

**In Defense of LGBT Youth:
Strategies to Help Juvenile Defenders Zealously Advocate for their LGBT Clients**
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Many lesbian, gay, bisexual, and transgender (LGBT) youth face abuse, rejection, and discrimination in their homes, schools, and communities. These experiences can place LGBT youth at risk of juvenile court involvement. Without a firm understanding of how sexual orientation and gender identity impact the experiences and needs of each LGBT youth they serve, juvenile justice professionals will struggle to effectively serve these youth and risk treating them unfairly. Since 2005, the Equity Project has been working to address these issues in an effort to bring much-needed attention to the needs and concerns of LGBT youth.²

In 2009, the Equity Project produced a report documenting the experiences of LGBT youth. *Hidden Injustice: LGBT Youth in Juvenile Courts* represents the first national effort to examine the treatment of LGBT youth in juvenile courts and provides guidance to professionals working in the juvenile justice system on the development of LGBT-sensitive practices and policies.³ The report's findings, based primarily on information gathered from LGBT youth and the professionals who work with them, reveal that bias and lack of understanding about LGBT youth often leads to denials of due process, disrespectful treatment by juvenile justice professionals, unnecessary detention, unduly harsh dispositions, and ineffective and harmful programs and services. While all juvenile justice professionals have legal and ethical duties to ensure fair and unbiased treatment of youth in juvenile courts, defense attorneys play a critical role in protecting the rights and safety of court-involved youth.⁴ This article highlights the recommendations from *Hidden Injustice* for juvenile defenders and presents strategies to help defense attorneys advocate for their LGBT clients as effectively as possible.

Defense Attorneys Must Zealously Defend their Clients and Respond to their Individual Needs

All youth accused of committing a crime have a constitutional right to counsel who will zealously defend them and protect their due-process rights.⁵ As national standards recognize, juvenile defenders are "essential to the administration of justice and to the fair and accurate resolution of issues at all stages of [the] proceedings."⁶ Specifically, juvenile defense attorneys have a duty to:

- Advocate for their clients' stated interests—not what the attorney believes is in their "best interests;"⁷
- Provide competent, diligent, and vigorous representation at all stages of juvenile court involvement;⁸
- Hold the juvenile justice system accountable to their clients and advocate for their fair and respectful treatment;⁹ and
- Ensure that their legal advocacy is tailored to their clients' individual needs.¹⁰

Unfortunately, not all defenders are meeting their legal and ethical responsibilities when representing LGBT youth. Juvenile defenders often fail their LGBT clients by advocating positions contrary to their client's expressed interests based on their own biases about sexual orientation and gender identity.¹¹ Other defenders avoid talking with youth about sexual orientation and gender identity because they are uncomfortable doing so and miss crucial information about their clients that is necessary for effective defense.¹² Many LGBT youth do not receive zealous advocacy at detention and disposition hearings, and many more do not have adequate post-disposition representation.¹³ Without zealous defense, LGBT youth often get pulled deeper into the system and spend significant portions of their adolescence in secure facilities where they are physically and emotionally unsafe.¹⁴ By implementing the following recommendations, juvenile defense attorneys will be better prepared to meet the legal and ethical duties owed to their LGBT clients and protect their clients' rights.

1. Approach all Clients in a Manner that Recognizes that Any Youth May Be LGBT.

Most of the defenders surveyed in *Hidden Injustice* were aware of representing only a handful of LGBT youth.¹⁵ In many of these cases, the defender perceived the youth to be LGBT but never directly addressed the topic with their client.¹⁶ Recent studies have found that close to 13% of youth in detention are LGBT or questioning.¹⁷ While many young people are openly LGBT in some areas of their lives, it is not likely that LGBT youth will immediately offer this information to their attorney. The role of juvenile defenders is not to determine whether or not each youth they represent is LGBT, but rather to approach all clients in a manner that recognizes that any youth *might be* LGBT, thus creating an atmosphere where LGBT youth will be comfortable sharing this information.

In order to develop meaningful attorney-client relationships with LGBT youth, defenders must be able to talk with youth about sexual orientation and gender identity.¹⁸ When defenders are unfamiliar with or uncomfortable talking about LGBT issues, youth can sense this and will likely shy away from sharing relevant information with their attorney, making it more difficult for the attorney to fully advocate on their behalf.¹⁹

Defenders can create a safe and open atmosphere for their clients by using the following techniques:

- Conduct initial interviews with clients in a setting that provides the greatest amount of privacy possible and without the clients' parents present, as many LGBT youth are not out to their parents.
- Avoid using language that assumes anything about a youth's sexual orientation or gender identity. For example, rather than asking a youth "Do you have a girlfriend?" ask "Do you have a boyfriend or girlfriend?" or "Are you dating or in a relationship with anyone?"
- Convey a nonjudgmental attitude and demonstrate an open mind when a client shares personal things about his or her life.
- Make sure clients understand what attorney-client confidentiality means.
- Ask open-ended questions and follow up with questions exploring the why behind the response.

- Signal openness and acceptance of LGBT people by placing LGBT-supportive posters, stickers, or pins on briefcases and in defender offices.

If defenders think that a youth is LGBT, they should raise the topic directly with their client rather than proceed based on an assumption. It is always appropriate to ask a youth if he or she is LGBT, but defenders need to be aware that if they have not yet developed a trusting relationship with their client, it is unlikely that the youth will share this information with them.²⁰ Regardless of when it happens, if a youth does disclose that he or she is LGBT, defenders should respond in a way that indicates they will fully advocate for their client and will not reveal the information in court or elsewhere without their client's knowledge and permission. In addition, defenders should talk with the youth about his or her experiences with family and at school and find out who else knows that the youth is LGBT.

When representing transgender and gender nonconforming youth, defenders should always ask what pronoun and name the youth prefers, and unless directed by the client to do otherwise, they should consistently use that name and pronoun, even if it differs from the youth's legal name.²¹ In addition, if the youth requests this, defenders should ask all other system professionals to refer to their client by the name and pronoun the youth prefers. And defenders should never refer to a transgender youth as "he-she" or "it" or allow other system professionals to do so. When representing a transgender youth, defenders should find out more about the client's gender history as early as possible, including whether the youth lives full time in their gender, whether the youth has a medical diagnosis of gender identity disorder (GID) and is undergoing treatment, and whether the youth is taking hormones – either prescribed or from the underground market – or if the youth wants to start taking hormones soon.²²

2. Talk with LGBT Clients about Any Experiences of Abuse, Discrimination, and Rejection and the Effect these Experiences Have Had on their Lives.

Lack of understanding about LGBT youths' life experiences undermines a defender's ability to build an effective attorney-client relationship and to present the strongest possible defenses on their clients' behalves.²³ To provide effective representation, defenders must understand the ways in which sexual orientation and gender identity impact the experiences of a particular LGBT client, both within and outside the system.²⁴ While a youth's sexual orientation and gender identity are not necessarily relevant in every case, defenders should keep in mind the numerous ways in which their client's LGBT identity could be relevant and be prepared to proceed appropriately.²⁵

Unfortunately, many LGBT youth experience harassment, discrimination, violence, and rejection at home, school, and in the community due to their identity.²⁶ These experiences can negatively impact adolescent development and lead to family rejection and school victimization, which increases the likelihood of entering the juvenile justice system.²⁷ When defending an LGBT youth, attorneys need to identify what, if any, effect societal bias has had on their client and how this has impacted his or her entrance to the system and experiences in the

system. Defenders need to be aware that LGBT youth who experience conflicts at home because of their sexual orientation or gender identity are at risk of being charged with specific categories of offenses, such as status offenses, domestic disturbances with parents, and survival crimes if they have been kicked out of their homes.²⁸ Similarly, harassment at school can place LGBT youth at risk of entering the system for such things as fighting, truancy, and altercations with school resource officers.²⁹ Understanding these contextual factors assists defenders in explaining to the court underlying concerns in their client's life, which can help create a different picture of this youth for the judge and serve to mitigate the charges.

3. Provide Zealous Advocacy at All Stages of Representation.

While building relationships with LGBT clients and understanding how their identity may be relevant in their case is essential to competent representation, LGBT youth also need their defense attorneys to zealously advocate for them at every stage of their case. When LGBT youth do not receive zealous advocacy, they are vulnerable to unnecessary detention and incarceration, inappropriate services at disposition, and unchallenged abuse in out-of-home placements.³⁰

In order for defenders to provide their LGBT clients with vigorous advocacy in the courtroom, defenders should:

- Be familiar with current research on LGBT youth, including transgender healthcare.
- Be knowledgeable about state and local nondiscrimination laws and policies that protect LGBT youth in different settings.
- Be prepared to advocate for clients' expressed interests whenever LGBT issues come up, including at detention and disposition hearings, during plea bargaining, and in post-disposition representation.
- Keep informed about the conditions in the secure facilities in the jurisdiction, including whether these facilities have policies prohibiting discrimination based on sexual orientation and gender identity, provide LGBT training for staff, and engage in practices that protect the safety of LGBT youth. Also know how these facilities determine where to house transgender youth and whether the facility will call transgender youth by their chosen names and pronouns and provide them with access to necessary transgender-related medical care.
- Review risk-screening instruments for any potentially disparate impact on LGBT youth.
- Be familiar with alternatives to detention, community-based programs, non-secure placements, and other resources that provide competent and nondiscriminatory services to LGBT youth and their families.
- Maintain up-to-date lists of all LGBT-competent services in the jurisdiction, as well as programs or placements that have been unsupportive of LGBT youth. Advocate for those services and placements that are LGBT-competent and against those that are not. Share this information with courts, probation officers, and prosecutors, where appropriate.

a. Representing LGBT youth at detention hearings³¹

In most jurisdictions, after a youth is arrested the court holds a detention hearing to determine whether the youth can be released to the community (and under what conditions) or if he or she must be detained pending the completion of the case. Most states have statutes limiting the circumstances under which a court officer can order pretrial detention to cases where it is necessary to ensure that the youth appears in court or when there is high risk that the youth will seriously reoffend while the current charges are pending.³² In these states, courts must release youth who do not meet these standards to their parent, guardian, caregiver, or other appropriate non-secure placement.³³

Unfortunately, many LGBT youth are inappropriately and unnecessarily detained because their family refuses to allow them back home.³⁴ In other instances, courts have detained LGBT youth based on a misconception that it is in the youth's best interests to remove him or her from a less than ideal family situation or in order to prevent the youth from engaging in a same-sex relationship.³⁵ Defenders have a duty to represent their clients at detention hearings, including discussing options with their clients before the hearing, determining the least restrictive release possibilities, and advocating in court for appropriate alternatives to detention.³⁶ Without effective detention advocacy, LGBT youth are likely to end up in pre-trial detention where they are at high risk of abuse.

In order to prevent unnecessary detention for their LGBT clients, defenders should do the following:

- If your client was detained after arrest, ask if he or she was harassed or mistreated while in detention and ask about the circumstances. If your client was not detained, find out if he or she is afraid of abuse if detained and why.
- Ask about the youth's home life. If the youth does not get along with his or her family, ask why.
- If an LGBT youth's family is not accepting of his or her sexual orientation or gender identity and returning home is not an option, explore alternatives, such as a relative or mentor's home or other appropriate placement. Investigate possible options before the hearing. If you need additional time to find such a placement, ask for it.
- Ask about attendance and performance at school. If the youth is not attending school or is having problems at school, find out why.
- If your client is transgender, ask the youth about any hormones or other transition-related medications he or she is currently taking. Be sure that the youth will have access to these medications if placed out-of-home.
- If you have your client's consent, educate the judge about the high risk of abuse for LGBT youth in detention facilities and explain that transgender youth are particularly vulnerable to abuse.
- If your client does not want his or her parents or others to hear in court that he or she is LGBT but you think it is important for the judge to know, ask the judge to have a discussion in chambers.

