



**THE PRIDE JUSTICE RESOURCE CENTER**  
The National Resource Center on Justice-Involved LGBTQ2S+ Youth

# The Importance of Judges Knowing a Youth's LGBTQ2S+ Identity and the Outcomes of LGBTQ2S+ Youth in the Juvenile Justice System

## Introduction

Judges play a crucial role in the lives of young individuals who are involved in the Juvenile Justice System. In the pursuit of fairness and rehabilitation, judges should be aware of a youth's LGBTQ2S+ identity. Research has shown that this population is at increased risk of suicide, depression, increased anxiety, and other negative mental health outcomes. For example, the Trevor Project has found that more than half of transgender and nonbinary youth have considered suicide<sup>1</sup>. While in care, this population is also at higher risk to experience violence and harassment. The Prison Rape Elimination Act (PREA) set some basic standards for the treatment of incarcerated LGBTQ2S+ youth, such as establishing that transgender and intersex youth should be involved in the determination the best placement for them and their placement should be reflective of their safety concerns. Further, in 2022, the Department of Justice's Civil Rights Division clarified that in accordance with the Supreme Court's holding in

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<sup>1</sup> The Trevor Project. (2021). 2021 National Survey on LGBTQ Youth Mental Health. West Hollywood, California: The Trevor Project. For additional information please contact: [Research@TheTrevorProject.org](mailto:Research@TheTrevorProject.org).

Bostock v. Clayton County statutes that prohibit discrimination on the basis of sex include protections on the basis of sexual orientation, gender identity, and intersex traits based on Agencies need to ensure that the collection of all demographic data, including sexual orientation and gender identity (SOGI), is reflected in policy and practices.

This summary explores the reasons why judges' knowledge of a youth's LGBTQ2S+ status and the overall court's outcome data regarding LGBTQ2S+ youth is paramount in the juvenile justice system and how it can contribute to a more just and equitable process for LGBTQ2S+ young people.

## Addressing Disproportionate Involvement

LGBTQ2S+ youth are overrepresented in the juvenile justice system, often due to factors like family rejection, discrimination, or homelessness. Analysis of the federal National Survey of Youth in Custody, by the Williams Institute, found that 39% of girls and 3.2% of boys in juvenile detention and correctional facilities self-identified as lesbian, gay, or bisexual compared to the estimated 7-9% of youth who identify as LGBTQ2S+ nationally<sup>2</sup>. Likewise, the number of transgender youth in juvenile detention has been reported at higher rates compared to the general population<sup>3</sup>. Recognizing a youth's LGBTQ2S+ identity and assessing court outcome data allows judges to better understand the systemic issues that contribute to their disproportionate involvement and take appropriate action to address these underlying problems.

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<sup>2</sup> Wilson et al., "Disproportionality and Disparities among Sexual Minority Youth in Custody," Journal of Youth & Adolescence, 2017

<sup>3</sup> Center for American Progress. (2017). Unjust: LGBTQ+ Youth incarcerated in the juvenile justice system. Retrieved from <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>.

## Fostering Fairness and Impartiality

One of the primary reasons judges should know a youth's LGBTQ2S+ identity is to foster fairness and impartiality within the juvenile justice system. Awareness of a youth's sexual orientation or gender identity can help judges challenge their own biases and ensure equitable treatment for all young individuals, regardless of their LGBTQ2S+ status. This knowledge can also help them ensure that anti-LGBTQ2S+ stigma or biases were not the underlying or direct basis for arrest and court referral. With SOGI data, courts and judges can also assess how LGBTQ2S+ youth outcomes in the juvenile justice system differ from heterosexual and/or cisgender youth.

## Providing Appropriate Services

LGBTQ2S+ youth may have unique needs and vulnerabilities that must be addressed for effective rehabilitation. Judges who are aware of a youth's LGBTQ2S+ identity can ensure that the necessary services, such as mental health support, counseling, or gender-affirming care, support groups, and family support programs are provided to help them successfully reintegrate into society. Knowing LGBTQ2S+ youth's identities may also shine a light on why certain programs, group homes, or foster parents might cause additional harm to LGBTQ2S+ youth.

