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Addressing the Mental Health Needs of LGBTQ Youth in the Juvenile Justice System

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While growing awareness of the unmet mental health needs of LGBTQ youth populations has prompted calls for greater emphasis on health equity, efforts have largely overlooked glaring inequities affecting LGBTQ youth who become involved with the justice system. The disproportionality of juvenile justice system involvement for LGBTQ youth is a public health concern that merits focused attention and advocacy from child and adolescent mental health professionals. The proportion of incarcerated youth in the juvenile justice system who are LGBTQ is twice that of LGBTQ youth in the general adolescent population.¹ Disparities are even more pronounced for girls—40% of incarcerated girls identify as LGB and/or report same-sex attraction.² Furthermore, gender and sexuality dimensions intersect with racial and ethnic identities for many youth involved in the justice system. In fact, 85%-90% of incarcerated LGBTQ youth are from ethnic or racial minority backgrounds.^{2,3} Thus, we call for attentiveness to the intersectional inequities facing LGBTQ youth involved in the justice system and offer solutions for improving their mental health outcomes. Child and adolescent mental health professionals can change trajectories of LGBTQ youth through clinical work that addresses modifiable risk factors facing LGBTQ youth, targeted research efforts on the experiences of LGBTQ youth in justice settings as well as intervention studies, and legislative advocacy that provides protective and appropriate services to LGBTQ youth across various justice system touchpoints.

INTERSECTIONALITY OF LGBTQ AND RACIAL/ETHNIC IDENTITIES IN JUSTICE INVOLVEMENT

The reasons for the overrepresentation of LGBTQ youth in justice settings are complex and multilayered. LGBTQ youth face chronic and socially embedded stressors related to sexual orientation, gender identity, and gender expression (SOGIE), creating experiences of adversity that compound over time to produce negative self-regard and poorer health and social outcomes. LGBTQ adolescents are at increased risk of experiencing discrimination,

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social stigma, family rejection, and abuse. As a result, they have higher rates of housing instability, child welfare contact, homelessness, posttraumatic symptoms, substance use, and high-risk sexual behaviors.^{3,4} LGBTQ youth also experience high rates of harassment and bullying and harsher discipline in school settings, which contribute to higher dropout rates.⁵ While on the streets, LGBTQ youth may engage in risky behaviors that put them at risk for contact with law enforcement and further victimization, including survival sex and other forms of commercial sexual exploitation. LGBTQ youth are also at greater risk for intrafamilial and extrafamilial child maltreatment, which increases their contact with the child welfare system, an independent risk factor for justice involvement.⁶ In fact, 23% of LGBTQ youth in detention previously lived in a group or foster home compared with 3% of heterosexual cisgender youth.³ It is important to note that risk is not uniform among LGBTQ populations; existing data show that transgender and gender diverse youth experience higher rates of out-of-home placements compared with LGB cisgender peers, all of which increase risk of justice involvement as well as poor health outcomes.

Youth of color experience profound inequities in the justice system. For LGBTQ youth of color, marginalization based on SOGIE intersects with racial/ethnic identity-based discrimination to potentiate risk for justice involvement. LGBTQ youth are greatly overrepresented in detention settings, and Black and Latinx youth account for the vast majority of detained LGBTQ youth (85%), with the most striking disparity occurring with LGB girls of color.³ In a large national sample of incarcerated youth, LGB girls were twice as likely as their heterosexual peers to be Latinx.² A survey of California detention facilities yielded comparable findings, as 19% of all incarcerated youth were LGBTQ, and 90% of LGBTQ youth were also minoritized based on racial/ethnic identity.⁷ Unmistakably, LGBTQ youth of color experience more risk factors for juvenile justice involvement than LGBTQ White youth. They are more likely to experience victimization by peers and parents and housing instability, while having fewer connections with supportive adults or resources that attend to psychosocial and behavioral health needs.⁸ Each of these factors potentiates risk for child welfare involvement and homelessness, in addition to risk of justice system involvement, which often interplay in a loop of systems involvement.

