noting that she often did not receive callbacks after face-to-face interviews.¹⁵⁸

BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

Bullying and Harassment of LGBT Youth Documented in Surveys

Middle School and High School

Survey data indicate that LGBT youth in Ohio face harassment, bullying, and exclusion in secondary and post-secondary schools. The Centers for Disease Control and Prevention (CDC) published an analysis of 2017 Youth Risk Behavior Survey (YRBS) data on LGB youth from multiple states and certain large urban school districts, including Cleveland, Ohio.¹⁵⁹ This analysis compared LGB to heterosexual 9th through 12th graders on a variety of indicators of health and wellbeing by sexual orientation.¹⁶⁰ The 2017 YRBS data indicate that LGB youth in Cleveland experience higher rates of being bullied and threatened with violence than heterosexual youth.

¹⁵² Taylor v. H.B. Fuller Co., No. No. 06cv854, 2008 WL 4647690, at *1 (S.D. Ohio Oct. 20, 2008).

¹⁵³ Id. at *1-2.

¹⁵⁴ Id. at *3.

¹⁵⁵ Id.

¹⁵⁶ Id. at *5-7.

¹⁵⁷ Id. at *7-10.

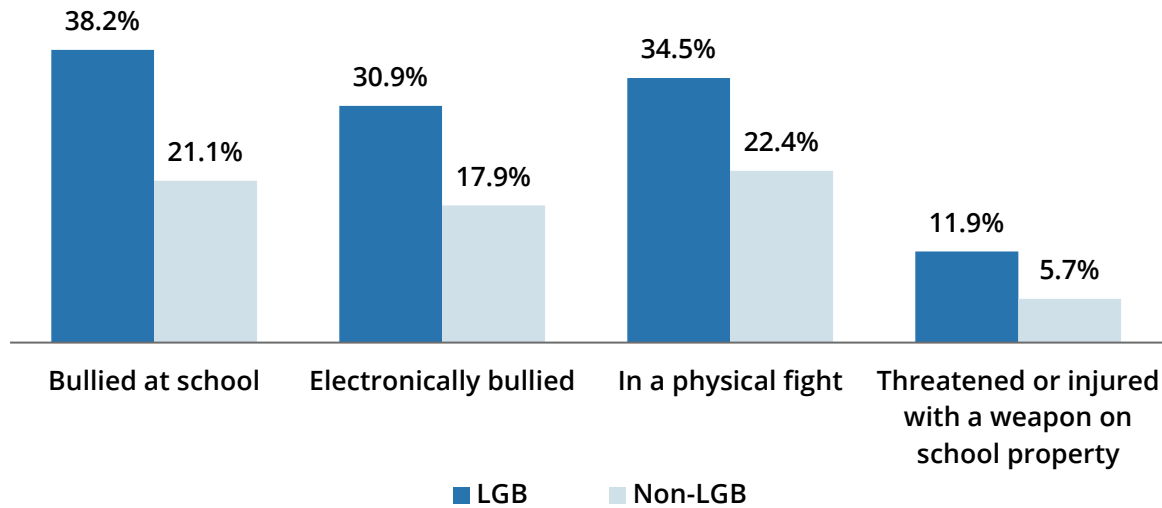
¹⁵⁸ Joshua Lim, *Think All Discrimination is Illegal? Think Again.*, WCPO CINCINNATI (May 10, 2016),

<https://www.wcpo.com/news/political/ohio-state-government-news/lawmakers-reluctant-to-move-lgbt-anti-discrimination-bill>.

¹⁵⁹ Laura Kann et al., *supra* note 6.

¹⁶⁰ The study also compared students who said they were “not sure” of their sexual orientation to LGB and non-LGB students. We have not included the “not sure” students in our analysis and focus only on students who identified as LGB or heterosexual.

Figure 9. 12-month experiences of bullying and violence among high school students in Cleveland, Ohio, by sexual orientation



Source: Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017, 2018*

LGB students in Cleveland were more than twice as likely to report being bullied at school (24.5% v. 11.1%)¹⁶¹ and electronically bullied (23.4% v. 10.2%)¹⁶² in the year prior to the survey than heterosexual students. In addition, LGB students were more likely to report being in a physical fight in the year prior to the survey (44.9% v. 37.6%)¹⁶³ and to report being threatened or injured with a weapon on school property (12.6% v. 9.7%).¹⁶⁴ Not surprisingly, LGB students were more than twice as likely as heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (15.5% v. 7.5%).¹⁶⁵

Findings from the 2017 Cleveland YRBS are consistent with 2017 YRBS findings from other states and large urban school districts and with findings from the 2015 Cleveland YRBS.¹⁶⁶ In addition, a 2011 CDC meta-analysis of YRBS data collected from 2001 through 2009 found that, nationally, LGB students were more likely to experience bullying and violence at school than heterosexual students, confirming that bullying is a disproportionate problem for LGB students.¹⁶⁷

¹⁶¹ Id. at 169.

¹⁶² Id. at 166.

¹⁶³ Id. at 160.

¹⁶⁴ Id. at 157.

¹⁶⁵ Id. at 172.

¹⁶⁶ Id.; Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, *supra* note 30.

¹⁶⁷ Laura Kann et al., *supra* note 6 at 11.

Bullying and harassment of LGBT youth in Ohio have also been documented in other sources. For instance, the 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 73% of respondents from Ohio said they had experienced verbal harassment based on their sexual orientation at school, and 60% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.¹⁶⁸ Many students also reported experiencing physical harassment based on their sexual orientation (30%) or gender expression (26%) at school in the year prior to the survey.¹⁶⁹ In addition, 14% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and 12% of respondents said they had experienced physical assault because of their gender expression at school in the year prior to the survey.¹⁷⁰ Further, 69% of transgender student respondents from Ohio reported that they were unable to use the bathroom at school that aligns with their gender identity, and 54% were prevented from using their preferred name or pronouns in school.¹⁷¹ Around half (56%) of student respondents from Ohio reported that they did not have access to a Gay-Straight Alliance or similar club in school.¹⁷² Of students who were bullied or harassed at school, only 46% of students reported the incident to school staff.¹⁷³ Only 29% of those who reported bullying or harassment to staff said that it resulted in effective intervention.¹⁷⁴

Additionally, in response to the 2015 U.S. Transgender Survey, 57% of survey respondents from Ohio who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 27% reported experiencing physical assault, and 15% reported experiencing sexual violence while in school.¹⁷⁵ Further, 20% of respondents said the harassment was so severe that they had to leave school.¹⁷⁶

Recent instances of discrimination, bullying, and harassment against LGBT k-12 students in Ohio have also been documented in lawsuits and the media:

- In 2019, the parents of a Fairless High School student filed a federal discrimination lawsuit alleging that after their son came out as gay at his high school, the school's basketball coach cut the teen's playing time, denied him a varsity letter, and told him that he "hates Jesus."¹⁷⁷

¹⁶⁸ GLSEN, *supra* note 9. The survey included 818 respondents from Ohio.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 2.

¹⁷³ *Id.* at 1.

¹⁷⁴ *Id.*

¹⁷⁵ The National Center for Transgender Equality and Trans Ohio, *supra* note 2.

¹⁷⁶ *Id.*

¹⁷⁷ Kelli Weir, *Gay teen suing Fairless school officials alleges harassment*, CANTON REPOSITORY (Jun. 19, 2019), <https://www.cantonrep.com/news/20190619/gay-teen-suing-fairless-school-officials-alleges-harassment>. *See also*

- In 2018, several members of Ontario Middle School, including students, organized an LGBT Support Day aimed at helping students feel more comfortable and at-ease.¹⁷⁸ School staff canceled the event, citing protests and safety concerns.¹⁷⁹
- In 2017, the Lakota Board of Education voted 3-2 against a proposal to expand district policies to better accommodate LGBT students.¹⁸⁰ The district also settled a lawsuit with a special education teacher who alleged that she was suspended because of her advocacy on behalf of transgender students.¹⁸¹
- In 2016, a federal district court in Ohio held that a public elementary school had to allow a transgender student to use the restroom consistent with her gender identity.¹⁸² The school had required a transgender grade school student to use a single stall staff restroom rather than the students' restrooms. Her parents filed a complaint with the Office for Civil Rights in the U.S. Department of Education (DOE), which determined that the school discriminated against the student based on sex in violation of Title IX of the Education Amendments. Rather than comply with the DOE's decision, the school brought a lawsuit against the DOE. The student and her parents brought a third-party complaint in response to the school's lawsuit, arguing that the school violated Title IX and the student's constitutional rights by prohibiting her from using the girls' restroom. The court issued a preliminary injunction in favor of the student, finding that she would likely succeed on the merits of her claim and must be permitted to use the restroom consistent with her gender identity as the case proceeded. The Sixth Circuit Court of Appeals affirmed the district court's decision.¹⁸³
- In 2014, the Ohio Board of Education voted to exclude sexual orientation from its non-discrimination policy.¹⁸⁴

Higher Education

A 2016 survey of students, faculty, and staff at Kent State University found that transspectrum respondents (including transgender, non-binary, and other gender minority respondents) were more likely to report problems on campus than cisgender men and women students. Among all respondents

¹⁷⁸ Ontario Middle School Cancels LGBT Event For Student Safety, WFMD-AM (Dec. 11, 2018), <https://www.wmfd.com/news/single.asp?story=77716>.

¹⁷⁹ Ontario Middle School Cancels LGBT Event For Student Safety, WFMD-AM (Dec. 11, 2018), <https://www.wmfd.com/news/single.asp?story=77716>.

¹⁸⁰ Michael D. Clark, *A year later, Lakota's transgender dust-up leads to more discussion but no policy changes*, DAYTON DAILY NEWS (Jan. 18, 2019), <https://www.daytondailynews.com/news/local-education/year-later-lakota-transgender-dust-leads-more-discussion-but-policy-changes/MuSoGcRFUNeOGmv5Pv3MRP/>.

¹⁸¹ Michael Clark, *Former Lakota teacher who claimed she was targeted for transgender stance settles for \$175K*, HAMILTON JOURNAL-NEWS (Apr. 9, 2019), <https://www.journal-news.com/news/local-education/former-lakota-teacher-who-claimed-she-was-targeted-for-transgender-stance-settles-for-175k/614E21nE645RBH8ywhf4/>.

¹⁸² *Dodds v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016), *aff'd*, No. 16-4117 (6th Cir. 2016).

¹⁸³ *Id.*

¹⁸⁴ Danielle Doza, *Ohio Board of Education Refuses to Protect LGBT Educators*, AM. CIV. LIBERTIES UNION (Apr. 23, 2014), <https://www.acluohio.org/archives/blog-posts/ohio-boe-refuses-to-protect-lgbt-educators>.

(students, faculty, and staff), 39% of transspectrum respondents said that they had experienced exclusionary, intimidating, offensive or hostile conduct on campus compared to 17% of cisgender women respondents and 15% of cisgender men respondents.¹⁸⁵ Over half (54%) of transspectrum respondents who had these experiences said the exclusionary conduct was because of their gender identity.¹⁸⁶

Transspectrum and LGBTQ respondents were also significantly more likely to report experiencing unwanted sexual contact. Nine percent of transspectrum respondents and 7% of LGBTQ respondents reported such experiences compared to 5% of cisgender women, 1% of cisgender men, and 3% of heterosexual respondents.¹⁸⁷

In addition, transspectrum student and faculty respondents were less likely to report that they felt comfortable with the overall campus climate than men and women respondents. Seventy-six percent of transspectrum student and faculty respondents said they felt “very comfortable” or “comfortable” with the overall campus climate compared to 85% of cisgender men and 83% of cisgender women.¹⁸⁸ And, transspectrum student respondents were less likely to say they felt valued by other students in the classroom: about one-third (32%) of transspectrum respondents said they “strongly agreed” that they felt valued by other students, compared to 42% of cisgender women and 43% of cisgender men.¹⁸⁹ Similar percentages of LGBTQ (19%) and heterosexual students (21%) said they felt valued by other students.¹⁹⁰

Overall, similar percentages LGBTQ and heterosexual student respondents perceived the campus climate to be safe and supportive.¹⁹¹

A similar survey of students, faculty, and staff at Miami University found that LGBTQ respondents felt less comfortable with the campus climate than non-LGBTQ respondents. Twelve percent of LGBTQ respondents said they felt “very comfortable” with the overall campus climate compared to 23% of heterosexual respondents, and 21% of LGBTQ faculty and student respondents said they felt “very comfortable” in their classes compared to 34% of heterosexual faculty and student respondents.¹⁹² Additionally, the Campus Climate Survey on Sexual Misconduct at Ohio State University found that LGBTQ students were significantly more likely to experience harassment than heterosexual students.¹⁹³

¹⁸⁵ RANKIN & ASSOCIATES, *supra* note 1 at 82.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 109.