- Inform your client of his or her rights in detention and explain that he or she should contact you if there are problems.
- If a judge detains a client who is transgender, advocate for placement in a facility or unit appropriate to the client's gender identity, and in accordance with your client's preference for placement. If there are concerns that a particular facility will not respect your client's gender identity, ask the court for an order requiring the facility to refer to your client by the appropriate name and pronoun, allow your client to dress in clothing in line with his or her gender identity, and continue providing your client with transgender-related medical care.³⁷

b. Advocating for appropriate programs and services for LGBT youth at disposition.

The purpose of a disposition hearing is to develop the least restrictive treatment and rehabilitation plans for youth that meet their individual educational, emotional, and physical needs while also protecting the community.³⁸ Disposition interventions must also be developmentally and culturally appropriate.³⁹ Similar to their detention hearings duties, defenders must consult with their clients to develop the most appropriate disposition recommendations consistent with their clients' expressed interests and individualized needs.⁴⁰ In addition, defenders have an obligation to actively seek out and then advocate for these recommendations and other alternatives to incarceration.⁴¹ Without this type of disposition advocacy, LGBT youth are likely to receive harsh dispositions that are highly restrictive, do not meet their needs, fail to keep them safe, and include long periods of incarceration.⁴²

To provide effective representation to LGBT clients during the disposition phase of their case, defenders should:

- Review lists of LGBT-competent services in the jurisdiction, as well as programs or placements that have been unsupportive of LGBT youth.
- Explain all possible disposition options to LGBT clients and solicit input from them about the services with which they feel most comfortable.
- Inform the court of your clients' individual needs and expressed interests regarding treatment and placement alternatives.
- Recommend services and placements outside of the jurisdiction if there are no appropriate services available locally, and if consistent with your client's expressed interests.
- Zealously advocate against any placements that are not sensitive to LGBT youth or cannot keep LGBT youth safe. Ensure that any placements for transgender youth treat these youth respectfully and use the appropriate name and pronoun.
- Present expert testimony and reports to challenge any recommendations for incarceration or other harmful treatment services that are not consistent with professionally accepted medical and mental health practices for LGBT youth, such as counseling that attempts to change a youth's LGBT identity.⁴³

c. Protecting the rights and safety of LGBT youth post-disposition

During the time period after a disposition hearing but while a youth is still under the jurisdiction of the court, continued access to counsel is critical to ensure that the state complies with all orders to provide services, that services provided are appropriate and effective, and that the youth is not experiencing unsafe conditions of confinement.⁴⁴ When LGBT youth do not have zealous post-disposition representation, they are vulnerable to abuse and have no way to challenge violations of their constitutional rights.

LGBT youth experience disproportionate rates of physical, sexual, and emotional abuse in juvenile justice facilities.⁴⁵ Pervasive disrespect and unfair treatment by facilities is also common practice.⁴⁶ And facility staff regularly punish, ridicule, and prevent transgender youth from expressing their gender identity.⁴⁷ In addition, LGBT youth often report feeling isolated and many have little, if any, support in the facility or from people on the outside. For all of these reasons, LGBT youth need zealous post-disposition representation.

Defense attorneys should have regular contact with their LGBT clients in order to stay informed about conditions of confinement and to be able to advocate for these youth when necessary. Specifically, defenders should verify that their LGBT clients are not abused by staff or peers, are not given harmful or inappropriate treatment or services, and are not labeled as sex offenders, unless required by the court. In addition, when representing transgender youth, defenders should confirm that these youth are not disciplined for their gender expression, are not isolated or segregated from other youth, are treated respectfully by facility staff and peers, are able to use the shower safely, and are provided with necessary transgender-related medical care.