## Preventing Discrimination and Harassment

LGBTQ2S+ youth often face discrimination and harassment, both within the justice system and in detention facilities. When judges are informed about a youth's LGBTQ2S+ status, they can take proactive measures to protect them from harm, ensuring that they are treated with dignity and respect while in the system. Judges should also be well-informed about the legal protections and rights of LGBTQ2S+ youth. This knowledge enables them to ensure that these rights are upheld, providing LGBTQ2S+ youth with equal access to justice and protection under the law. Judges should be

aware of the data on discrimination and PREA complaints made by LGBTQ2S+ youth at all of the facilities they send LGBTQ2S+ youth to, as well as any harassment or discrimination claims made within the court.

## Ensuring Appropriate Placements

Placement decisions should be made based on the person's gender identity and where the young person feels most safe. PREA standards state that transgender and intersex placements should be made on a case-by-case basis and that youth should be involved in determining the best placement given their safety and vulnerability. Judges should be aware of how placement decisions are made at each of the facilities they send youth to and ensure those placement procedures are in line with PREA. Judges should also verify that the youth they refer to detention, group homes, and/or other secure facilities are placed where they feel safe.

## Supporting Rehabilitation and Reintegration

Effective rehabilitation is a core principle of the juvenile justice system. Understanding a youth's LGBTQ2S+ identity enables judges to tailor court orders to address any unique challenges or experiences related to their sexual orientation or gender identity, and to assess whether the service plans developed by case managers, probation officers, and detention facility staff is reflective of their strengths, barriers, and risk factors. This personalized approach can significantly enhance the chances of successful rehabilitation and reintegration. The services utilized by the system should also be analyzed to assess the outcomes of LGBTQ2S+ youth.

## Promoting Inclusivity

The juvenile justice system should be inclusive and affirming of all youth, regardless of their LGBTQ2S+ status. When judges are knowledgeable and respectful of a youth's sexual orientation or gender identity, it sends a powerful message of inclusivity, promoting a safer and more welcoming

environment for all young individuals involved in the system. This includes respecting the young person's stated name and pronouns in the court and following the young person's guidance around disclosure and privacy. Respecting a young person's guidance around disclosure and privacy will also require the judge and the juvenile court to assess how and when gender and sexual identity data is included or shared within open court rooms and publicly available court documents.

## Educating Stakeholders

Judges have the opportunity to educate other stakeholders within the juvenile justice system, such as probation officers, attorneys, and detention facility staff, about the unique needs and challenges faced by LGBTQ2S+ youth. This knowledge can lead to more informed decision-making and improved support for these individuals. Judges can also convene stakeholders to develop collaborative plans to ensure SOGI data is collected and assessed throughout the juvenile justice system to improve outcomes for LGBTQ2S+ youth.

## Reducing Recidivism

An understanding of a youth's LGBTQ2S+ identity can help judges address the root causes of delinquent behavior and provide appropriate interventions. This holistic approach can contribute to reducing recidivism rates among LGBTQ2S+ youth and supporting their long-term success. Collecting and assessing data on the re-arrest, re-adjudication, and re-incarceration rates of LGBTQ2S+ youth can provide indicators of the impact of bias on LGBTQ2S+ youth outcomes as well as identify which approaches, resources, and supports are having a positive impact on youth.

## Conclusion

Judges' awareness of a young person's LGBTQ2S+ identity and the outcomes of LGBTQ2S+ youth in the juvenile justice system is essential to uphold the principle of equal justice for all. This knowledge allows judges to address systemic disparities, provide tailored services, prevent discrimination, and promote inclusivity, ultimately working toward a more equitable and just juvenile justice system that respects the rights and dignity of all youth.



Funding for this publication was provided by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (15PJDP-22-GK-03104-TITL). Points of view or opinions expressed in this presentation are those of the contributor(s) and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice