

Annual Review of Criminology

Taking the “Girl” Out of Gender-Responsive Programming in the Juvenile Justice System

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Annu. Rev. Criminol. 2019. 2:321–336

The *Annual Review of Criminology* is online at criminol.annualreviews.org

<https://doi.org/10.1146/annurev-criminol-032317-091922>

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Keywords

LGBQ youth, GNCT youth, black and Latinx youth, juvenile justice system, intersectionality, gender conforming, gender nonconforming, racial disparities

Abstract

Since the early 2000s, state and local policy makers, practitioners, and advocates accelerated existing federal efforts to reform the youth justice system and dramatically reduce the number of youth detained in the juvenile justice system. States across the country achieved these drops through policy changes that created fiscal disincentives and legal roadblocks to state custody. Yet recent research shows that youth of color and LGBQ–GNCT (lesbian, gay, bisexual, questioning, gender-nonconforming, and transgender) youth continue to be overrepresented in many juvenile justice systems throughout the country. In this review, we interrogate these disparities more deeply in an effort to (a) advocate for continued and increased efforts to reduce racial disparities in the juvenile justice system; (b) break the silence around the experiences of LGBQ–GNCT youth in the system, which are overwhelmingly youth of color; and (c) encourage a deeper appreciation of sexual orientation, gender identity, and gender expression and how they intersect with race when it comes to serving youth in the justice system.

INTRODUCTION

Since the early 2000s, state and local policy makers, practitioners, and advocates accelerated existing federal efforts to reform the youth justice system. Prior to this period, the passage and reauthorization of the federal Juvenile Justice Delinquency Prevention Act (Pub. L. No. 93-415, 42 U.S.C. § 5601 et seq.) aimed to separate youth and adults in secure facilities, remove youth from adult jails and detention facilities, make status offenders ineligible for detention or incarceration, and to collect data on racial and ethnic disparities in the youth justice system. Although the first goal has been broadly adopted by the field, there have been setbacks in the other areas. Some states allow status offenders to be incarcerated with a valid court order—an exception from a judge. There are ongoing efforts to remove youth from adult prisons. And the quality of data on racial and ethnic disparities has been slow to improve, whereas actual rates of racial and ethnic disparities have stagnated or become dramatically worse. Over the past fifteen years, there has been a 53% reduction in the overall number of confined youth (Davis et al. 2014a, John Ridolfi 2016). States across the country achieved these drops through policy changes that created fiscal disincentives and legal roadblocks to state custody, as was the case in California, which reduced the number of youth housed in state facilities from 10,000 to 800 over the course of a decade (Davis et al. 2014a).¹ Many states also passed policies that reduced the number of youth held in county detention halls and postadjudication facilities (Davis et al. 2014a). These changes are a benefit to all adolescents who are vulnerable to contact with the system, yet research also shows that some groups of youth have benefitted more than others. Youth of color continue to be overrepresented in many juvenile justice systems throughout the country. Black and Native American youth are still four times more likely and Latinx youth one-and-a-half to two times more likely to be committed to secure facilities or other out-of-home placements when compared with white youth who are charged with the same crimes (John Ridolfi 2016).

A growing body of literature also documents the overrepresentation of lesbian, gay, bisexual, questioning, gender-nonconforming, and transgender (LGBQ-GNCT) youth in the justice system. Himmelstein & Brückner (2011) found that LGBQ-GNCT youth, particularly girls, were more likely to be suspended, expelled, arrested, detained, and incarcerated for the same behaviors exhibited by their straight peers.² Other studies have found that approximately 20% of youth in national and California detention halls are LGBQ-GNCT (Irvine & Canfield 2017, Irvine et al. 2017). Recent research also finds that LGBQ-GNCT youth are overrepresented within secure postadjudication facilities. Analysis of the National Survey of Youth in Custody by the Bureau of Justice Statistics found that approximately 12% of youth in out-of-home placement identify as lesbian, gay, bisexual, or other sexual orientations (Wilson et al. 2017). Notably, as with the general population, these LGBQ-GNCT youth are also predominantly youth of color. California survey research shows that 90% of the youth in detention halls, ranches, and camps are of color (Irvine et al. 2017). Broken down, 18.6% of respondents are African American or black, 1.8% of

¹In 2007, the California legislature passed the Juvenile Justice Realignment Bill (SB81 175 2007), which made any youth charged with a nonserious, nonviolent, and nonsex crime ineligible for state secure facilities. It also created a financial incentive program that provided county probation departments \$113,000 for every youth that they retained locally rather than sending them to the Department of Juvenile Justice. States like Ohio, Illinois, and New York passed similar laws making misdemeanants ineligible for state facilities and passing various fiscal incentives and disincentives to keep youth in local custody (see Davis et al. 2014b).