¹⁸⁸ *Id.* at 60.

¹⁸⁹ *Id.* at 194.

¹⁹⁰ *Id.*

¹⁹¹ *See generally* RANKIN & ASSOCIATES, *supra* note 1 (Generally, LGBTQ respondents reporting similar perceptions of campus climate, similar experiences of exclusionary conduct, and other measures).

¹⁹² RANKIN & ASSOCIATES, MIAMI UNIVERSITY: CAMPUS CLIMATE ASSESSMENT PROJECT, EXECUTIVE SUMMARY 10 (2018),

<https://miamioh.edu/files/documents/about-miami/president/campus-climate-survey-executive-summary-508.pdf>.

¹⁹³ Results of the 2017 Campus Climate Survey on Sexual Misconduct at Ohio State University 13 (2017)

https://www.osu.edu/BuckeyesAct/campus_climate_survey_results_2017.pdf. For example, 64.7% of non-heterosexual respondents reported experiencing at least one harassment behavior since enrolling at Ohio State University, compared to 49.1% of heterosexual students.

Instances of discrimination and harassment of students in higher education in Ohio have also been documented in other sources. For example, a student resident at the Ohio State University College of Veterinary Medicine filed a lawsuit against the college alleging that she had been discriminated against because of her sexual orientation.¹⁹⁴ The student argued that sexual orientation discrimination is a form of sex discrimination prohibited by Ohio's non-discrimination law. According to the student, her supervising professor began to treat her differently when he learned that she was a lesbian. He excluded her from social activities at the school, changed the percentage of time she was assigned under a research grant, denied her assistance from other residents, and made sexual comments and jokes to her. The student also said that the professor refused to be a job reference for her. The court dismissed her claim, finding that sexual orientation discrimination is not a form of sex discrimination prohibited by Ohio's non-discrimination law. The decision was affirmed by the Ohio Court of Appeals in 2014 and the Ohio Supreme Court declined to review the case.¹⁹⁵

Family Rejection

For many youth, the challenges that they face at school are compounded by unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.¹⁹⁶ For example, in one study about the challenges that youth face, LGBT youth ranked non-accepting families as the most important problem in their lives (26%), followed by school and bullying problems (21%), and fear of being open about being LGBT (18%).¹⁹⁷ In contrast, non-LGBT youth ranked classes/exams/grades (25%), college/career (14%), and financial pressures related to college or job (11%) as the most important problems in their lives.¹⁹⁸

¹⁹⁴ Burns v. Ohio State Univ. College of Veterinary Med., No. 2014- 1190, 2014 Ohio App. LEXIS 1101 (Ohio App. Mar. 25, 2014), *cert. denied*, No. 2014-0728, 2014 Ohio LEXIS 1772 (Ohio 2014).

¹⁹⁵ *Id.*

¹⁹⁶ *E.g.*, Darrel Higa, Marilyn J. Hoppe, Taryn Lindhorst, Shawn Mincer, Blair Beadnell, Diane M. Morrison, Elizabeth A. Wells, Avry Todd & Sarah Mountz, *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 YOUTH SOC'Y 1, 8 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 788 (2006); Anthony R. D'Augelli, Arnold H. Grossman & Michael T. Starks, *Parents' Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 J. MARRIAGE & FAMILY 474 (2005); Les Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RESEARCH 329 (2004); Brian N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 733 (2002); Bryan E. Robinson, Lynda Henley Walters & Patsy Skeen, *Responses of Parents to Learning that their Child is Homosexual and Concern over AIDS: A National Survey*, 1 J. HOMOSEXUALITY 59, 67 (1989); CHRISTY MALLORY, BRAD SEARS, AMIRA HASENBUSH & ALEXANDRA SUSMAN, WILLIAMS INST., ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

¹⁹⁷ HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS 2 (2012), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf.

¹⁹⁸ *Id.*

EFFECTS OF STIGMA AND DISCRIMINATION

Stigma and discrimination can result in negative outcomes for LGBT individuals including economic instability and poor health. Research has found that gay men and transgender people experience wage gaps, and has found an association between lower earnings and lack of state-level protections from discrimination for LGBT people. Research also indicates that LGBT people, in general, are disproportionately poor, and that social climate and policy are linked determinants of poverty among LGBT communities.

In addition, research has linked experiences of stigma and discrimination, as well as living in a state with unsupportive laws and social climate, to health disparities for LGBT people, including higher rates of mood and anxiety disorders, depression, attempted suicide, self-harm, and substance use. Data from Ohio's BRFSS and YRBS indicate that LGBT adults and youth in the state are more likely to experience several of such health outcomes than their non-LGBT counterparts.

ECONOMIC INSTABILITY

Wage Gaps for LGBT People

Wage gap analysis has been used by economists to measure employment discrimination against women, people of color, and LGBT people. Several studies have found evidence of wage gaps affecting gay men and transgender people, and for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts.

In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all studies found an earnings penalty for gay men, with an average of -11%.¹⁹⁹ For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.²⁰⁰ Klawitter concluded that her analysis "shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians."²⁰¹ However, despite this premium, most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.²⁰²

¹⁹⁹ Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 *INDUST. REL.* 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

²⁰⁰ *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

²⁰¹ *Id.* at 21.

²⁰² M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., *THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

Klawitter posited several reasons to explain why gay men may face more discrimination in the workplace, including that straight men in the U.S. have less positive attitudes towards gay men than lesbians, and that straight men are more likely to be in wage-determining senior positions than women.²⁰³ Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.²⁰⁴ She also noted that other research reviews have found that lesbians who do not fit the norms for femininity have a harder time securing employment.²⁰⁵ Finally, Klawitter noted that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in more highly regulated government sector jobs, but this pattern is not observed for lesbians—who have significant earnings premiums in the private and non-profit sectors, but none in government employment.²⁰⁶

A simple comparison²⁰⁷ of median incomes in Ohio also suggests that men in same-sex couples may face a wage gap. An analysis of Census 2000 data found that the median income of men in same-sex couples in the state was 24% lower than the median income of men in different-sex marriages.²⁰⁸

In addition, a forthcoming study, based on representative data from 27 states, finds “clear evidence that self-identified transgender individuals have significantly lower employment rates and household incomes and significantly higher poverty rates than non-transgender individuals.”²⁰⁹ The study concludes that transgender adults who are wage earners experience a “household income penalty” equivalent to 12% of annual household income.²¹⁰

A growing body of research supports that, for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2015 study found that the overall wage gap for men of color in same-sex couples was greater than what the sum of the race and sexual orientation wage gaps would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers.”²¹¹

²⁰³ Klawitter, *supra* note 199 at 21-22.

²⁰⁴ *Id.* at 22.

²⁰⁵ *E.g.*, LOTTA SAMELIUS & ERIK WÄGGER, SIDA, SEXUAL ORIENTATION AND GENDER IDENTITY ISSUES IN DEVELOPMENT (2005), http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development_718.pdf.

²⁰⁶ Klawitter, *supra* note 199 at 22.

²⁰⁷ Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

²⁰⁸ The median income of women in same-sex couples in Ohio is higher than that of women in different-sex marriages, but lower than the median income of men with either same-sex or different-sex partners. ADAM P. ROMERO, AMANDA BAUMLE, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: OHIO 2 (2008), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Ohio2000CensusSnapshot.pdf>.

²⁰⁹ Christopher S. Carpenter, Samuel T. Eppink & Gilbert Gonzales, Transgender Status, Gender Identity, and Socioeconomic Outcomes in the United States (forthcoming in *INDUST. AND LABOR REL. REV.*) (draft on file with authors).

²¹⁰ *Id.*

²¹¹ Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 *INDUST. REL.* 59, 96 (2015).

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with sexual orientation non-discrimination laws, men and women in same-sex couples had a wage premium (3% and 2% respectively), and they earned approximately 0.3% more for each year the policy was in effect.²¹² Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings²¹³ and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men, especially in private-sector jobs.²¹⁴ Furthermore, a 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and rate of employment by 2% for gay men.²¹⁵

Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have higher household incomes than non-LGBT people, those averages can mask that LGBT people are also disproportionately poor²¹⁶ and that poverty is concentrated in certain groups within the LGBT community such as female same-sex couples, people of color, transgender people, youth, and the elderly. For example, key findings from a 2013 study on poverty in the LGBT community include:

- 7.6% of lesbian couples are in poverty, compared to 5.7% of married different-sex couples;
- Over 1 in 5 children of same-sex couples are in poverty, compared to 12.1% of children of married different-sex couples;
- African American same-sex couples have poverty rates more than twice that of married different-sex African American couples; and
- Female same-sex couples who live in rural areas are much more likely to be poor (14.1%), compared to lesbian couples in large cities (4.5%).²¹⁷

Similarly, research on the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have

²¹² GARY J. GATES, CAL. CENTER FOR POP. RESEARCH, THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.cprp.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

²¹³ Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011).

²¹⁴ Marieka M. Klawitter, *Multilevel Analysis of the Effects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J. POL. ANALYSIS & MGMT. 334 (2011). See also Marieka M. Klawitter & Victor B. Flatt, *The Effects of State and Local Anti-Discrimination Policies on Earnings for Gays and Lesbians*, 17 J. POL. ANALYSIS & MGMT. 658 (1998).

²¹⁵ Ian Burn, *Legal Differences in Non-Discrimination Laws and the Effect of Employment Protections for Gay Men* (Feb. 2015) (unpublished manuscript available at the Princeton University repository). The study also found that state non-discrimination laws with stronger damages, statutes of limitations, and attorney's fees increase the positive impact on gay men's wages. Id.

²¹⁶ M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

²¹⁷ Id. at 1-3.

enough money to feed themselves or their families, and nearly half of LGB adults aged 18-44 who are raising children (46%) participated in SNAP, the federal food stamps program.²¹⁸

The 2015 U.S. Transgender Survey found that, nationally, 29% of respondents were living at or near the federal poverty line, which was twice the rate of poverty in the U.S. general population (29% v. 12%).²¹⁹ Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of Black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of White respondents.²²⁰

In a 2013 study on poverty, Badgett et al. suggested that social climate and policy are linked determinants of LGB poverty: "LGB people who live in non-coastal regions of the U.S. or rural communities are more likely than those in urban and coastal regions to be in poverty. These geographic areas are more likely to have social climates that are less accepting of LGB identities, increasing the stress and discrimination that LGB people face. These locales may also be less likely to offer legal protections that would guard against major life events, such as job loss or health issues that often contribute to poverty."²²¹

Building from that thesis, a 2014 report by the Williams Institute linked greater socio-economic disparities for LGBT people to region, a lack of legal protections, and a poor social climate.²²² The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination, and in regions of the country such as the Midwest, with a poorer social climate and fewer legal protections.²²³ For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in the states with protective laws to \$11,000 in states that lack such laws.²²⁴

²¹⁸ TAYLOR N.T. BROWN, ADAM P. ROMERO & GARY J. GATES, WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

²¹⁹ JAMES ET AL., *supra* note 113.

²²⁰ *Id.*

²²¹ BADGETT, DURSO & SCHNEEBAUM, *supra* note 216 at 25.