CHALLENGES FOR LGBTQ YOUTH THROUGHOUT JUSTICE SYSTEM TOUCHPOINTS

LGBTQ youth, and especially Black and Latinx LGBTQ youth, face an increased risk of justice involvement across all touchpoints of the juvenile justice system. To start, these youth are more likely to have initial contact with law enforcement, leading to entry into justice systems and entrapment into “no exit” cycles of incarceration.⁹ A longitudinal study found that adolescents who identified as LGB or had same-sex attractions were more likely than heterosexual peers to be stopped by police, to be expelled from school, or to be arrested for the same behaviors.¹⁰ Furthermore, Black transfeminine youth who experienced anti-transgender victimization in school, school expulsion, or denial of enrollment were 4-9 times more likely to be incarcerated than peers who did not face school-based victimization.¹⁰ LGBTQ youth are regularly profiled by police and subjected to discriminatory policing, including harassment by police officers and arrests for sex offenses.¹ National data show that

LGB youth are 125%-300% more likely to be stopped by police, arrested before age 18, and convicted, with the most notable inequities occurring among LGB girls.¹¹ LGBTQ youth, particularly LGBTQ youth of color, are also more likely to be arrested for minor offenses, such as loitering, littering, and public intoxication than heterosexual cisgender youth.^{1,12}

LGBTQ youth also face bias and harsher treatment throughout multiple stages of legal proceedings and contact. Upon arrest, they are more likely than heterosexual cisgender peers to be detained before sentencing and to receive harsher charges due to authorities pathologizing their sexual orientation and/or gender identity.¹³ The exercise of prosecutorial discretion in formulating charges and sentencing recommendations reflects notable bias against LGBTQ youth and compounds disadvantages faced by LGBTQ youth of color. Anti-LGBTQ bias among some defense attorneys representing LGBTQ youth may further impede their representation.¹ Differential treatment by judges also occurs; LGBTQ youth, and girls in particular, are more likely to be convicted of crimes both as juveniles and as adults and to receive harsher sentencing outcomes compared with heterosexual cisgender youth.¹¹ In sum, all LGBTQ youth, and especially LGBTQ youth of color, experience disproportionality along the justice involvement continuum—from arrest to sentencing and incarceration.

While detained, many LGBTQ youth face heightened challenges that can negatively impact their mental health, including a high risk of physical, emotional, and sexual trauma. LGBTQ youth report higher rates of peer sexual assault and higher rates of sexual contact with staff while detained.¹⁴ In a study by the US Department of Justice, 10.3% of LGBTQ youth reported peer sexual assault compared with 1.5% of heterosexual cisgender youth.¹⁵ Although needed actions to protect detained LGBTQ youth have been identified and codified through the Prison Rape Elimination Act (PREA) and a subsequent memorandum on PREA implementation by the Obama Administration,¹⁶ SOGIE policies and procedures in detention facilities remain highly inconsistent.¹⁷

Limited oversight within detention facilities, inadequate staff training, and housing placements contribute to the failure of detention facilities to adequately protect LGBTQ youth. Transgender and gender diverse youth, in particular, face ongoing challenges regarding appropriate and safe placement, as facilities in many jurisdictions force youth to be housed based on their genitals and/or in segregated units. A 2017 study of state policies found that only 21 states and the District of Columbia include SOGIE in nondiscrimination protections within juvenile justice systems, and 43 states require no training in SOGIE topics for correctional facility staff.¹⁸ Furthermore, a lack of access to supportive services as well as LGBTQ-affirming medical and mental health care potentiate health inequities during incarceration and reentry. For example, practices regarding continuation or initiation of hormone treatment for transgender youth vary widely, despite growing evidence that gender-affirming care positively impacts mental health. Additionally, a lack of community placement options and services after release for LGBTQ youth often leads to a longer detention or incarceration period and impedes healthy reintegration.¹

PRIORITIES AND SOLUTIONS

The striking inequities facing LGBTQ youth illustrate the urgency to address the needs of LGBTQ youth across all justice system settings and reverse trends that perpetuate incarceration. Policies and services that address underlying gender- and sexuality-based discrimination and the marginalization of LGBTQ youth across school, community health, and out-of-home care settings can reduce the entry of LGBTQ youth into juvenile justice settings. Concurrently, the provision of sensitive, supportive mental health care and social services improves safety and well-being of LGBTQ youth across the life span. Lastly, the inclusion of gender identity data among state and federal youth surveys and the prioritization and funding of research into discrimination and risk factors among LGBTQ youth can inform future education, clinical, and advocacy efforts.

Pediatric mental health professionals are uniquely positioned to recognize and respond to the intersecting risk factors that lead to the overcriminalization and poor mental health outcomes of LGBTQ youth. Furthermore, mental health, medical care, and reentry policies and programs have the potential to support LGBTQ youth involved in the justice system in building a future and recovering from trauma. In line with the mission of the American Academy of Child and Adolescent Psychiatry (AACAP), we present recommended priorities for advocacy, education, clinical care, and research aimed at improving the mental health outcomes of LGBTQ youth involved in the justice system (Table 1). These priorities are relevant to community and correctional mental health clinicians as well as trainees, medical educators, researchers, and policymakers.

CONCLUSION

The overcriminalization of LGBTQ youth—principally LGBTQ youth of color—reflects unaddressed structural racism and chronic, pervasive socially based stigma, discrimination, and victimization based on gender and sexual identity. Identity-based rejection and marginalization set off a cascade of risk factors for incarceration across the life span, including school dropout, homelessness, and high-risk survival behavior. Fortunately, many of these recognizable risk factors are modifiable across justice system touchpoints, and LGBTQ youth often demonstrate remarkable resilience. Child and adolescent mental health professionals are uniquely positioned to address modifiable risk factors within social systems through advocacy, education, clinical, and research efforts, thereby changing LGBTQ youth trajectories and reducing justice system involvement.

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TABLE 1

Priorities for Mental Health Professionals for Improving Outcomes for LGBTQ Youth Impacted by the Juvenile Justice System

Advocacy

Schools
Evidence-based school policies and procedures that promote youth engagement and retention, including minimization of expulsion and harsh discipline and provision of supportive mentors and spaces for LGBTQ youth
Community programs
Resource allocation to community programs and centers that provide mentoring and safe activities for LGBTQ youth
Training
Required training on affirming language and practices for government-funded workers who interact with at-risk LGBTQ youth in school, community, and out-of-home care settings
Community mental health
Increased funding for affirming, sensitive mental health services for LGBTQ foster and unhoused youth
Training

Required training for police officers, child welfare staff, court personnel, and detention facility staff on LGBTQ-sensitive practices^a

PREA Implementation

Implementation of the 2012 PREA^b regulations on SOGIE-inclusive practices for screening, placement, and body searches

Policy

Additional legislation regulating access to appropriate clothing and garments (eg, binders, tuckers) and LGBTQ-affirming medical and mental health care in custody (eg, services that follow standards for evidence-based care)

Education for mental health providers

Gender and sexuality development across the life span, including normalization of diverse identities and nonbinary conceptualizations of gender

Social stress and public health models that accurately explain the impacts of cumulative toxic stress related to intersecting marginalized identities, discrimination, and stigma on health behaviors/outcomes

Affirming communication practices for care settings (eg, SOGIE terminology, use of name and pronouns, and responses to disclosure of identity)

Sensitive history taking that integrates sexual attraction and behaviors, gender identity and expression, and risk and protective factors and avoids identity-driven stereotypes or pathologization

Implementation of trauma-informed practices that promote shared decision making and empowerment throughout care systems

Clinical

Correctional providers

Screening with standardized instrument such as the MAYSI-2,¹⁹ with particular focus on depression and suicide risk factors; early identification of mental health symptoms and risk factors for victimization (including SOGIE); ensuring confidential, safe spaces for screening and care; and screening for abuse and trauma and reporting to proper authorities to ensure safety of youth

Community providers

Screening for abuse and trauma, addressing key risk factors such as substance use, school disengagement, housing insecurity, and sexual activity during clinical care; discussing sexuality and gender development throughout care; maintaining patient confidentiality related to SOGIE; and collaborating with pediatricians, schools, and family members where appropriate

Research

Inclusion of gender identity in state and federal youth surveys and assessments to better characterize identity-related risk and protective factors

Data collection on the experiences and outcomes of LGBTQ youth across justice touchpoints

Analyses of pilot programs implementing affirming training and protocols

Analysis of data on sexual victimization within facilities collected by the Bureau of Justice Statistics annually under PREA (eg, National Survey of Youth in Custody)

Professional societies can promote these research efforts and publish standards of care related to treatment of LGBTQ youth in detention

Note: MAYSI-2 = Massachusetts Youth Screening Instrument-2; PREA = Prison Rape Elimination Act; SOGIE = sexual orientation, gender identity, and gender expression.

^a A limited number of training programs exist, such as the Equity Project Toward Equity Training Curriculum for juvenile justice professionals.

^b Despite the 2012 PREA and a subsequent memorandum on PREA implementation issued by the Obama Administration,¹⁴ SOGIE policies and procedures in detention facilities remain highly inconsistent.¹⁵ PREA regulations concerning LGBTQ youth include safe and private screenings at entry points that include discussion of SOGIE and risk factors for victimization and perpetration; housing unit assignments based on individualized assessment and gender identity, not genitals; integration of LGBTQ youth into youth detention populations (eg, no placement into adult facilities, solitary confinement, or segregated LGBTQ-only units); and least intrusive practices for body searches.