If defenders become aware that an LGBT client is experiencing these or any other rights violations, or is not receiving the services ordered by the court, they should talk with the youth about options for moving forward and then advocate for their client using all available and appropriate vehicles. Depending upon the jurisdiction, possible ways to improve a client's situation, in addition to any identified by the youth, include requesting a review hearing, seeking a writ, or connecting the youth with attorneys who can talk with them about available civil remedies.⁴⁸

4. Respond to LGBT Bias and Misconceptions in the Courtroom

Bias and disrespect in the courtroom are all-too-common experiences for LGBT youth. Defense attorneys have legal and ethical responsibilities to advocate for their clients' fair and respectful treatment throughout the court process, which includes addressing bias by other juvenile court professionals toward their clients. To meet this responsibility, juvenile defenders should:

- Immediately respond to jokes or other disrespectful comments about a client's actual or perceived sexual orientation or gender identity. If this happens during a court hearing, object for the record.

- Oppose introduction of evidence of sexual orientation or sexual conduct when not relevant to the case or when introduced in an attempt to embarrass a client or attack his or her character.
- Review all written reports and evaluations for language that pathologizes an LGBT client's identity and appropriately address any such statements with the court.
- Oppose sexual offending assessments for LGBT clients when unwarranted.

Conclusion

While all juvenile justice professionals have legal and ethical responsibilities to court-involved youth, defenders of LGBT youth must vigorously represent their clients in court while also protecting them from abuse and mistreatment at all stages of system involvement. Studies have shown that LGBT youth are frequently unnecessarily detained, denied due process, disrespected by court and facility personnel, subjected to unduly harsh dispositions, and forced to endure ineffective and harmful services, including egregious conditions of confinement. It is essential that juvenile defenders are committed to zealously defending their clients from the very first court hearing through the time juvenile court jurisdiction is terminated. By using the strategies and recommendations that are highlighted in this article, defense attorneys will be better prepared to build effective attorney-client relationships with LGBT youth, protect their clients' rights and safety, advocate for fair and respectful treatment, and effectively respond to instances of mistreatment or abuse.

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² The Equity Project is a multiyear initiative aimed at ensuring that LGBT youth in the juvenile justice system are treated with dignity, respect, and fairness. To promote leadership and provide guidance regarding LGBT youth in the juvenile justice system, Legal Services for Children, the National Center for Lesbian Rights, and the National Juvenile Defender Center joined in 2005 to launch this project. In addition to the lead organizations, the Equity Project receives critical guidance from the Equity Project Advisory Committee, which is comprised of individuals from across the country with expertise in this area, including professionals with experience working with LGBT youth in juvenile courts and LGBT youth who have been in the juvenile justice system. For more information about the equity Project and to download other Equity Project resources, visit www.equityproject.org

³ See Katayoon Majd, Jody Marksamer, & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009) [hereinafter *Hidden Injustice*]. To download an electronic copy of *Hidden Injustice*, visit: http://www.equityproject.org/pdfs/hidden_injustice.pdf. To order hard copies of *Hidden Injustice*, visit:

http://www.nclrights.org/site/PageServer?pagename=issue_youth_hiddeninjustice_orderform

⁴ See Lee Teitelbaum, Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards, *Juvenile Justice Standards Relating to Counsel for Private Parties* 69 (1996) [hereinafter *Juvenile Justice Standards Relating to Counsel*]; *Fare v. Michael C.*, 442 U.S. 707, 719 (1979) (“the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person”); National Counsel of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, 123 (2005) [hereinafter *Juvenile Delinquency Guidelines*]; James P. Manak, Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards, *Juvenile Justice Standards Relating to Adjudication*, 263 (1996); National Center for Juvenile Justice, *Desktop Guide to Good Juvenile Probation Practice, Revised*, 115 (Griffin & Torbet, eds., 2002); National Juvenile Detention Association, *Code of Ethics*, 3 (2009), available at http://www.npjs.org/docs/NJDA/NJDA_Code_of_Ethics.pdf.

⁵ See generally *In re Gault*, 387 U.S. 1, 36-37 (1967); National Juvenile Defender Center & National Legal Aid and Defender Association, *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* 1 (2008) [hereinafter *Ten Core Principles*]; Daniel J. Freed & Timothy P. Terrell, Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards, *Juvenile Justice Standards Relating to Interim Status: The Release, Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, 119 (1996) [hereinafter *Juvenile Justice Interim Status Standards*]; *Juvenile Delinquency Guidelines*, *supra* note 4, at 122.