²²² HASENBUSH ET AL., *supra* note 18.

²²³ Press Release, Williams Inst., LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: "It's not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse."

²²⁴ HASENBUSH ET AL., *supra* note 18.

Data from the 2015-2017 Gallup Daily Tracking poll show similar disadvantages for LGBT people in Ohio, including:²²⁵

- 33% of LGBT adults in Ohio reported that they do not have enough money for food, compared to 16% of non-LGBT adults.
- 33% of LGBT adults in Ohio reported having a household income below \$24,000, compared to 21% of non-LGBT adults.
- 11% of LGBT adults in Ohio reported that they were unemployed, compared to 5% of non-LGBT adults.
- 10% of LGBT adults in Ohio reported that they do not have health insurance, compared to 7% of non-LGBT people.

In addition, the 2015 National Transgender Discrimination Survey found that 16% of transgender respondents in Ohio were unemployed, and 26% were living in poverty.²²⁶ Fifteen percent of respondents in Ohio reported experiencing homelessness in the past year because they were transgender.²²⁷

HEALTH DISPARITIES FOR LGBT PEOPLE

Health Disparities for LGBT Adults

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climate, have been shown to contribute to health disparities for LGBT people. Substantial research has documented that LGBT people experience disparities on a range of health outcomes, and health-related risk factors, compared to their non-LGBT counterparts. Research shows that mood²²⁸ and anxiety disorders,²²⁹ attempted suicide,²³⁰ and self-harm²³¹ are more common among sexual minorities (LGBs) than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender people.²³² In addition, LGB people are more likely to report

²²⁵ LGBT Data & Demographics: Ohio, *supra* note 20.

²²⁶ National Center for Transgender Equality & Trans Ohio, *supra* note 10 at 1.

²²⁷ *Id.* at 2.

²²⁸ Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 *BMC Psychiatry* 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 *J. ABNORMAL PSYCH.* 471 (2005).

²²⁹ King et al., *supra* note 228; Wendy B. Bostwick, Carol J. Boyd, Tonda L. Hughes & Sean Esteban McCabe, *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 *AM. J. PUBLIC HEALTH* 468 (2010).

²³⁰ King et al., *supra* note 228; Susan D. Cochran & Vickie M. Mays, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 *J. EPIDEMIOLOGY* 516 (2000).

²³¹ Balsam et al., *supra* note 228. For comprehensive reviews of research on LGBT health, see INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011); THE HEALTH OF SEXUAL MINORITIES: PUBLIC HEALTH PERSPECTIVES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER POPULATIONS (Ilan H. Meyer & Mary E. Northridge eds., 2007).

²³² See INSTITUTE OF MEDICINE, *supra* note 231 at 193-97.

tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.²³³ As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in Ohio indicate that LGBT adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

Health Disparities for LGBT Adults in Ohio

One source for assessing health disparities between LGBT and non-LGBT people in Ohio is the Ohio Behavioral Risk Factor Surveillance System (BRFSS).²³⁴ Since 2014, the Ohio Department of Health and Human Services has included the U.S. Centers for Disease Control and Prevention's optional module for measurement of sexual orientation and gender identity on its BRFSS.²³⁵ In the analysis presented here, we utilized data from the 2017 Ohio BRFSS, noting where our results are similar or dissimilar to patterns observed in the general population.

We assessed the health of LGBT and non-LGBT adults on three health outcomes that are widely viewed as stress-coping responses²³⁶ and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking; as well as two other health indicators (the number of days respondents experienced poor mental health during the month prior to the survey and respondents' experiences of feeling limited in their usual activities because of poor health). In our analyses we include individuals who identified as lesbian, gay, bisexual, or transgender (LGBT) and those

²³³ Cochran & Mays, *supra* note 230; AMERICAN LUNG ASSOC., SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012).

²³⁴ About BRFSS, U.S. Centers for Disease Control & Prevention, <https://www.cdc.gov/brfss/about/index.htm> (last visited May 22, 2019); Behavioral Risk Factor Surveillance System, Ohio Department of Health, <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/behavioral-risk-factor-surveillance-system/welcome-to> (last visited May 22, 2019). Administered jointly by the CDC and the Ohio Department of Health, the Ohio BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices.

²³⁵ The 2017 BRFSS sexual orientation measure asked respondents the following: "Do you consider yourself to be: 1 - Straight; 2 - Lesbian or gay; 3 - Bisexual." Respondents who indicated other or another sexual orientation were coded as "other." The transgender status question asked respondents: "Do you consider yourself to be transgender?" If respondents answered "yes" the interview then asked "Do you consider yourself to be 1. Male-to-female, 2. Female-to-male, or 3. Gender non-conforming?" If respondents asked about the definition of the term *transgender*, the interviewer stated, "Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Some transgender people change their physical appearance so that it matches their internal gender identity. Some transgender people take hormones and some have surgery. A transgender person may be of any sexual orientation - straight, gay, lesbian, or bisexual." If respondents asked about the term *gender non-conforming*, the interviewer stated, "Some people think of themselves as gender non-conforming when they do not identify only as a man or only as a woman." 2017 Behavioral Risk Factor Survey, CDC (Oct. 3 2016), available at https://www.cdc.gov/brfss/questionnaires/pdf-ques/2017_BRFSS_Pub_Ques_508_tagged.pdf.

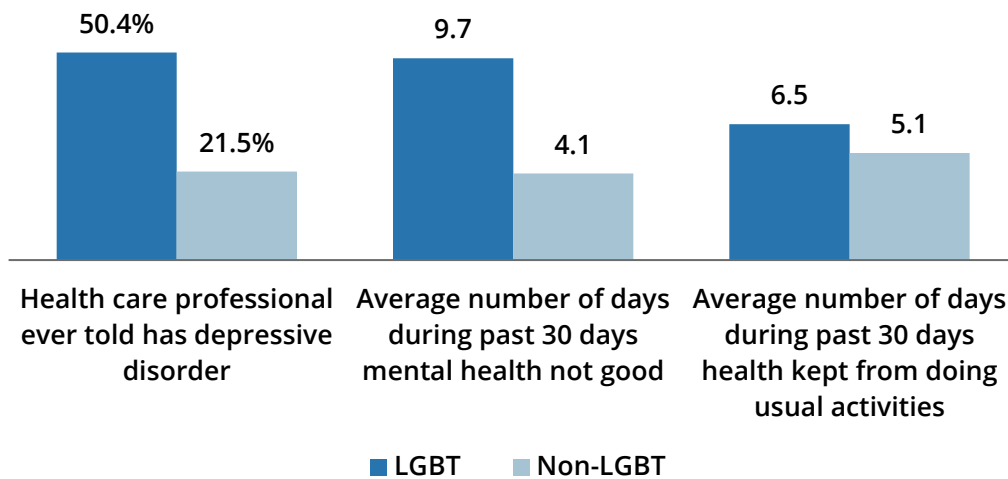
²³⁶ See, e.g., Richard T. Liu & Lauren B. Alloy, *Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study*, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud, Carol A. Paronis, *Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking*, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, *The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse*, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

who did not identify as LGBT (non-LGBT), including those who identified as straight and not transgender.²³⁷

The proportions of LGBT ($n = 334$) and non-LGBT ($n = 10,050$) people in Ohio who reported each health outcome are shown below. The proportions are weighted to reflect the population of Ohio, as recommended by the Centers for Disease Control and Prevention when analyzing these data.²³⁸

Mental Health. LGBT adults in Ohio were significantly more likely to have ever been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when compared to non-LGBT adults (50.4% v. 21.5%).²³⁹ LGBT respondents reported, on average, more days of not being in good mental health in the month prior to the survey than non-LGBT respondents (9.7 days v. 4.1 days).²⁴⁰ Also, LGBT respondents reported that their physical or mental health kept them from doing their usual activities on more days per month, on average, than non-LGBT respondents (6.5 days v. 5.1 days).²⁴¹

Figure 10. Health characteristics of adults in Ohio, by LGBT identity



Source: 2017 Ohio BRFSS

²³⁷ Respondents who identified as lesbian, gay, or bisexual and responded to the transgender-status question we coded as LGBT. Similarly, respondents who identified as transgender and responded to the sexual orientation question we coded as LGBT. Respondents who identified as straight or other in response to the sexual orientation question AND identified as not transgender we coded as non-LGBT. We coded all other respondents as missing.

²³⁸ Behavioral Risk Factor Surveillance System: Complex Sampling Weights and Preparing 2017 BRFSS Module Data for Analysis, July 2018, U.S. Centers for Disease Control and Prevention, https://www.cdc.gov/brfss/annual_data/2017/pdf/Complex-Smple-Weights-Prep-Module-Data-Analysis-2017-508.pdf (last visited May 22, 2019). LGBT survey respondents in Ohio were younger than the non-LGBT survey respondents and were more likely to be female than male. In order to make fair comparisons between sexual orientation groups, we used statistical controls to make the two groups comparable on age and sex.

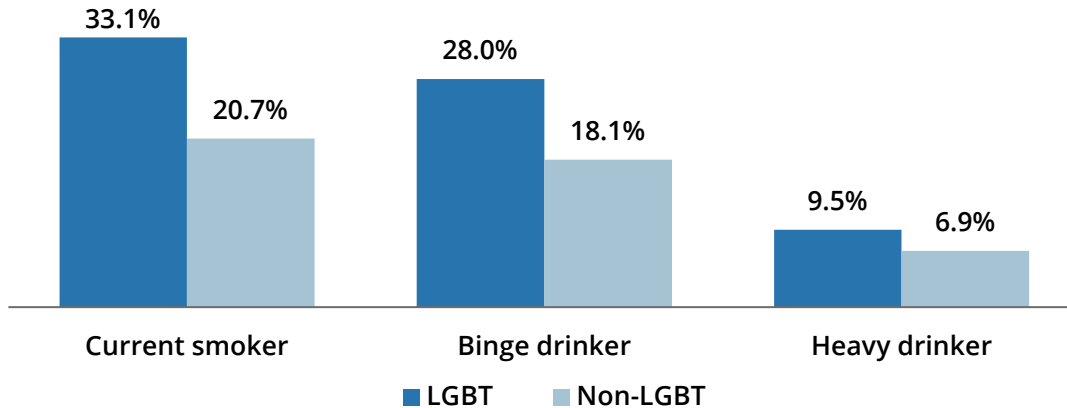
²³⁹ Adjusted odds ratio (95% CI) = 3.31 (2.38, 4.61).

²⁴⁰ Adjusted $b = 4.82$, $p < 0.01$.

²⁴¹ Adjusted $b = 2.34$, $p < 0.05$.

Substance Use. LGBT adults in Ohio were significantly more likely to be current smokers than non-LGBT adults (33.2% v. 20.6%).²⁴² Additionally, greater proportions of LGBT adults than non-LGBT adults were identified as binge drinkers (28.1% v. 18.2%)²⁴³ and heavy drinkers (9.5% v. 7.0%),²⁴⁴ though these differences were not statistically significant.

Figure 11. Substance abuse among adults in Ohio, by LGBT identity



Source: 2017 Ohio BRFSS

Our findings are consistent with analyses of BRFSS data collected in other states and with analyses of National Health Interview Survey data. For example, an analysis of BRFSS data collected in 10 states²⁴⁵ in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts.²⁴⁶ Similarly, an analysis of data from the 2013 National Health Interview Survey found that LGB adults aged 18-64 in the U.S. were more likely to be current smokers (27.2% lesbian or gay v. 29.5% bisexual v. 19.6% non-LGB).²⁴⁷ A recent 2018 analysis of 2016 BRFSS data compared health-related behavior across sexual orientation and transgender identity and found that gay men, lesbian women, and bisexual women were significantly more likely to be current smokers than their heterosexual

²⁴² Adjusted odds ratio (95% CI) = 1.67 (1.17, 2.39). Current smokers included respondents who reported having smoked at least 100 cigarettes in their lifetimes and reported now smoking every day or some days.

²⁴³ Adjusted odds ratio (95% CI) = 1.24 (0.85, 1.82). Binge drinking is defined in the BRFSS as five or more alcoholic drinks on one occasion for males and four or more alcoholic drinks on one occasion for females.

²⁴⁴ Adjusted odds ratio (95% CI) = 1.19 (0.70, 2.02). Heavy drinking is defined as more than 14 drinks per week among males and more than 7 drinks per week among females.

²⁴⁵ In 2010, 12 states had added a question about sexual orientation to their BRFSS surveys (Alaska, Arizona, California, Colorado, Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Washington, and Wisconsin), but data from two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the study was based on data collected in the remaining 10 states. John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 AM. J. PREV. MED. 337, 338 (2014).

²⁴⁶ Id. at 340.

²⁴⁷ Brian W. Ward et al., *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, 77 NATIONAL HEALTH STATS. REPORT 1, 4 (2015), <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

counterparts.²⁴⁸ Two studies analyzing BRFSS data from Massachusetts²⁴⁹ and Washington State²⁵⁰ found disparities across a range of health outcomes and behaviors for LGB respondents, including poor physical and mental health, activity limitation, tension or worry, smoking, excessive drinking, and drug use.

Impact of Anti-LGBT Policies and Unsupportive Social Climates on LGBT Health

Empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to anti-LGBT policies and unsupportive social climates. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*²⁵¹ and by the Institute of Medicine of the National Academies.²⁵² Research also suggests that stigmatizing campaigns around the passage of anti-LGBT policies, or negative media messaging that draws attention to unsupportive social climates, may exacerbate these disparities.

The minority stress model suggests that unsupportive social climates, created by anti-LGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for LGBT people compared to non-LGBT people.²⁵³ Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.²⁵⁴ This research has demonstrated that both interpersonal experiences of stigma and discrimination, such as being fired from a job for being LGBT, and structural stigma, such as living in a state without LGBT-supportive laws, contribute to minority stress.²⁵⁵

A number of studies have found evidence of links between minority stressors and negative mental health outcomes in LGB people, including a higher prevalence of psychiatric disorders,²⁵⁶ including

²⁴⁸ Timothy J. Cunningham, Fang Xu, & Machell Town, *Prevalence of Five Health-Related Behaviors for Chronic Disease Prevention Among Sexual and Gender Minority Adults — 25 U.S. States and Guam, 2016*. 67 MMWR 888 (2018).

²⁴⁹ Kerith J. Conron, Matthew J. Mimiaga, Stewart J. Landers, *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUBLIC HEALTH 1953 (2010).

²⁵⁰ Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUBLIC HEALTH 460 (2010).

²⁵¹ *Healthy People 2020*, DEP'T OF HEALTH AND HUMAN SERV.,

https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf (last visited Jan. 3, 2016). Healthy People 2010 identified the gay and lesbian population among groups targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." DEPT. OF HEALTH AND HUMAN SERVICES, OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

²⁵² INSTITUTE OF MEDICINE, *supra* note 231 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

²⁵³ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674 (2009); INSTITUTE OF MEDICINE, *supra* note 231.

²⁵⁴ *Id.*; AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

²⁵⁵ See Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

²⁵⁶ E.g., Katie A. McLaughlin, Mark L. Hatzenbuehler & Katherine M. Keyes, *Responses to Discrimination and Psychiatric Disorders among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals*, 100 AM. J. PUBLIC HEALTH 1477 (2010); Ellen D.B. Riggie,

depression²⁵⁷ and psychological distress,²⁵⁸ as well as loneliness, suicidal intention,²⁵⁹ deliberate self-harm,²⁶⁰ and low self-esteem.²⁶¹ Studies have also linked minority stress in LGB people to an increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders.²⁶²

For example, a 2016 study by the American Psychological Association, based on a nationally representative sample, linked experiences of discrimination to increased stress and poorer health for LGBT people.²⁶³ The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% v. 23%) in the prior 30 days than adults who were non-LGBT.²⁶⁴ Job stability was a current source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults.²⁶⁵ The study also found that many LGBT respondents had experienced discrimination.²⁶⁶ Nearly one-fourth (23%) of the LGBT adults reported that they had

Sharon S. Rostosky & Sharon G. Horne, *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 SEXUALITY RESEARCH & SOCIAL POLICY 80 (2009).

²⁵⁷ E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. OF COUNSELING PSYCHOL. 302 (2006).

²⁵⁸ E.g., Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001); David M. Heubner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?*, 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. OF HEALTH & SOC. BEHAV. 38 (1995).

²⁵⁹ David M. Huebner, Gregory M. Rebchook & Susan M. Kegeles, *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men*, 94 AM. J. OF PUB. HEALTH 1200 (2004).

²⁶⁰ James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRITISH J. OF PSYCHIATRY 479 (2004).

²⁶¹ E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being among HIV-positive Latino Gay Men*, 27 HISP. J. OF BEHAV. SCI. 101 (2005).

²⁶² E.g., Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, Wendy B. Bostwick, Tonda L. Hughes, Brady T. West & Carol J. Boyd, *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUBLIC HEALTH 1946 (2010); Mark L. Hatzenbuehler, Katie A. McLaughlin, Katherine M. Keyes & Deborah S. Hasin, *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUBLIC HEALTH 452 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

²⁶³ AM. PSYCH. ASSOC., *supra* note 254.

²⁶⁴ *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% v. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% v. 20%).

²⁶⁵ *Id.*

²⁶⁶ The percentage of respondents who were reported as having experienced discrimination said that they had either experienced “at least one of the five day-to-day stressors ‘less than once a year’ or more often; or ever experienced one of nine major forms of discrimination.” The five day-to-day stressors included: 1. You are treated with less courtesy or respect than other people; 2. You receive poorer service than other people at restaurants or stores; 3. People act as if they think you are not smart; 4. People act as if they are afraid of you; 5. You are threatened or harassed.” The nine major forms of discrimination included: 1. Have you ever been unfairly fired from a job? 2. Have you ever been unfairly denied a promotion? 3. For unfair reasons, have you ever been not hired for a job? 4. Have you ever been unfairly stopped, searched, questioned, physically threatened or abused by the police? 5. Have you ever been unfairly discouraged by a teacher or advisor from continuing your education? 6. Have you ever been unfairly prevented from moving into a neighborhood because the landlord or a realtor refused to sell or rent you a house or apartment? 7. Have you ever moved into a neighborhood where neighbors made life difficult for you or your family? 8. Have you ever been treated unfairly when receiving health care? 9. Have you ever been treated unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.)? Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology,

ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; nearly one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to continue their education; and one-third (33%) reported being unfairly not hired for a job.²⁶⁷

Studies have also linked a lack of legal protections and a poor state social climate to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGB people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws.²⁶⁸ A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional ban on marriage for same-sex couples, and rates were unchanged in states that did not pass bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”²⁶⁹ Drawing on these findings and prior research, Hatzenbuehler concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”²⁷⁰

Similarly, researchers who used 2011 North Carolina BRFSS data to study health disparities between LGB and non-LGB people in the state noted that the poor legal and social environment for LGB people in the South may exacerbate the disparities:

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthful social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles

<http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Dec. 5, 2016) (see Measurement with Experience with Discrimination).

²⁶⁷ AM. PSYCH. ASSOC., *supra* note 254 at 6-7.

²⁶⁸ Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUBLIC HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. *Id.* at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. *Id.* at 2277.

²⁶⁹ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 262 at 456. *See also*, Ben Lennox Kail, Katie L. Acosta & Eric R. Wright, *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUBLIC HEALTH 1101 (2015).

²⁷⁰ Mark L. Hatzenbuehler, *The Health Consequences of Hate*, COLUMBIA UNIV. (Apr. 26, 2016), <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.²⁷¹

Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, and can put them in danger of verbal and physical harassment. For example, a 2008 survey of transgender and gender non-conforming people in Washington, D.C. found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney related problems.²⁷² Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom.²⁷³

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health, which would heighten observed disparities in less accepting places.²⁷⁴ Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, contribute to LGBT health disparities in Ohio.

Health Disparities for LGBT Youth

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC analysis of 2017 YRBS data from a number of states and large urban school districts reported high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,²⁷⁵ that disproportionately impact LGB youth.²⁷⁶ Analyses of YRBS data from prior years also indicated sexual orientation disparities in mental health and health risk behaviors.²⁷⁷ Finally, a 2011 meta-analysis of 18 studies found that, compared to non-LGB youth, heterosexual youth were more likely to report depression and more than twice as likely to think

²⁷¹ Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities*, 106 AM. J. PUB. HEALTH 98 (2014).

²⁷² Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives*, 19 J. PUBLIC MANAGEMENT & SOCIAL POL'Y. 65, 75 (2013).

²⁷³ *Id.* at 71, 76.

²⁷⁴ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 262 at 452.

²⁷⁵ *See, e.g.*, Liu & Alloy, *supra* note 236; Kassel et al., *supra* note 236; Brady & Sonne, *supra* note 236.

²⁷⁶ Kann et al., *supra* note 6.

²⁷⁷ Kann et al., *supra* note 30; Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors among Students in Grades 9-12 – Youth Risk Behavior Surveillance, Selected Sites, United States 2001-2009*, 60 MMWR 1 (2011).

about suicide, over three times as likely to report that they had attempted suicide, and more than four times as likely to have attempted suicide such that they needed medical attention.²⁷⁸

Other studies have linked health disparities and risk behaviors among LGB youth to discrimination and unsupportive environments. For example, a 2017 study found that marriage equality at the state level was associated with a statistically significant decline (14%) in the proportion of LGB youth reporting that they attempted suicide in the past year.²⁷⁹ Similarly, a 2011 study of youth in Oregon found that, in general, LGB youth were more likely to have attempted suicide than heterosexual youth, and that LGB youth in unsupportive school environments were at a 20% greater risk of attempting suicide than were LGB youth in supportive school environments.²⁸⁰ High levels of school-based victimization have been associated with higher levels of illicit drug use and risky sexual behavior.²⁸¹ Research has also linked unsupportive family environments to depression and suicidality,²⁸² high levels of stress,²⁸³ tobacco use,²⁸⁴ and illicit drug use²⁸⁵ in LGB youth and young adults.

Studies of transgender youth have also found evidence of associations between discrimination, abuse, and poorer health. For example, a 2010 study found that transgender respondents who had experienced gender-related abuse in their youth reported significantly higher rates of major depression and suicidality during that period of their lives than those who had not had such experiences.²⁸⁶

Health Disparities for LGBT Youth in Ohio

Depression and Suicidality. Data from the 2017 Cleveland YRBS suggest that sexual orientation disparities in mental health for LGB youth observed elsewhere in the U.S. also persist in Ohio.

LGB high school students in Cleveland were significantly more likely to report feeling sad or hopeless and suicidal than heterosexual students. During the 12 months prior to the survey, over half of LGB students

²⁷⁸ Michael P. Marshal, Laura J. Dietz, Mark S. Friedman, Ron Stall, Helen Smith, James McGinley, Brian C. Thoma, Pamela J. Murray, Anthony D'Augelli & David A. Brent, *Suicide and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

²⁷⁹ Julia Raifman et al., *Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 JAMA PEDIATRICS 350 (2017) [doi: 10.1001/jamapediatrics.2016.4529].

²⁸⁰ Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896 (2011).

²⁸¹ Daniel E. Bontempo & Anthony D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 30 J. ADOL. HEALTH 362 (2002); Kann et al., *supra* note 159 at 11.

²⁸² Another study found that LGBT youth who were rejected by their families in adolescence were 5.9 times more likely to report high levels of depression and 8.4 times more likely to have attempted suicide than LGBT youth who had not been rejected. Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

²⁸³ Mark L. Hatzenbuehler & Katie A. McLaughlin, *Structural Stigma and Hypothalamic-Pituitary-Adrenocortical Axis Reactivity in Lesbian, Gay, and Bisexual Young Adults*, 47 ANN. BEHAV. MED. 39 (2014).