²There are various acronyms to describe lesbian, gay, bisexual, questioning/queer, gender-nonconforming, and transgender (LGBQ-GNCT) people. Researchers use many different combinations. For myriad reasons, they may choose to focus on certain identities and not others in their research. For consistency, this review chooses to use LGBQ when we are discussing sexual orientation, GNCT when we are discussing gender identity and expression and LGBQ-GNCT when we are discussing both sexual orientation and gender identity and expression.

respondents are Asian, 50.4% of respondents are Latinx, 1.5% of respondents were Native American, 9.8% of respondents are white, 17.1% of respondents had a mixed race or ethnic identity, and 0.7% of respondents had another race or ethnic identity (Irvine et al. 2017).

These persistent and newly emergent disparities highlight the need to continue to focus on the reduction of racial/ethnic disparities in the juvenile justice system while also bringing increased attention to the ways that race intersects with sexual orientation, gender identity, and gender expression (SOGIE) among system-involved youth. The complex interactions between race and SOGIE also highlight the need to move from gender-responsive programming, which is typically informed by an assumption of a male/female gender binary, toward gender-affirming programming for all youth across the gender spectrum.

In this review, we interrogate these disparities more deeply in an effort to (a) advocate for continued and increased efforts to reduce racial disparities in the juvenile justice system; (b) break the silence around the experiences of LGBTQ-GNCT youth in the system, which are overwhelmingly youth of color; and (c) encourage a deeper appreciation of SOGIE and how they intersect with race when it comes to serving youth in the justice system.

We begin the review with a consideration of how scholarly understandings of gender have evolved over time and how this evolution is reflected in programming for system-involved youth. We then review relevant research that exposes how thinking about gender as a binary serves to reify and codify traditional constructions of femininity and masculinity. Given the number of youth who identify outside of the gender binary, it is imperative that we develop programming that challenges the notion that boys and girls are fundamentally different and, as such, have opposing needs when it comes to service delivery. We end with a description of how the field of juvenile justice might develop programming that is sensitive to gender, race, and class across a spectrum while simultaneously transforming our understanding of femininity and masculinity.

FROM GENDER BINARY TO GENDER SPECTRUM

Gender is a central organizing principle of our social lives and social institutions. At the same time, ideas and understandings of what gender is, exactly, have shifted in significant ways over the past few decades. Prior to Candace West & Don Zimmerman's (1987) groundbreaking article "Doing Gender," sociologists typically thought of gender as "a role or attribute of individuals or as a reflection of natural differences rooted in biology" (Jurik & Siemsen 2009, p. 72). Gender was inextricably linked to biological sex category (Geist et al. 2017). The work of West & Zimmerman (1987) [and then West & Fenstermaker (1995) in "Doing Difference"] disrupted such commonsense understandings of gender by "drawing attention to the ways in which gender differences are accomplished in routine social interactions." Put simply, gender is not determined by binary biological sex categories of male or female; gender is a social construction.

Since this major shift in the conceptualization of gender (which occurred in parallel with shifts in other academic disciplines), scholars in gender and women's studies, psychology, and queer studies as well as LGBTQ-GNCT advocates on the ground and others have further expanded our understanding of gender and the way in which it intersects with other categorical identities (e.g., race, class, sexuality). Such work has encouraged us to think about gender identity and gender expression as distinct and, at times, overlapping. One's gender identity is best understood as "a person's deeply-felt, internal sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, or gender neutral)" (APA 2015; Irvine & Canfield 2016, p. 245). One's gender identity may or may not be consistent with "a person's sex assigned at birth or to a person's primary or secondary sex characteristics" (APA 2015,

p. 862).³ Cisgender is a term used to indicate that one's gender identity is consistent with one's assigned sex category at birth (APA 2015). For transgender persons, one's gender identity does not correspond with their assigned sex at birth (Irvine & Canfield 2016). Gender expression relates to the degree a person's presentation of self, i.e., physical appearance, clothing, and behaviors, expresses normative aspects of gender roles. Some people may present themselves in ways that reflect normative assumptions of gender, whereas others may present themselves, and may be evaluated by others, as gender nonconforming (APA 2015, Irvine & Canfield 2016). Sexual orientation, i.e., to whom one is emotionally or romantically attracted, is distinct from but may be interrelated with gender identity and gender expression: A cisgender, lesbian-identified youth can be gender conforming or gender nonconforming (APA 2015). This more nuanced understanding of gender reflects the degree to which gender, much like sexual orientation, is best understood not as a binary but as a spectrum that is not solely determined by biological sex categories that are assigned at birth (APA 2015; S. Wilber, personal communication). Such an understanding of gender is typically not reflected in youth-serving institutions, particularly those that adopt a gender-responsive lens.

Policing Race, Gender, and Sexuality in Secure Correctional Facilities

The experiences of black youth within and beyond the boundaries of the juvenile justice system in the United States provide an apt illustration of how racial and gender ideologies inform the development and functioning of what might otherwise be imagined as a progressive child-serving institution. In *Black Child-Savers: Racial Democracy and Juvenile Justice*, Geoffrey Ward (2012) documents how black youth were routinely excluded from the juvenile justice systems of the early twentieth century, which were intended to manufacture new citizens from a population of delinquent, white immigrant youth. In addition to being racially segregated, these juvenile justice and adult correctional institutions were also among the most sex segregated of institutions in the United States (Chesney-Lind 2007).⁴ For "bad" girls and women, these institutions not only punished criminal behavior but worked to reform and discipline them into normative gender expectations, which included policing and punishing social and sexual behaviors that were perceived as deviant or outside the norms of respectable femininity (Chesney-Lind & Irwin 2007, Chesney-Lind & Jones 2010, Pasko 2010). One's potential to achieve a respectable femininity served as a litmus test for women and girls' entry into the system. For white immigrant girls, the developing system was designed to manufacture not merely good citizens but good (heterosexual) women. The intersection of race and gender often placed black women and girls outside of this disciplinary project. In *South Side Girls: Growing Up in the Great Migration*, Marie Chatelain (2015) documents persistent efforts to maintain the racial segregation in reform institutions for girls in Chicago, where fears of same-sex, interracial relationships were often used as an argument against the racial integration of these institutions. The exclusion of black youth from any benefits that existed within the newly developing system left them vulnerable to the harsh punishment of the chain gang, the convict lease system, and the various forms of abuse in homes where black girls were placed as domestics (Chatelain 2015; see also Haley 2016).

The pattern of racial and gender exclusion documented by Ward (2012) and Chatelain (2015) would change in the post-Civil Rights Era, when black youth began to take up a dramatically disproportionate share of the population of youth in the justice system. Still, the intertwining

³To the extent that sex assignments are restricted to binary categories of male or female, sex categories assigned at birth are also best understood as social constructions.

⁴The heavy reliance of correctional institutions on biological sex categories is revealed in recent research on transgender women in a men's prison in California (Jenness & Fenstermaker 2013).

of respectability and reform continues to shape the experiences of youth in the system, particularly the development of gender-specific and gender-responsive programming. Now, as then, LBQ-GNCT women and women and girls of color are often viewed as inherently irredeemable, incapable of reform and unworthy of the services, resources, and programming that could lead to a successful and permanent exit from the system. The persistence of this framing is shaped by narrow Eurocentric characterizations of what and who can be appropriately feminine as well as by conservative black gender ideologies that are rooted in a deep belief in natural (and complementary) differences between biological men and women (Collins 2004, Jones 2009; see also Jones 2018). black women and girls whose actions, demeanor, or behaviors are evaluated by others as violating expectations of appropriate femininity are, in turn, excluded from the privileges and protections, and related access to services and programming, that femininity affords “good” white women and respectable black ladies, or girls who could grow up to be either. In juvenile detention settings, where evaluations of girls are paired with rewards and sanctions, black girls who fall outside of the boundaries of reform and respectability are often treated, when it comes to the application of harsh discipline and punishment, as if they are more like black men and boys—a category of youth who are permanently viewed as irredeemable and incapable of reform as a function of both their masculinity and race.

Girls who challenge traditional expectations of femininity are hypervisible in settings that are designed to police the boundaries of acceptable femininity. Lisa Pasko’s (2010, p. 8) research on the surveillance and policing of girls’ identities and relationships within juvenile detention settings reveals the ways that “staff construct and penalize girls for their within-institution sexual identity and activity.” Pasko found that staff invalidated, pathologized and criminalized girls’ sexual identities while also remaining hypervigilant of behaviors that might indicate same-sex attraction or same-sex relationships. Even girls who do not identify as lesbian or bisexual are vulnerable to the hypersurveillance of their behaviors and interactions with same-sex peers. For example, black girls, who are often viewed through a hypersexual lens, risk having displays of nonromantic acts of affection toward one another, like braiding and styling each other’s hair (a common display of solidarity and friendship among black girls) categorized and punished in ways similar to the actions (both romantic and nonromantic) of LGBTQ-GNCT youth. The hypervisibility of black and LGBTQ girls is often paired with invisibility: Youth who violate normative expectations of gender are hypervisible and, in turn, more vulnerable to discipline and punishment while their programmatic needs, especially the needs of LGB youth, are neglected in program settings that are rooted in binary and normative understandings of gender and sexuality.

The theme of hypervisibility and invisibility is apparent in studies that examine the disciplining of girls of color within and outside of detention settings. As the net of surveillance and punishment has widened over the past several decades, the juvenile justice system is now enmeshed with other youth-serving institutions in ways that are consequential for adolescent developmental trajectories. Monique Morris’s (2012, 2016) work on the criminalization of black girls reveals how the punishment of girls in schools often leads to their detachment from education, which makes girls more vulnerable to various forms of punishment, including entrance into the juvenile justice system. Morris also highlights the ways that the hypervisibility of black girls and, in turn, their disproportionate punishment for behaviors ranging from talking loudly in class to fights in schools often hide underlying risk factors in girls’ lives, such as sexual violence or involvement/exploitation in the sex trade (Jones 2009, Morris 2016, Wun 2014).