⁶ *Juvenile Justice Standards Relating to Counsel*, *supra* note 4, at 69.

⁷ American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct*, Rules 1.1- 1.3 (2009); *Juvenile Delinquency Guidelines*, *supra* note 4, at 30, 122.

⁸ *Ten Core Principles*, *supra* note 5, at 1, 3; *Juvenile Delinquency Guidelines*, *supra* note 4, at 30-31.

⁹ *Ten Core Principles*, *supra* note 5, at 3; *Juvenile Delinquency Guidelines*, *supra* note 4, at 25.

¹⁰ *Ten Core Principles*, *supra* note 5, at 1.

¹¹ See *Hidden Injustice*, *supra* note 3, at 121-22.

¹² See *Hidden Injustice*, *supra* note 3, at 129.

¹³ See *Hidden Injustice*, *supra* note 3, at 123, 125, 126.

¹⁴ See *Hidden Injustice*, *supra* note 3, at 117; Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 Rutgers L. Rev 175 (2007).

¹⁵ See *Hidden Injustice*, *supra* note 3, at 44. See also *Hidden Injustice* juvenile defender survey data, on file with author.

¹⁶ See *Hidden Injustice* juvenile defender interview notes, on file with author.

¹⁷ See Angela Irvine, Ceres Policy Research, *The Inappropriate Use of Secure Detention for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Youth* (2009), presented at the Columbia University Gender on the Frontiers Symposium (April 10, 2009) (available on file with author) Results of the 2009 Ceres Policy Research study will appear in *19 Columbia Journal of Gender & Law* (forthcoming 2011). This 13 percent number includes some youth categorized by the researcher as “not straight” based on their responses to other questions on the survey, rather than on the youth self-identifying as LGBTQ. Youth categorized as “not straight” either answered every other demographic question on the survey, but skipped the question asking about sexual orientation, or they answered “yes” to the question, “Have you ever been bullied or harassed at school because of your sexual orientation (being lesbian, gay,

etc.).” See also, A. Beck, P. Harrison, and P. Guerino, Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09 11 (Bureau of Justice Statistics (Jan., 2010) [hereinafter *Sexual Victimization in Juvenile Facilities*], available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/svifry09.pdf> (finding twelve percent of youth in the study reported a sexual orientation other than heterosexual).

¹⁸ See Jody Marksamer & Shannan Wilber, *The Model Standards Project: Defending LGBTQ Youth*, http://www.nclrights.org/site/DocServer/msp_attyguideyouth0105.pdf?docID=1562. See also Marynella Woods, *10 Tips: Working with LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Questioning) Youth*, available at http://www.equityproject.org/pdfs/top_10_tips.pdf.

¹⁹ See *Hidden Injustice*, *supra* note 3, at 129.

²⁰ See *Hidden Injustice*, *supra* note 3, at 44, 131 FN 50.

²¹ See *Hidden Injustice*, *supra* note 3, at 48.

²² See *Hidden Injustice*, *supra* note 3, at 49-51.

²³ See *Hidden Injustice*, *supra* note 3, at 129.

²⁴ See *Hidden Injustice*, *supra* note 3, at 69.

²⁵ See *Hidden Injustice*, *supra* note 3, at 118-9.

²⁶ See *Hidden Injustice*, *supra* note 3, at 69, 70, 75-6. See also A.R. D’Augelli, *Parents’ Awareness of Lesbian, Gay, and Bisexual Youths’ Sexual Orientation*, 67 *Journal of Marriage & Family* 474-482 (2005); Gay, Lesbian and Straight Education Network, *The 2009 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools XVI* (2010), available at <http://www.glsen.org/cgi-bin/iowa/all/news/record/2624.html> [hereinafter *GLSEN 2009 National School Climate Survey*].