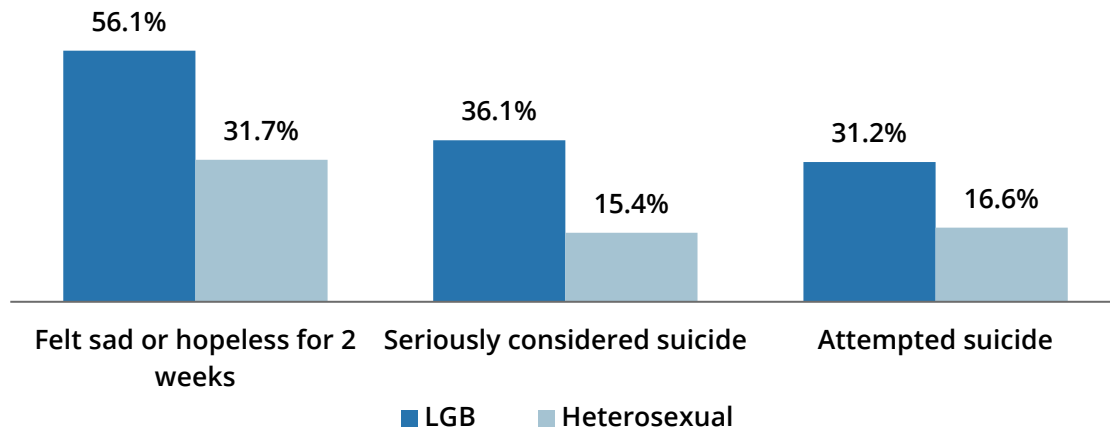
²⁸⁴ Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

²⁸⁵ *Id.*

²⁸⁶ Larry Nuttbrock, Sel Hwahng, Walter Bockting, Andrew Rosenblum, Mona Mason, Monica Macri & Jeffrey Becker, *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

in Cleveland (56.1%) reported feeling so sad or hopeless every day for over two weeks that they stopped doing some of their usual activities, compared to 31.7% of heterosexual students.²⁸⁷ An affirmative answer to this question is part of the diagnostic definition of major depressive disorder.²⁸⁸ LGBT high school students in Cleveland were also more likely to exhibit suicidal ideation and behavior than non-LGBT students. LGBT students were about twice as likely as heterosexual students to have seriously considered suicide (36.1% v. 15.4%)²⁸⁹ and to have attempted suicide (31.2% v. 16.6%)²⁹⁰ in the year prior to the survey.

Figure 12. 12-month depression and suicidality among high school students in Cleveland, by sexual orientation



Source: Laura Kann et al., Youth Risk Behavior Surveillance – United States, 2017, 2018

Substance Use. LGBT high school students in Cleveland were more likely to report drinking, smoking, and other substance abuse than heterosexual students. LGBT students in Cleveland were three times more likely to report having smoked cigarettes on one or more days in the month prior to the survey (15.0% v. 5.0%)²⁹¹ and were nearly ten times as likely to report that they had smoked cigarettes on 20 or more days in the month prior to the survey (5.6% v. 0.6%) as heterosexual students.²⁹² LGBT students were also more likely to have had at least one drink (41.3% v. 23.7%)²⁹³ and to have used marijuana (38.2% v. 23.4%)²⁹⁴ than heterosexual students in the month prior to the survey.

²⁸⁷ Laura Kann et al., *supra* note 6 at 187.

²⁸⁸ See *Diagnostic Criteria for Major Depressive Disorder and Depressive Episodes*, PSNPALOALTO.COM, <http://www.psnpaloalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> (last visited Oct. 4, 2019).

²⁸⁹ Laura Kann et al., *supra* note 6 at 190.

²⁹⁰ *Id.* at 196.

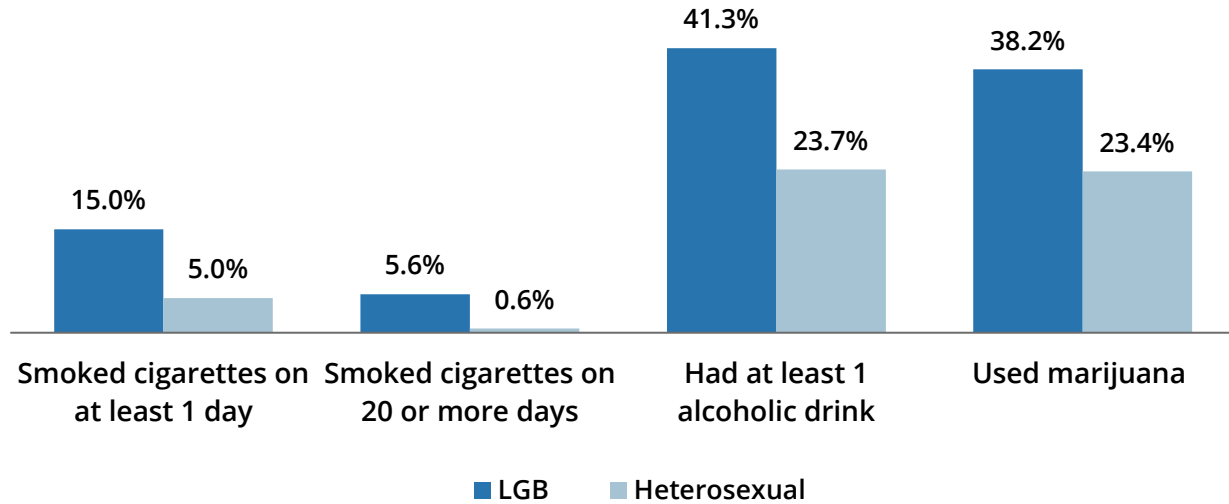
²⁹¹ *Id.* at 208.

²⁹² *Id.* at 211.

²⁹³ *Id.* at 271.

²⁹⁴ *Id.* at 289.

Figure 13. 30-day substance use among high school students in Cleveland, by sexual orientation



Source: Laura Kann et al., Youth Risk Behavior Surveillance – United States, 2017, 2018

These findings are consistent with the 2017 YRBS data collected in other states and large urban school districts. In terms of mental health, like LGBT youth in Cleveland, LGBT youth in the national YRBS sample were more likely to report that they felt so sad or hopeless that they stopped doing their usual activities for a period of time,²⁹⁵ that they had seriously considered suicide,²⁹⁶ that they had made a suicide plan,²⁹⁷ and that they had made a suicide attempt that resulted in an injury that had to be treated by a doctor or nurse.²⁹⁸ In terms of substance use, LGBT youth in the national sample, similarly to LGBT youth in Cleveland, reported higher rates of smoking cigarettes,²⁹⁹ drinking alcohol,³⁰⁰ marijuana use,³⁰¹ and cocaine use.³⁰²

²⁹⁵ Id. at 185.

²⁹⁶ Id. at 188

²⁹⁷ Id. at 191.

²⁹⁸ Id. at 197.

²⁹⁹ Id. at 206, 209.

³⁰⁰ Id. at 269.

³⁰¹ Id. at 287.

³⁰² Id. at 293.

ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION

In 2014, USAID and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look at three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape on Ohio's economy: 1) discrimination and harassment in the workplace and other settings; 2) health disparities experienced by LGBT people; and 3) bullying and harassment of youth.³⁰³ In our analysis, we draw on data specific to Ohio, and illustrate the magnitude of some of the costs resulting from different types of stigma and discrimination. Due to limited available data on LGBT people in the state, we are able to estimate only a few of the costs related to LGBT stigma and discrimination in Ohio.

FRAMEWORK FOR ANALYSIS

In a 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.³⁰⁴ In the micro-level analysis, the authors considered five types of discrimination against LGBT people and explained how they might be linked to harmful economic outcomes:

1. Police abuse and over-incarceration
2. Higher rates of violence
3. Workplace harassment and discrimination
4. Discrimination and bullying of LGBT students in schools
5. Health disparities³⁰⁵

After considering these, the authors concluded that "human rights violations experienced by LGBT people diminish economic output and capacity at the micro-level. When LGBT people are targets of violence, denied equal access to education, stigmatized in communities, and discouraged from pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy."³⁰⁶

³⁰³ The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on effects of such stigma and discrimination against LGBT people in Ohio.

³⁰⁴ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST., *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and the defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 6.

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender minorities and economic development in emerging economies, measured by per capita GDP.³⁰⁷ Notably, they found that non-discrimination laws in particular “have an especially strong correlation with GDP per capita. The importance of nondiscrimination laws could be related to their stronger connection to the treatment of LGBT people in the workplace and other settings that have direct economic relevance.”³⁰⁸

While the USAID and Williams Institute study focused on national economies, similar types of discrimination and stigma confront LGBT people in Ohio and are likely to have similar economic effects.

Before we turn to the analysis, five important points:

First, we map out several economic impacts due to stigma and discrimination against LGBT people in Ohio in general. We do not consider how the effects specifically relate to any particular law or policy in the state.

Second, we illustrate just a few of the economic impacts created by a challenging legal landscape and social climate for LGBT people in Ohio. This report is not intended to quantify the total amount of harmful economic impacts related to stigma and discrimination against LGBT people in the state.

Third, while the forms of discrimination and stigma that we address in this study provide a useful way to understand some of the significant challenges that LGBT people face throughout their lives, different types of discrimination and stigma interact with each other, and all may contribute to one or more negative outcomes for LGBT people. For example, LGBT people are more likely to be poor because of school bullying and workplace discrimination, to have poor health, and to have higher rates of incarceration and violent crime victimization. Because these factors overlap and interact, the economic impacts that we have estimated should not be summed together.

Fourth, focusing on LGBT stigma and discrimination alone will not address all negative outcomes experienced by LGBT people. LGBT people also have identities associated with their race, ethnicity, age, disability, and gender. While a singular focus on LGBT stigma will not entirely eliminate the disparities we discuss, an approach that embraces eliminating disparities for diverse LGBT people, no matter what their cause, will improve the lives of many non-LGBT people as well. For example, eliminating gender and

³⁰⁷ Id. at 10.

³⁰⁸ Id. at 3.

racial-ethnic wage gaps in the U.S. would both eliminate the poverty gap between same-sex and different sex-couples, as well as lift many non-LGBT people out of poverty.³⁰⁹

Finally, as the authors of the USAID and Williams Institute study emphasize, to move this analysis beyond this framework and the illustrations of economic impact below, we need more complete and better data on LGBT populations.³¹⁰ In particular, the routine inclusion of sexual orientation and gender identity measures on large population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of two data sets specific to LGBT people in Ohio that were unavailable just a few years ago—data from the Youth Risk Behavior Survey (YRBS) and the Behavioral Risk Factor Surveillance System (BRFSS). We also need more research about the lived experiences of LGBT people and the effectiveness of legal protections to further assess the impact of LGBT supportive laws and climates on LGBT people.³¹¹

ECONOMIC IMPACT IN THE WORKPLACE AND OTHER SETTINGS

A growing body of research finds that supportive workplace policies and practices, such as non-discrimination policies, have a positive impact on employer outcomes—which has been termed “the business case for diversity.” While this research has primarily focused on the inclusive policies and environments of individual firms, it also suggests that state economies benefit from more inclusive legal and social environments.

To the extent that Ohio’s legal landscape and social climate is unsupportive of LGBT workers, businesses within the state and the state, as an employer, are likely to experience negative economic outcomes. Research shows that LGBT workers in unsupportive environments are less likely to be open about their sexual orientation or gender identity at work, more likely to be distracted on the job, and less likely to be committed to staying with their current employer, compared to LGBT employees at supportive workplaces. Moreover, LGBT and non-LGBT workers outside a state that they perceive to be unsupportive may be less likely to accept job offers from employers in that state.

In addition, discrimination in employment, housing, and other areas of life can result in LGBT people experiencing economic instability, including poverty and homelessness. When LGBT people experience

³⁰⁹ M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

³¹⁰ See, e.g., MARIELLA ARRENDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

³¹¹ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 304 at 49.

economic instability, they are more likely to rely on government benefits and services, which increases the costs of these programs to the state.