The understanding of gender and the significance of intersecting identities has evolved over time, yet the juvenile justice system has resisted incorporating this new understanding into its programming for youth, which instead tends to organize around traditional, racialized assumptions of gender roles and, in doing so, contributes to the reification and codification of the very social

constructions that they are charged with helping youth to navigate. In the following section, we describe how previous efforts to more fully address the experiences of girls in the juvenile justice system led to the introduction of programming that segregated youth by birth sex as well as the challenges that remain when it comes to the development of affirming programming for justice-involved youth across the gender spectrum.

THE HISTORY OF PROGRAMMING THAT REINFORCES THE GENDER BINARY

Scholarship that moved our understanding from gender as a role to gender as social construction was, in part, a consequence of feminist interventions in the field. A similar sort of feminist intervention in discussions of juvenile justice exposed the lack of programming for girls and helped to establish the field of gender-specific and gender-responsive programming for justice-involved youth.

Concerns about girls in the juvenile justice system began to rise as the use of secure detention for girls increased. From 1990 to 1999, there was a 50% increase in the number of girls' delinquency cases entering juvenile court compared with a 4–7% increase for boys (Berkeley Cent. Crim. Justice 2010, Sherman 2005). Notably, the vast majority of delinquency cases for girls were linked to prostitution, running away, status offenses, and family fights (Bloom & Covington 2001, Sherman 2005).

Policy advocates recognized that most community-based programs were developed for boys and began calling for special interventions for girls (Acoca 1998, Bloom & Covington 2001, Off. Juv. Justice Delinquency Prev. 1998). As early as 1992, the federal government provided funding to provide services for girls under the reauthorization of the Juvenile Justice and Delinquency Prevention Act. At this time, states were required to analyze their provision of gender-responsive programs for girls in the system. By 1998, 95% of this funding was used to analyze data on girls in the system, 38% went to gender-responsive programs for girls, and 10% went to legislative advocacy on behalf of girls (Chesney-Lind 2000).

In 1998, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the federal agency promoting reforms in the youth justice system, called for the development of gender-specific programs. Although they used an apparently gender-neutral term, their focus on gender-specific programs was specifically aimed at girls and “femaleness” (Off. Juv. Justice Delinquency Prev. 1998):

Gender-specific programming . . . represents a concentrated effort to assist all girls (not only those involved in the justice system) in positive female development. It takes into account the developmental needs of girls at adolescence, a critical stage for gender identity formation. It nurtures and reinforces “femaleness” as a positive identity with inherent strengths.

Further, the OJJDP specifically recommended that departments and programs provide the following:

- Space that is physically and emotionally safe and removed from the demands for attention of adolescent males.
- Time for girls to talk, for girls to conduct emotionally safe, comforting, challenging, nurturing conversations within ongoing relationships.
- Opportunities for girls to develop relationships of trust and interdependence with other women already present in their lives (such as friends, relatives, neighbors, and church members).

- Programs that tap girls' cultural strengths rather than focusing primarily on the individual girl (i.e., building on Afrocentric perspectives of history and community relationships).
- Mentors who share experiences that resonate with the realities of girls' lives and who exemplify survival and growth.
- Education about women's health, including female development, pregnancy, contraception, and disease and prevention, along with opportunities for girls to define healthy sexuality on their own terms (rather than as victims).

Notably, these programs were developed to support the strength of girls. Many were developed to deconstruct patriarchy (Haney 1996). And, over time, researchers and advocates recognized the need to support cultural differences across race and sexual orientation (NCCD Cent. Girls Young Women 2009, Urban Justice Cent. 2001).

However, these programs rarely discuss how intersections of gender and race lead to the abuse and oppression of girls in the justice system—the vast majority of which are girls of color. Furthermore, many programs failed to recognize that participants have various sexual orientations, gender identities, and gender expressions. Instead, curricula are developed in a way that is both cisnormative and heteronormative. And by focusing on topics that only girls typically experience, they inadvertently reinforce gender norms while erasing layers of identity tied to race, ethnicity, and SOGIE.⁵ In this way, gender-responsive programming came to mean programming for youth who were assigned female at birth. This new focus fueled the development of well-meaning programs for girls that nonetheless reify and codify traditional gender norms.