²⁷ See *Hidden Injustice*, *supra* note 3, at 69; Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Adults*, 123 *Pediatrics* 346, 349-51 (2009).

²⁸ See *Hidden Injustice*, *supra* note 3, at 71-4.

²⁹ See *Hidden Injustice*, *supra* note 3, at 75-7. A recent article, based on a national longitudinal study of over 15,000 adolescents from the late 90’s and early 2000’s, found that lesbian, gay and bisexual (LGB) teens are about 40 percent more likely to receive punishment at the hands of school authorities, police and the courts compared to non-LGB teens who engage in similar behaviors. See Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49-57 (2011).

³⁰ See *Hidden Injustice*, *supra* note 3, at 117.

³¹ In some jurisdictions, a detention hearing is called a “first appearance” hearing or a probable cause hearing. See Elizabeth Calvin, *Advocacy and Training Guide: Legal Strategies to Reduce the Unnecessary Detention of Children* 4 (2004).

³² See Elizabeth Calvin et al., *Advocacy and Training Guide: Juvenile Defender Delinquency Notebook* 144 (2d ed. 2006), available at http://www.njdc.info/delinquency_notebook/interface.swf.

³³ See *Juvenile Delinquency Guidelines*, *supra* note 4, at 30.

³⁴ See *Hidden Injustice*, *supra* note 3, at 95.

³⁵ See *id.*

³⁶ See *Juvenile Justice Interim Status Standards*, *supra* note 5, at 139.

³⁷ For an example of such an order, see *Hidden Injustice*, *supra* note 3, at 157-8.

³⁸ Josephine Gittler, Institute of Judicial Administration–American Bar Association Joint Commission on Juvenile Justice Standards, *Juvenile Justice Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services*, 169-70 (1996); Calvin et al., *supra* note 32, at 228-29.

³⁹ *Juvenile Delinquency Guidelines*, *supra* note 4, at 135.

⁴⁰ *Id.* at 137; *Ten Core Principles*, *supra* note 5, at principle 8.

⁴¹ See *id.*

⁴² See *Hidden Injustice*, *supra* note 3, at 125; Calvin et al., *supra* note 32, at 148-49.

⁴³ Attempting to change a youth's sexual orientation is harmful, futile and unethical. See American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 35-41(2009), available at <http://www.apa.org/pi/lgbc/publications/therapeutic-response.pdf>; American Psychological Association, *APA Help Center: Sexual Orientation and Homosexuality* 1 (2009) <http://www.apahelpcenter.org/articles/pdf.php?id=31>; Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information, and Personal Accounts* 134-5 (Temple University Press 1997); Gerald P. Mallon, *Practice with Transgendered Children*, in *Social Services with Transgendered Youth* 49, 55-6 (Gerald P. Mallon, ed., 1999).

⁴⁴ See *Hidden Injustice*, *supra* note 3, at 126.

⁴⁵ Research released by the Bureau of Justice Statistics (BJS) regarding sexual victimization in juvenile facilities found that more than one in five non-heterosexual youth reported sexual victimization involving another youth or facility staff – almost twice the rate of heterosexual youth. And non-heterosexual youth were almost ten times as likely as heterosexual youth to have reported they had been sexually abused by other youth while in custody (12.5 percent vs. 1.3 percent). *Sexual Victimization in Juvenile Facilities*, *supra* note 17, at 11. See also *Hidden Injustice*, *supra* note 3, at 102-3.

⁴⁶ See *Hidden Injustice*, *supra* note 3, at 104-5. For a more in depth discussion of conditions of confinement for LGBT youth, see Chapter 8 of *Hidden Injustice*.

⁴⁷ See *Hidden Injustice*, *supra* note 3, at 105-6; Jody Marksamer, *And by the Way, Do You Know He Thinks He's a Girl? The Failures of Law, Policy, and Legal Representation for Transgender Youth in Delinquency Courts*, 5:1 *Sexuality Research & Social Policy* 72, 80-2 (2008).

⁴⁸ See Calvin et al., *supra* note 32, at 244-7.