The Business Case for Diversity

Over the past two decades, many employers have adopted non-discrimination policies to protect LGBT employees and created more inclusive workplace environments, even when not legally required to do so.³¹² In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part, because the companies perceive that the policies will have a positive impact on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination and 75% included gender identity.³¹³ Further, 64% offered domestic partner benefits and 40% had transgender-inclusive benefits policies.³¹⁴

Of the 20 Fortune 500 companies headquartered in Ohio,³¹⁵ at least 18 include sexual orientation and gender identity in their non-discrimination policies: Cardinal Health, Kroger, Marathon Petroleum, Procter & Gamble, Nationwide, Progressive, Macy's, Sherwin-Williams, American Electric Power, Goodyear Tire & Rubber, Parker-Hannifin, L Brands, FirstEnergy, Dana, Fifth Third Bancorp, KeyCorp, J.M. Smucker, and Owens Corning.³¹⁶

³¹² M.V. LEE BADGETT, *MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN* (2001); NICOLE C. RAEBURN, *CHANGING CORPORATE AMERICA FROM INSIDE OUT: LESBIAN AND GAY WORKPLACE RIGHTS* (2004).

³¹³ DARYL HERRSCHAFT ET AL., HUMAN RIGHTS CAMPAIGN, *DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT PEOPLE 5* (2009), https://issuu.com/hrcworkplace/docs/hrc_degrees_of_equality_2009; DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, *CORPORATE EQUALITY INDEX 2016: RATING AMERICA'S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 7* (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

³¹⁴ FIDAS & COOPER, *supra* note 313.

³¹⁵ Chris Mosby, *Fortune 500: These Ohio Companies Make the 2019 List*, PATCH.COM (May 21, 2019), <https://patch.com/ohio/cleveland/fortune-500-these-ohio-companies-make-2019-list>.

³¹⁶ Unless otherwise noted, the information about individual companies' policies is from the Human Rights Campaign report, *Corporate Equality Index 2016: Rating America's Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*. FIDAS & COOPER, *supra* note 313. Parker, Equal Opportunity, <https://www.parker.com/portal/site/PARKER/menuitem.34d97bf947aa18280787535d4256d1ca/?vgnextoid=a3d8d5fa39bf2510VgnVCM100000b4a81dacRCD&vgnnextchannel=ae9ff0e5c6b30510VgnVCM100000b4a81dacRCD&vgnnextfmt=EN&vgnnextcat=Equal%20Opportunity> (last visited Oct. 21, 2019); FirstEnergy, *Position on Human Rights*, July 26, 2019, *available at* <https://www.firstenergycorp.com/content/dam/investor/files/statement-on-human-rights.pdf>.

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,³¹⁷ the business case for diversity is clear:

Today, diversity and inclusion are a given. They are among the core principles of amici in the conduct of their businesses. The value of diversity and inclusion in the workplace has been well-documented following rigorous analyses. Amici and others recognize that diversity is crucial to innovation and marketplace success. Members of the lesbian, gay, bisexual, and transgender (“LGBT”) community are one source of that diversity.³¹⁸

In fact, a 2011 study found that when enacting non-discrimination policies, 92% of the leading companies in the U.S. did so based on a general argument that diversity is good for business, and 53% made that link specifically to LGBT-supportive policies and practices.³¹⁹ Similarly, a 2013 Williams Institute study found that over 60% of corporate respondents that offered transition-related health care coverage to their employees did so because of the business benefits.³²⁰ Some of the specific business-related outcomes that have motivated employers to adopt LGBT-supportive policies include: recruiting and retaining talented employees, sparking new ideas and innovations, attracting and serving a diverse customer base, and enhancing employee productivity.³²¹

Academic research conducted over the past two decades supports the business case for LGBT inclusion. In 2013, the Williams Institute reviewed 36 academic studies examining the effects of LGBT-supportive policies, and concluded that the research supports the existence of many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers (Figure 14).³²²

³¹⁷ 135 S. Ct. 2584 (2015).

³¹⁸ Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571, 14-574), available at http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf.

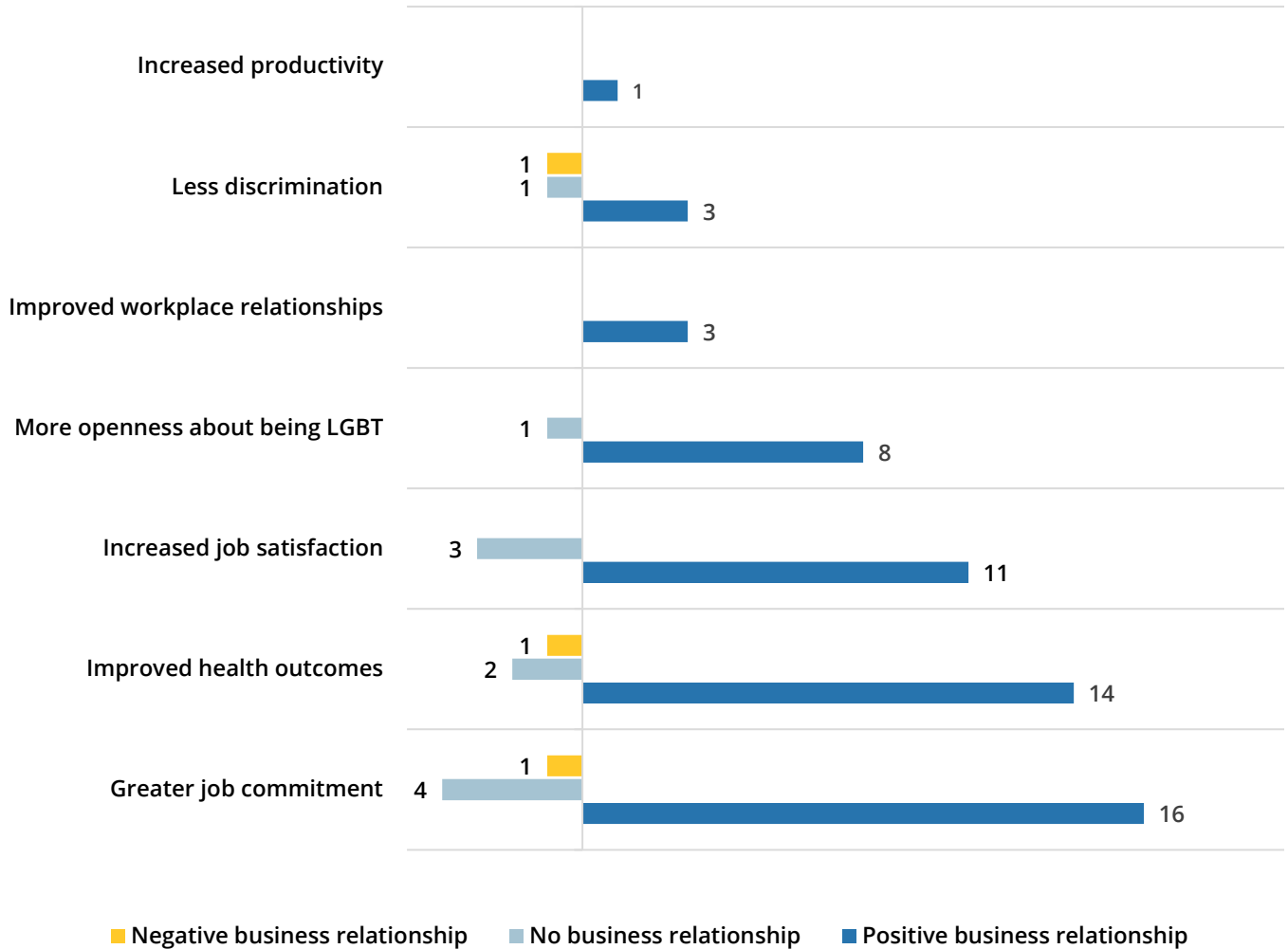
³¹⁹ BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

³²⁰ JODY L. HERMAN, WILLIAMS INST., COSTS AND BENEFITS OF PROVIDING TRANSITION-RELATED HEALTH CARE COVERAGE IN EMPLOYEE HEALTH BENEFIT PLANS: FINDINGS FROM A SURVEY OF EMPLOYERS 3 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

³²¹ *Id.*; SEARS & MALLORY, *supra* note 319.

³²² M.V. LEE BADGETT, LAURA DURSO, ANGELIKI KASTANIS, & CHRISTY MALLORY, WILLIAMS INST., THE BUSINESS IMPACT OF LGBT SUPPORTIVE WORKPLACE POLICIES (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-May-2013.pdf>.

Figure 14. Number of studies conducted prior to 2013 showing relationship between LGBT-supportive policies or workplace climates and individual-level outcomes



A 2014 literature review of academic studies similarly concluded that LGBT-supportive policies have positive effects on LGBT employees in terms of mental health, workplace relationships, and job satisfaction.³²³ Many of the underlying studies included in the 2013 and 2014 literature reviews focused on three specific areas of the case for business diversity: employee recruitment, productivity/engagement, and retention. Studies focused on these outcomes have shown the following:

³²³ Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

Recruitment

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.³²⁴
- LGBT employees prefer to work in states with more supportive laws and social environments.³²⁵
- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.³²⁶
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,³²⁷ particularly younger and more highly educated workers.³²⁸

Productivity/Engagement

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, increased productivity, and job satisfaction.³²⁹
- When LGBT employees are open about their sexual orientation or gender identity at work, teams that include both LGBT and non-LGBT workers may be more productive and more competent.³³⁰
- Negative outcomes related to unsupportive policies and environments could lead to economic losses for state and local governments, as employers, and private businesses in Ohio. Since the

³²⁴ Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM (Oct. 4, 2010), <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>; SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, *THE POWER OF "OUT" 2.0: LGBT IN THE WORKPLACE* 29 (2013).

³²⁵ Out & Equal et al., *Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, HARRIS POLL (Oct. 30, 2014), http://media.theharrispoll.com/documents/FINAL_2014_Out_Equal_Workplace_Survey_Release_10.30.2014.pdf.

³²⁶ Russell Shrader, *Broadening Partner Benefits to Improve Recruitment and Retention among LGBT Employees in United States Institutions of Higher Education*, 40 PUBLIC ADMIN. Q. 180 (2016).

³²⁷ SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM (Oct. 4, 2010), <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>.

³²⁸ Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact*, 3 POLITICS, GROUPS, AND IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994); *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

³²⁹ Yuan-Hui Tsai, Sheng-Wuu Joe, Wei-Te Liu, Chieh-Peng Lin, Chou-Kang Chiu & Chaio-Chih Tang, *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 REV. MANAG. SCI. 197 (2015); SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); BADGETT ET AL., *supra* note 322.

³³⁰ Benjamin A. Everly, Margaret J. Shih & Geoffrey C. Ho, *Don't Ask, Don't Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 J. EXPERIMENTAL SOCIAL PSYCH. 407, 409 (2012); SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 22, 63 (2016).

state government of Ohio employs 185,000 people,³³¹ its own loss in productivity from a discriminatory environment could be significant.

Retention

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.³³²
- LGBT employees in unsupportive environments feel less committed to their jobs.³³³
- When a worker leaves a job, costs include a loss in productivity due to the unfilled position, the costs of hiring and training a new employee, and lower initial rates of productivity of the new employee.³³⁴ A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.³³⁵ This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs – up to 213% of annual salary.³³⁶ Based on the average annual mean wage in Ohio,³³⁷ public and private employers are at risk of losing approximately \$9,640, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people.³³⁸

In addition, several studies have linked LGBT-supportive policies and workplace environments to bottom line gains, including improved productivity, profitability, and stock prices when compared to firms without such policies.³³⁹

³³¹ For state government workforce: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Nov. 16, 2018) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "Ohio" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over" 2017 1-year estimates).

³³² HEWLETT & YOSHINO, *supra* note 330 at 20.