Although not promoted by the OJJDP, support groups for boys also formed across the country and inadvertently reinforced traditional masculine constructs. Local community-based organizations developed classes and support groups that covered topics such as how to be a supportive father, how to manage conflict with partners and peers, and how to transition out of violent gangs. More recently, with the advent of the My Brother's Keeper (MBK) initiative, much attention has been given to funding programs for young black men with a focus, at times, on an investment in black fathers and fatherhood more broadly. In his announcement of the MBK initiative, the Obama administration's unprecedented public/private collaboration aimed at the crisis of young black men and President Obama echoed a common and often uncontested refrain: "We can reform our criminal justice system to ensure that it's not infected with bias, but nothing keeps a young man out of trouble like a father who takes an active role in his son's life" (Obama 2014).⁶

President Obama and his initiative received ample praise for targeting young black men, along with pointed critiques from black feminist scholars and advocates concerned with the way that the framing of the President's initiatives ignored the intersections of race and gender. Paul Butler has described this type of framing, which is often used to appeal for an intervention, as black male exceptionalism: the premise that African-American men fare more poorly than any group in the United States. Framing young black men and boys as an endangered species, Butler argues, runs the risk of obscuring the experiences of black females and reinforcing the kinds of patriarchal values that are constraining and oppressive for both black boys and girls. Such a framing can also be damaging for boys who participate in fatherhood or manhood programs that are "designed to tame the savage beast" or are "premised on stereotypes of violent, hyper masculine Black men" (Butler 2013, p. 486). Such programs may be gender responsive, but they are not gender affirming or

⁵There are exceptions to the practices that reify gender stereotypes. Young Women's Freedom Center in San Francisco and One Circle Foundation in San Rafael, CA, are two examples.

⁶See Jones (2018) for a discussion of how conservative Black gender ideologies shape community politics and the process of redemption for Black men.

premised on an understanding of intersectionality, which helps us to make sense of “the difference that gender makes for race, and that race makes for gender” (Butler 2013, p. 486), among other categorical identities.

Over the past thirty years, the claim of exceptionalism has been used in a different way to garner an investment in gender-responsive programming within juvenile justice systems. Here, references to the invisibility of women and girls in the justice system were used to make a case for new programs for women and girls who were entering the system at unprecedented rates. As feminist criminologists pointed out, the juvenile justice system was a masculine institution designed primarily for boys and men. Policies and practices that took into account gender differences among girls and boys were the needed intervention. As we note here, such programming risks reifying normative presumptions of femininity (e.g., that girls are primarily relational and boys instrumental) while essentially ignoring the degree to which the lives of boys are gendered too. These two frameworks of exceptionalism and invisibility, rooted in an understanding of gender as a binary, continue to shape policy, practices, and programming in youth-serving institutions. Such programming leaves little room for the gay youth or gender-nonconforming black girl who is mandated to participate in a program that frames discussions of relationships through heteronormative understandings of intimate relationships and often ignores the degree to which, as we explain above, gender ideologies intersect with racial ideologies. Given the degree to which LGBTQ-GNCT youth and youth of color are overrepresented in the juvenile justice system, it is imperative that programs reflect an understanding of the constraints of racialized gender ideologies (e.g., supremacist white gender ideologies and conservative black gender ideologies) and the limits of conceptualizing gender as a binary instead of as a spectrum that intersects with other aspects of youth identities.

HOW MANY YOUTH FALL OUTSIDE THE GENDER BINARY?

Historically, probation departments and courts have not collected data on SOGIE. As such, the field has had scant information about how many youth might fall outside the gender binary. Recent survey research measuring SOGIE shows that many boys and girls in the justice system are lesbian, gay, bisexual, or questioning. Other youth are gender nonconforming or transgender and, therefore, fall outside the gender binary. Disaggregating these findings by current gender identity uncovers important patterns within findings from Irvine et al.’s 2017 survey of 4,033 youth being housed in county detention centers, ranches, and camps across the state of California.⁷

The researchers consider two different variables for each youth. We defined LGBTQ as youth who reported being lesbian, gay, bisexual, or questioning; youth who report being attracted to others of the same gender; youth who report being bullied or harassed because they are LGBTQ; and youth who report running away from home because they are LGBTQ. We defined GNCT as youth whose current gender identity does not match their birth sex; youth whose gender expression does not match their current gender identity; youth who report being bullied or harassed because they are not masculine or feminine enough; and youth who have run away because they are not masculine or feminine enough.⁸ Each youth is either LGBTQ or heterosexual and GNCT or gender conforming, which creates four different combinations.

⁷California transitioned more than 9,000 youth from state facilities to county custody. As it turns out, the counties had a 10,000 youth capacity but have engaged in rapid reform that leaves even their county detention halls, ranches, and camps at one-half to one-third capacity.

⁸These last two questions were developed in consultation with a national expert on gender identity and expression as a way to operationalize gender nonconformity on a short survey administered to youth in the justice system.

There are slightly different patterns when you compare youth by current gender identity:

- 87.9% of boys in county-run secure facilities are heterosexual and gender conforming.
- 8% of boys are heterosexual and GNCT.
- 2.2% of boys are gay, bisexual, or questioning and gender conforming.
- 1.9% of boys are gay, bisexual, or questioning and GNCT.
- Added up, 12.1% of boys in county-run secure facilities in California are GBQ/GNCT.
- Adding up the 8% of boys who are heterosexual and GNCT and 1.9% of boys who are GBQ-GNCT, 9.9% of boys in county-run secure facilities are gender nonconforming.

Using the same methodology for youth who currently identify as girls:

- 48.9% of girls in county-run secure facilities in California are heterosexual and gender conforming.
- 7.9% of girls are heterosexual and GNCT.
- 28.8% of girls are lesbian, gay, bisexual, and questioning and gender conforming.
- 14.5% of girls are lesbian, gay, bisexual, questioning, and GNCT.
- Added together, 51.1% of girls in county-run secure facilities in California are LBQ-GNCT.
- Adding up the 7.9% of girls who are heterosexual and GNCT and the 14.5% of girls who are LBQ-GNCT, 22.4% of girls are gender nonconforming.

If we transfer these findings from percentages to actual numbers, we see the urgency of thinking more broadly about gender. The California survey was a one-day census of youth in detention, ranches, and camps. Of the 4,033 respondents, 76.1% identified as boys, 23.4% of respondents identified as girls, and 0.5% identified as neither boy nor girl. This means that on any given day, approximately 304 gender-nonconforming boys, 211 gender-nonconforming girls, and 20 youth who do not identify as either boy or girl are being held in secure facilities in California. Although these youth are spread across the state, there is still a need to reconsider the way we assign youth to programming based on gender identity and expression. And because 90% of these youth are of color, programming needs to address multiple aspects of identity.⁹

WHAT IF A BOY NEEDS PROGRAMMING FOR GIRLS?

As we note above, much of what we think of as gender-responsive programming is actually programming designed for cisgender (and heterosexual) girls. An examination of who gets criminalized for prostitution exposes the need to rethink what type of programming should be provided to boys, who we consider to be a girl in the juvenile justice system, and what programmatic responses we should provide to LGBTQ-GNCT youth of color.

The most visible victims of human trafficking and commercial sexual exploitation have been straight, white girls (Sherman 2017). Since the justice system has become more concerned with human trafficking and commercially sexually exploited children, institutional responses such as residential treatment, community-based support groups, and girls' courts have multiplied across the country. Additionally, safe harbor laws have been passed to shift referrals away from the justice system and back toward the child-welfare system. Yet recent research shows that gender-nonconforming gay boys are at the highest risk of criminalization for prostitution-related charges, raising the importance of expanding how we think about gender and race in the context of the justice system.

⁹Other research shows a similar pattern. A national survey by Irvine & Canfield (2017) shows that 40% of girls in seven detention halls around the country are LBQ-GNCT and 17% are gender nonconforming. Wilson et al. (2017) found that 57.6% of girls in custody are not straight.

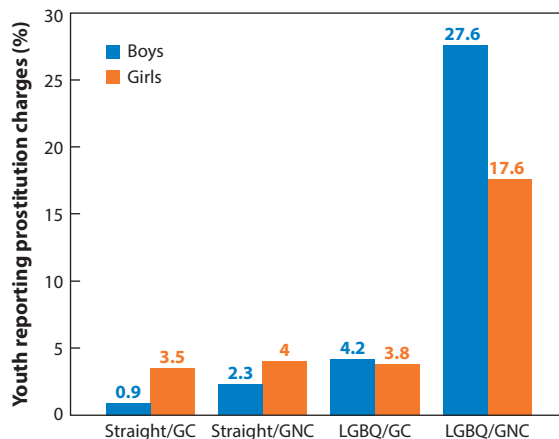


Figure 1

Percentage of youth reporting prostitution charges by sexual orientation and gender conformity (Irvine et al. 2017). Abbreviations: GC, gender conforming; GNC, gender nonconforming; LGBQ, lesbian, gay, bisexual, and questioning/queer.

Figure 1 reports the percentages of youth reporting that they were detained or incarcerated in California for prostitution-related charges. These figures come from the same statewide survey of youth in California county-run secure facilities. This survey was a one-day census of 4,033 youth detained or incarcerated in all but two California counties. Notably, these figures do not report the numbers of youth who are being trafficked or are engaging in survival sex, which would be a much larger number. Rather, these are the percentages of youth who report that they are being criminalized, i.e., arrested, charged, and incarcerated, for prostitution.¹⁰

Figure 1 shows that 0.9% of straight and gender-conforming boys are detained for prostitution compared with 2.3% of straight and gender-nonconforming boys, 4.2% of gender-conforming gay, bisexual, and questioning boys, and 27.6% of gender-nonconforming gay, bisexual, and questioning boys. It also shows that 3.5% of straight and gender-conforming girls are detained for prostitution compared with 4% of straight and gender-nonconforming girls, 3.8% of gender-conforming lesbian, bisexual, and questioning girls, and 17.6% of gender-nonconforming lesbian, bisexual, and questioning girls. Put together, gender-nonconforming LGBQ youth appear to have the highest risk of being detained or incarcerated for prostitution-related charges, with gender-nonconforming GBQ boys at the highest risk. This finding should force organizations providing services for youth engaging in sex work to consider expanding services—not just to “boys” but also to gender-conforming and gender-nonconforming boys and girls and nonbinary youth. Additionally, considering that 90% of these youth are of color, services should consider the ways that they may intentionally or unintentionally support “femaleness” for youth who were assigned female at birth instead of helping youth navigate the many barriers faced by combinations of race and gender.