³³³ Belle R. Ragins, Romila Singh, John M. Cornwell, *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); IAN JOHNSON & DARREN COOPER, OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 4, 47 (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, THE POWER OF OUT (2011); DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, HUMAN RIGHTS CAMPAIGN, THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION 22 (2014), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf; Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 4 (Apr. 2013) (unpublished manuscript, available online).

³³⁴ HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COSTS TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ The annual mean wage in Ohio is \$48,220. May 2018 State Occupational Employment and Wage Estimates: Ohio, Bureau of Labor Stats, https://www.bls.gov/oes/current/oes_mi.htm (last visited Oct. 21, 2019).

³³⁸ Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Ohio. *Id.*; BOUSHEY & GLYNN, *supra* note 334.

³³⁹ CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic profit generation, and that stocks of companies who have LGBT people in senior roles outperform those who do not); Feng Li and Venky Nagar, *Diversity and Performance*, 59 MGMT. SCI. 529 (2013) (finding improved operating returns on assets (ROA) after companies adopt domestic partner benefits for same-sex couples); Blazovich, Cook, Huston

This body of research suggests if Ohio were to move toward a more supportive legal landscape for LGBT people, public and private employers in the state would likely be able to more easily recruit employees from other places and retain current employees, and would likely see improved employee productivity.

Illustration of Costs of Discrimination against Transgender People

As discussed above, discrimination in employment, housing, and other areas of life can result in LGBT people being unemployed, underemployed, underpaid, less productive, and more reliant on government benefits and social services. The 2015 U.S. Transgender Survey (USTS) found that in Ohio, among USTS respondents who had a job or applied for a job in the past year, 6% reported having been denied a promotion, 7% reported having been fired from a job, and 26% reported having not been hired because of anti-transgender bias.³⁴⁰

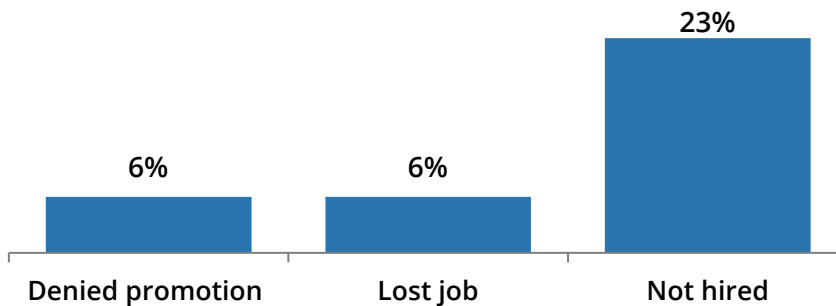
We used available data³⁴¹ to estimate the fiscal impact of discrimination in one of many possible areas by estimating the costs associated with Medicaid participation that results from employment discrimination against transgender people in Ohio.

& Strawser, *supra* note 333 at 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which ... increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT ET AL., *supra* note 322 at 23 (“A ... study found that the more robust a company’s LGBT friendly policies, the better its stock performed over the course of four years (2002-2006), compared to other companies in the same industry over the same period of time.”); Garrett D. Voge, Investor Valuation: LGBTQ Inclusion and the Effect on a Firm’s Financials (unpublished manuscript, available at the University of Arizona Campus Repository) (2013), <http://arizona.openrepository.com/arizona/handle/10150/297778> (finding that institutional investors value LGBT-supportive corporate policies as evaluated by stock price increases after release of the LGBT Corporate Equality Index report by the Human Rights Campaign).

³⁴⁰ These findings are based on data generated from the 2015 U.S. Transgender Survey, which was conducted by the National Center for Transgender Equality. To find out more about the U.S. Transgender Survey, visit <http://www.ustranssurvey.org>. The USTS was based on a national convenience sample of 27,715 transgender and gender non-conforming people. Additional calculations for this report were completed by the authors at The Williams Institute.

³⁴¹ We use prevalence findings from the U.S. Transgender Survey (USTS), coupled with estimates of the size of the transgender population in Ohio (reported in Section I.A.), to estimate the number of transgender adults in Ohio who have experienced anti-transgender bias in employment. SANDY JAMES ET AL., *supra* note 113 AT 12. We use data from the Henry J. Kaiser Foundation to estimate state spending per Medicaid enrollee in Ohio. Henry J. Kaiser Family Foundation, Ohio: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2014 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D>.

Figure 15. Employment discrimination due to anti-transgender bias among Ohio USTS respondents who had or applied for a job in the past year (N=941)



Source: U.S. Transgender Survey, 2015

Job loss, including due to anti-transgender bias, can result in economic insecurity and loss of a variety of benefits, such as health care coverage. People who experience job loss may become eligible for and enroll in Medicaid. Estimates from the Centers for Medicare and Medicaid Services indicate that as of June 2018, more than 2.3 million people were enrolled in Medicaid or the Children’s Health Insurance Program (CHIP) in Ohio.³⁴²

Based on findings from the U.S. Transgender Survey, we estimate that 15.6% of transgender adults in Ohio who have ever lost a job due to anti-transgender bias are currently enrolled only in Medicaid. An estimated 12.3% of transgender adults in Ohio who have never experienced such discrimination are enrolled only in Medicaid. We attribute the difference in Medicaid enrollment between these two groups (3.3%) to the elevated need for Medicaid coverage resulting from employment discrimination based on gender identity. Applying this figure to the population of transgender adults in Ohio who have ever held a job and then lost a job because of transgender bias, we estimate that 189 transgender people in Ohio have enrolled in Medicaid because of employment discrimination based on gender identity.³⁴³ In 2014, average state spending per Medicaid enrollee in Ohio was approximately \$2,370.³⁴⁴ Therefore, we

³⁴² Medicaid & CHIP in Ohio, Center for Medicare and Medicaid Services, Medicaid.gov, <https://www.medicaid.gov/state-overviews/stateprofile.html?state=virginia> (last visited June 14, 2019).

⁴¹⁸ According to the USTS, approximately 17.3 percent of transgender adults in Ohio who have ever worked at a job or business have experienced job loss due to anti-transgender bias. By applying this estimate to the number of transgender adults in Ohio who have ever worked at a job or business (an estimated 83.4 percent of the population of transgender adults in Ohio, or 33,302), it is possible to estimate the number who have lost a job because of anti-transgender bias (5,761). Multiplying this figure by 3.3 percent yields 189 transgender adults who have enrolled in Medicaid due to job loss resulting from anti-transgender bias in Ohio.

³⁴⁴ Medicaid per enrollee figure available at Henry J. Kaiser Family Foundation, New York: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2014 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22collid%22:%22Location%22,%22sort%22:%22asc%22%7D> (last accessed June 14, 2019). Further calculations to determine the state proportion of expenditures, based off of the 2014 Federal Medical Assistance Percentage or FMAP (63.0%), were conducted by the authors. It is unclear how changes since 2014 have impacted the per-enrollee state expenditure for Medicaid. Ohio adopted Medicaid expansion under the Patient Protection and Affordable Care Act (ACA) in 2014 prior to data collection in the USTS. USTS data from Ohio residents, therefore, reflect the higher Medicaid enrollment rates that followed the enactment of Medicaid expansion in the state.

estimate that employment discrimination experienced by transgender adults on the basis of gender identity costs Ohio approximately \$256,000 annually in state Medicaid expenditures.

ECONOMIC IMPACT OF LGBT HEALTH DISPARITIES

Poor health “can affect people’s ability to be productive at work, reduce labor force participation when people cannot work, and burden public health care funds when individuals rely on emergency care rather than regular or preventative care.”³⁴⁵ For these reasons, poor health, in general, imposes costs on employers and governments.³⁴⁶ When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.³⁴⁷

To illustrate the cost savings that would result from eliminating health disparities facing LGBT people in Ohio, we followed a model used by Canadian research organization Community – University Institute for Social Research (CUISR). CUISR estimated the costs associated with LGB health disparities in Canada through a four-step method:

- Determining prevalence for health outcomes for LGB and non-LGB populations.
- Subtracting the prevalence for non-LGB populations from that for LGB populations.
- Multiplying the difference in prevalence by the total LGB population to determine the number of LGB people who would have not had those health outcomes if the rates were the same.
- Multiplying the excess number of LGB people with each health outcome by the annual cost per affected person associated with the outcome as drawn from existing research.

In this report, we used CUISR’s method to estimate the costs associated with higher prevalence of three health outcomes – major depressive disorder and smoking – in LGBT adults in Ohio. To the extent possible, we used data on these health outcomes and related costs specific to Ohio. Where we could not find reliable cost data for these health outcomes at the state-level, we used national data as a proxy.

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of Ohio for LGBT people would reduce observed disparities by a fraction. This is consistent with the 2009 Hatzenbuehler et al. study described above, in which health disparities for LGB people related to mood and alcohol use disorder were lower in states with more supportive laws, but were still present.³⁴⁸

³⁴⁵ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 304.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ Hatzenbuehler, Keyes & Hasin, *supra* note 268 at 2277.

Specifically, we assume a range of a 25% to 33.3% reduction in the *disparity* between LGBT and non-LGBT people on each outcome could be achieved if the state were to move towards extending legal protections and improving the social climate for LGBT people. This range is a conservative assumption based on our review of the best available research on LGBT-health disparities in LGBT-supportive and unsupportive environments including the 2009 and 2010 Hatzenbuehler et al. studies.

Further, we note that there may be significant overlap in the costs that we estimate because some people may both have depression and smoke, and the costs associated with each condition may overlap. For this reason, our estimates are not intended to be cumulative, but rather to illustrate that significant cost savings could result if the disparity observed for any one of these health outcomes were reduced.

Excess Costs Associated with Major Depressive Disorder (MDD) Among LGBT People

In order to best estimate the annual costs associated with MDD, we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004-2005 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.³⁴⁹ Given the limited data about MDD among transgender people, we assume, for purposes of our analysis, that transgender people have the same rate of MDD as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.³⁵⁰

Applying the percentage of excess prevalence of MDD among LGB people (18.0% - 8.1% = 9.9%) to Ohio's adult LGBT population (an estimated 389,300 adults)³⁵¹ indicates that there are approximately 38,500 more LGBT adults who have major depressive disorder in Ohio than would be expected in the general population. As shown in Table 3 below, we further estimate that if 25% to 33.3% of the sexual orientation and gender identity disparity were reduced by improving the social climate for LGBT people, there would be between 9,600 and 12,800 fewer LGBT people living with MDD in the state.

To estimate the annual cost per person suffering from MDD, we drew from a 2015 study, *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*.³⁵² The study found that

³⁴⁹ Id. at 2279. For an explanation of how major depressive disorder is determined on the NESARC see U.S. Alcohol Epidemiologic Data Reference Manual, Alcohol Use and Alcohol Use Disorders in the United States, A 3-Year Follow-Up: Main Findings from the 2004-2005 Wave 2 National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), 19 (2010), https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf.

³⁵⁰ E.g., George R. Brown & Kenneth T. Jones, *Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study*, 3 LGBT HEALTH 122 (2016).

³⁵¹ See Section I.A.1, *supra*.

³⁵² Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLIN. PSYCHIATRY 155 (2015). Greenberg et al. used data from the National Survey on Drug Use and Health to identify people who met the diagnostic criteria for a major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with major depressive disorder (and compared to a control group). Similarly, the prevalence

the annual total cost of MDD, nationwide, in 2010 was \$210.5 billion. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with MDD, we divided the total cost by the number of adults with the condition in 2010.³⁵³ Next, we adjusted the cost per person with MDD in 2010 for inflation.³⁵⁴ In inflation-adjusted dollars, the 2019 cost per person with MDD was \$16,239.³⁵⁵

For the reasons described above, we estimate that Ohio may be able to reduce the disparity in MDD between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with MDD in Ohio of approximately \$155.9 to \$207.9 million.

Table 3. Reduction in Costs Associated with MDD in Ohio if LGBT Disparity Was Reduced

Reduction in disparity between LGBT and non-LGBT people in Ohio	LGBT individuals impacted	Annual reduction in costs (millions)
25%	9,600	\$155.9
33.3%	12,800	\$207.9

Excess Costs Associated with Smoking among LGBT People

Our analysis of Ohio’s 2017 BRFSS data found that 33.2% of LGBT respondents were current smokers, compared to 20.6% of non-LGBT respondents. Applying the percentage (12.6%) of excess prevalence of smoking among LGBT people in Ohio to the state’s LGBT population (389,300 adults)³⁵⁶ indicates that there are approximately 49,100 more LGBT people who currently smoke in Ohio than would be expected in the general population.

A 2010 study estimated the annual costs per current smoker in Ohio to be \$7,170.29.³⁵⁷ The total included costs from workplace productivity losses (\$1,504.78), medical care costs (\$2,708.56), and

of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

³⁵³ The study found that, in 2010, 15,446,771 adults in the U.S. suffered from major depressive disorder. *Id.* Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

³⁵⁴ To adjust for inflation, we used the U.S. Bureau of Labor Statistics’ inflation calculator available at CPI Inflation Calculator, U.S. Bureau of Labor Stats., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Oct. 18, 2019).

³⁵⁵ We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).

³⁵⁶ See Section I.A. *supra*.

³⁵⁷ JILL S. RUMBERGER, CHRISTOPHER S. HOLLENBEAK, & DAVID KLINE, POTENTIAL COSTS OF SMOKING CESSATION: AN OVERVIEW OF THE APPROACH TO STATE SPECIFIC ANALYSIS (2010), <http://www.lung.org/assets/documents/tobacco/economic-benefits.pdf>.

premature death (\$2,956.95).³⁵⁸ We adjusted for inflation³⁵⁹ to estimate that the 2019 cost per current smoker in Ohio is \$8,489.64.

For the reasons described above, we estimate that Ohio may be able to reduce the disparity in current smoking between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with smoking in Ohio of approximately \$104.4 to \$139.2 million.

Table 4. Reduction in Costs Associated with Smoking in Ohio if LGBT Disparity Was Reduced

Reduction in disparity between LGBT and non-LGBT people in Ohio	LGBT individuals impacted	Annual reduction in costs (millions)
25%	12,300	\$104.4
33.3%	16,400	\$139.2

If Ohio were to extend legal protections to LGBT people and if social acceptance of LGBT increased, the state would likely see improvements in the health of LGBT people. Furthermore, consideration of just two health disparities for LGBT people in the state – MDD and smoking – suggests that Ohio would see hundreds of millions of dollars in returns on both savings associated with reduced health care and social service costs and in greater productivity.

³⁵⁸ Id. at 168-69.

³⁵⁹ To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Nov. 23, 2016).

ECONOMIC IMPACT OF BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

School-based bullying and harassment of LGBT youth is pervasive³⁶⁰ and associated with an increased likelihood of school dropout,³⁶¹ poverty,³⁶² and suicide.³⁶³ Educational attainment, especially high school completion, is a significant determinant of economic status and health across the life course.³⁶⁴ As a result, early experiences of harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."³⁶⁵

Laws in Ohio do not adequately protect LGBT youth from bullying and harassment in schools.³⁶⁶ To the extent the state's legal landscape and social climate foster an environment that is not inclusive of LGBT youth, the state is likely to experience losses in human capital, as well as costs associated with an overrepresentation of LGBT youth in foster care, the juvenile justice system, and among those experiencing homelessness. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

School Outcomes

Research shows that bullying can lead to skipping school and low academic performance among LGBT youth. Several studies, relying on representative samples of youth, found that LGB students were more likely than non-LGB students to skip school as a result of feeling unsafe. According to 2017 YRBS data, LGB students in Cleveland were more than twice as likely as heterosexual students to report skipping

³⁶⁰ See, e.g., Kate L. Collier, Gabriël van Beusekom, Henny M.W. Bos & Theo G.M. Sandfort, *Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychological and Health Outcomes*, 50 J. SEX ROLES 299 (2013); Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 J. ADOLESCENT HEALTH 366 (2010); Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth Risk Behavior Surveillance, Selected Sites, United States, 2001–2009*, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 11 (2011); JOSEPH G. KOSCIW ET AL., GLSEN, *THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS* (2015), <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>; EMILY A. GREYAK, JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, GLSEN, *HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS* (2009), available at <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

³⁶¹ Jorge Srabstein & Thomas Piazza, *Public Health, Safety and Educational Risks Associated with Bullying Behaviors in American Adolescents*, 20 INT. J. ADOLESCENT MED. HEALTH 223 (2008).

³⁶² Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 ECONOMICS EDUC. REV. 387 (2008).

³⁶³ Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 INT. J. ADOLESCENT MED. HEALTH 133 (2008).

³⁶⁴ John Lynch & George Kaplan, *Socioeconomic Factors*, in *SOCIAL EPIDEMIOLOGY* 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

³⁶⁵ M.V. Lee Badgett, Sheila Nezhad, Kees Waaldijk & Yana van der Meulen Rodgers, *supra* note 304 at 26.

³⁶⁶ See Section I.B., *supra*.

school because they felt unsafe (15.5% v. 7.5%).³⁶⁷ Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB³⁶⁸ high school students reported significantly higher rates of skipping school because they felt unsafe.³⁶⁹ And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGBQ students were almost three times as likely to report not going to school because of safety concerns as their heterosexual counterparts.³⁷⁰

Studies based on convenience samples also indicate that many LGBT youth skip school due to bullying and harassment. A 2009 report by the National Education Association found that, nationwide, approximately half of LGBT students who said that they experienced frequent or severe verbal harassment because of their sexual orientation or gender identity missed school at least once a month, and around 70% who said they experienced frequent or severe physical harassment missed school more than once a month.³⁷¹ The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.³⁷² In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 14% said the harassment was so severe that they had to leave school as a result.³⁷³ Other studies have found that bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism for these students.³⁷⁴

Overrepresentation in State Systems and Services

Challenging environments at home and at school contribute to an overrepresentation of LGBT youth in the child welfare system, the population of youth experiencing homelessness, and the juvenile justice

³⁶⁷ Kann et al., *supra* note 6 at 172.

³⁶⁸ The study defined LGB students as those students who reported in response to the survey that they had sexual contact with others of the same-sex or both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 AM. J. PUBLIC HEALTH, 255, 256 (2014).

³⁶⁹ *Id.*

³⁷⁰ Kann et al., *supra* note 6 at 12.

³⁷¹ ROBERT KIM, NATIONAL EDUC. ASSN., REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEPPING OUT OF THE CLOSET, INTO THE LIGHT 30 (2009), <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

³⁷² *Id.*

³⁷³ NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASK FORCE, *supra* note 119.

³⁷⁴ E.g., Joseph P. Robinson & Dorothy L. Espelage, *Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice*, 41 EDUC. RESEARCHER 309 (2012); Alicia L. Fedewa & Soyeon Ahn, *The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature*, 7 J. GLBT FAMILY STUDIES 398 (2011); Shelley L. Craig & Mark S. Smith, *The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth*, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>; MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <http://www.mass.gov/cgly/YRBS09Factsheet.pdf> (last visited May 3, 2019); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 SOC. PROBLEMS 523 (2007); Stephen T. Russell, Hinda Seif & Nhan L. Truong, *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 J. ADOL. 111 (2001).

system. In addition to the human toll, there are costs to government and social service systems created by the overrepresentation of LGBT youth in these systems.³⁷⁵

LGBT youth are overrepresented in the foster care system; 19% of youth in foster care in Los Angeles County are LGBT, 2-3 times their proportion of the general youth and young adult population.³⁷⁶ Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.³⁷⁷ Of those who age out of foster care: more than 1 in 5 will experience homelessness after age 18; 1 in 4 will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19 year olds); fewer than 3% will earn a college degree by age 25 (compared to 28% of all 25 year olds); and at the age of 24, only half will be employed.³⁷⁸

In response to surveys conducted in 2012 and 2015, homeless youth service providers across the U.S. estimated that between 20% and 40% of their clients were LGBT.³⁷⁹ A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth in public high school, were experiencing homelessness, compared to 3% of heterosexual youth.³⁸⁰ Similarly, a 2015 survey of youth in Atlanta, Georgia experiencing homelessness, found that 28.2% of the respondents identified as LGBT.³⁸¹

Data from the National Survey of Youth in Custody indicates that 12.2% of youth in custody identify as LGBT.³⁸² Another study found that LGBT youth made up 15% of detained youth.³⁸³ Research has shown that LGBTQ youth are more likely to be detained for offenses such as running away, truancy, curfew

³⁷⁵ For an example of costs to the foster care system due to the overrepresentation of LGBT youth in foster care, and their increased likelihood of having multiple placements and being in congregate care, see BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST., *SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES* 41 (2014).

³⁷⁶ *Id.* at 6.

³⁷⁷ *Id.* (finding that LGBTQ youth in foster care have a higher total number of placements, are more likely to be in congregate care, and are more likely to have experienced homelessness).

³⁷⁸ Jim Casey Youth Opportunities Initiative, Issue Brief: Cost Avoidance: The Business Case for Investing in Youth Aging out of Foster Care 5 (2013), http://www.jimcaseyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%206.pdf.

³⁷⁹ LAURA DURSO & GARY J. GATES, WILLIAMS INST., *SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICES PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS* 3 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; SOON KYU CHOI, BIANCA D.M. WILSON, JAMA SHELTON & GARY J. GATES, WILLIAMS INST., *SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH EXPERIENCING HOMELESSNESS* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. See also WILSON ET AL., *supra* note 375.

³⁸⁰ Heather L. Corliss, Carol S. Goodenow, Lauren Nichols & S. Bryn Austin, High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample, 9 AM. J. PUB. HEALTH 1683 (2011).

³⁸¹ AYCNA 2016 Key Findings, Atlanta Youth Count, <http://atlantayouthcount.weebly.com/2016-key-findings.html> (last visited Nov. 29, 2016).

³⁸² Allen J. Beck & David Cantor, Bureau of Justice Stats., U.S. Dep't of Justice, Sexual Victimization in Juvenile Facilities Reported by Youth, 2012 at 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

³⁸³ Laura Garnette et al., *Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth and the Juvenile Justice System*, in *JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE* 162 (Francine T. Sherman & Francine H. Jacobs eds., 2011).

violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.³⁸⁴ Other studies have shown that in some instances, LGBT youth have been punished for defending themselves against their harassers,³⁸⁵ and there is evidence of selective enforcement against LGBT youth.³⁸⁶

Collectively, school-based harassment and family rejection contribute to significant “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”³⁸⁷ For example, nationally, the Jim Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual cohort.

³⁸⁴ Katayoon Majd, Jody Marksamer & Carolyn Reyes, Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts 71 (2009), http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf; SHANNAN WILBER, CAITLIN RYAN & JODY MARKSAMER, CHILD WELFARE LEAGUE OF AMERICA, BEST PRACTICE GUIDELINES FOR SERVING LGBT YOUTH IN OUT-OF-HOME CARE 4 (2006), <http://familyproject.sfsu.edu/sites/sites7.sfsu.edu.familyproject/files/bestpracticeslgbtyouth.pdf>.

³⁸⁵ MAJD ET AL., *supra* note 384 at 77.

³⁸⁶ Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

³⁸⁷ *Id.*

CONCLUSION

Ohio is home to an estimated 389,300 LGBT adults and 72,300 LGBT youth. LGBT people in Ohio lack important legal protections that have been extended in other states. For example, statewide statutes in Ohio do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Ohio also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Ohio ranks 25th in the nation on public support for LGBT rights and acceptance of LGBT people.

Ohio's legal landscape and social climate contribute to an environment in which LGBT adults experience stigma and discrimination in employment and other areas, and LGBT youth experience bullying in schools and family rejection. Such experiences have a negative impact on LGBT individuals in terms of health and economic stability, which in turn have economic consequences for the state. If Ohio were to take steps toward a more supportive legal landscape, the state's economy would likely benefit.