¹⁰These data are based on self-reported responses to an anonymous survey. Although some jurisdictions have made efforts to decriminalize prostitution-related charges, youth are still arrested. The benefit of using self-report data is that youth know when they were arrested for suspected solicitation, even when the official charge says something different to get around changing laws. Additionally, even when a jurisdiction is making an effort to divert youth picked up for solicitation away from the justice system and back to the child-welfare system, detention and court are still often the first step to getting services or child-welfare placement.

Beyond youth engaging in sex work, researchers studying the risk factors that drive youth into the justice system provide some important clues about why gender-nonconforming youth of color are at the highest risk of criminalization for a wide range of crimes. The literature on pathways into the justice system shows that LGBTQ-GNCT youth are at elevated risk for suspensions and expulsions from school (Palmer & Greytak 2017); bullying at school (Garnette et al. 2011, Majd et al. 2009, Palmer & Greytak 2017); conflict with their parents over their SOGIE (Majd et al. 2009, Garnette et al. 2011, Wilson et al. 2017); removal from home for child abuse and neglect (Irvine & Canfield 2016, Irvine et al. 2017); placement in foster and group homes (Irvine & Canfield 2016, Irvine et al. 2017); running away from home and other placements (Irvine et al. 2017); homelessness (Corliss et al. 2011, Durso & Gates 2012); and criminalization for survival crimes (Majd et al. 2009, Wilson et al. 2017).

These patterns hold for young people who are lesbian, gay, bisexual, and questioning, i.e., sexual orientations other than straight. These patterns also hold for young people who are gender nonconforming: The findings on the criminalization of gender-nonconforming youth suggest that they are exposed to higher levels of risk than gender-conforming youth.

As mentioned above, programming should address multiple layers of identity and recognize that youth in programs may be attracted to youth with the same gender identity. This is important because the underlying reasons that youth are in the justice system may be linked to social responses to their sexual orientation. For example, a girl may have been in a fight with her mother because of a same-sex relationship. Adults working in the justice system need to know the details of what drives young people in the system so they can provide the right types of support services. And the services need to recognize that youth may have different sexual orientations so that the content remains relevant.

Also of great concern, there is a dearth of programming for gender-nonconforming youth. Masculine-presenting girls of color are currently served within support groups for girls, girls' courts, and residential placements for girls, and there is virtually no programming designed to respond to the needs of feminine-presenting boys of color. For some gender-nonconforming and nonbinary youth, gender-responsive programming may be irrelevant if the content is grounded in gender stereotypes that are rooted in a sex binary. Other gender-nonconforming youth may find that programming that is designed for the sex different than the one they were assigned at birth may meet their needs or pique their interest, in which case the issue is not the relevancy of the programming but rather access and entry. In any case, institutions must consider the needs and interests of the youth when assigning programming rather than relying on anatomy and presentation.

It is also worth exploring whether boys are different than girls. Researchers focusing on topics such as family roles, labor market participation, and personal interests such as sports or art show that there is much difference between individuals within the same-sex groups. In fact, there is so much difference that any one boy is just as likely to be similar to a girl as to another boy (Geist et al. 2017). As such, programming as it is currently provided may feel irrelevant to many straight and gender-conforming youth.

TOWARD GENDER-AFFIRMING PROGRAMMING AND PRACTICES

Among the most significant shifts in the organization of juvenile justice systems over the past several decades has been the adoption of gender-responsive policies and practices. Youth-serving institutions and organizations should be cautious about relying on assumptions of gender binaries because SOGIE is not always consistent with the expectations associated with biological sex categories. This is perhaps especially important for young people in the juvenile justice system, where

youth of color and LGBTQ-GNCT youth are both hypervisible when it comes to surveillance and punishment and relatively invisible when it comes to programming (Irvine 2016).

Given the complex ways in which gender presents in everyday life, the degree to which young people subscribe to more flexible understandings of gender and our understanding of how intersections of race, gender, and sexuality make youth more vulnerable to punishment and violence require that youth-serving institutions and organizations adopt a more informed and intersectional understanding of the ways that gender and sexuality are consequential in young people's lives. In recent years, the concept of intersectionality has made its way out of the academy and into popular discourse and national politics. Along the way, the understanding and meaning of the term have been distorted and reduced to a caricature of identity politics. Intersectionality is not merely about identity or identity politics. Rather, intersectionality is an interpretive framework, i.e., a way to examine systems of power relations and the effects of power on particular groups of people. It is a dynamic framework that allows for the systematic examination of how power relations construct and structure vulnerability. It also encourages us to think about the ways that addressing the vulnerability of one group of people might actually exacerbate the vulnerability of another group. Intersectionality pushes us to consider crosscutting solutions to institutional oppression. The benefit of interventions developed from this perspective would extend far beyond any one group.

In the following section, we describe recent practices and programming that affirm all genders rather than reinforcing a binary and reflect an understanding of intersectionality. These approaches can also inform (and are already evident in) programming efforts in community-based organizations. These efforts reflect an understanding of the ways that gender identity and gender expression overlap and are distinct from sexual orientation; how SOGIE develops over the course of adolescence; and how intersections of SOGIE, race, and class shape the experiences of youth in the juvenile justice and other child-welfare systems.

Housing in Secure Facilities

Changes in how secure facilities serve gender-nonconforming youth provide some interesting lessons for community-based services. Secure facilities and residential placements traditionally segregated youth according to birth sex, i.e., youth who were assigned male at birth were housed in boys' units and youth who were assigned female at birth were housed in girls' units. Furthermore, gender-nonconforming youth and other youth who were suspected of being lesbian or gay were often housed in isolation from other youth (Majd et al. 2009). Once the Department of Justice began to research the risk of sex abuse, they found that LGBTQ-GNCT youth have a much higher risk of being sexually abused than their straight peers (Beck et al. 2010). In response to this elevated risk, the federal government passed the Prison Rape Elimination Act and developed standards to govern the conditions of confinement to protect incarcerated youth (Irvine et al. 2017). These standards or regulations generally require staff to ask youth about their SOGIE as part of the initial safety assessment and must not make assumptions based on appearance or stereotypes; make classification and housing decisions on a case-by-case basis and not automatically house youth solely on the basis of their actual or perceived LGBTQ-GNCT status; respect the gender identity of all youth, including transgender youth; refer to them by their preferred name and pronoun; and provide them with clothing and hygiene items consistent with their gender identity (Irvine et al. 2017).

As such, these standards require facilities to operate in a way that is no longer governed by a gender binary driven by birth sex but in a way that requires staff to address youths' current gender identity and expression. In practice, youth are grouped by their gender identity, which may shift and change over time. In sex-segregated housing units, youth also participate in programming

according to their current gender identity. Although these decisions still expose youth to services that may reinforce gender stereotypes and negate experiences of race, ethnicity, and SOGIE, there is still a precedent for making decisions according to shifting gender identity rather than birth sex.

CULTURALLY AFFIRMING COMMUNITY PROGRAMMING AND AFFINITY GROUPS

There are a handful of programs for youth in the justice system that are beginning to address the complexities of participants' identity. Notably, these same programs are also intentionally developing leadership skills among LGBTQ-GNCT youth of color so that they may eventually drive change in their own communities. Programs such as the Young Women's Freedom Center (YWFC) in San Francisco, CA; the RYSE Center in Richmond, CA; Communities United for Restorative Youth Justice (CURYJ) in Oakland, CA; the Youth Justice Coalition in Los Angeles, CA; and Motivating Individual Leadership for Public Advancement (MILPA) in Salinas, CA, have developed programming that develops youth to become community leaders by building on social justice history and working toward system justice change. These programs hire facilitators that have the same lived experiences as the youth in their programs. They teach youth about their personal, family, and community histories. And these programs all intentionally work with an intersectional lens that recognizes difference across race, ethnicity, immigration status, and SOGIE. This lens is seen in projects like organizing multi-organization protests against deportations that intentionally incorporate justice-involved youth and queer Latinxs.

Through this work, these programs are improving a broad range of outcomes as youth become more engaged with school and develop into community leaders. In this way, efforts to develop programming that is informed by an intersectional lens is working to define what culturally affirming programming looks like.

NEXT STEPS: TOWARD GENDER-AFFIRMING PROGRAMMING FOR ALL YOUTH

If the juvenile justice system must exist, it should be a system that is sensitive and responsive to the developmental needs of youth and organized around principles and practices that are known to encourage healthy adolescent development (see Schiraldi et al. 2015, Schiraldi & Western 2015). It should be a system that is affirming of and intentional about the various ways that intersections of race/ethnicity, class, and SOGIE shape the needs and experiences of youth in the system. A key step in creating such a system is to jettison the notion of gender as a binary category and, in turn, the notion of programming that is designed solely for boys or girls because such programming can actually work to reify and codify gender stereotypes, which can feel constraining, oppressive, and punishing for many youth. Such programming can also miss the needs of gender-nonconforming and transgender youth who make up a disproportionate percentage of youth in the system.

The type of shift we call for here requires us to interrogate the various ways that the justice system responds to youth who challenge normative expectations of gender. Instead of focusing on redeeming bad girls, for example, a gender-affirming and intersectional framework allows for the full expression of youth identities while also providing youth with the skills necessary to build a healthy sense of self and healthy communities. Developing programming that moves beyond the gender binary does not require the end of programming that brings youth together based on some category of identity, like race or gender. Some form of identity-based segregation can be a source of healing and empowerment for youth. Yet such groups should not necessarily be predetermined

by the institution. Instead, there should be room for affinity groups to develop among youth in ways that resonate with their developmental needs at particular moments in time.

Building a gender-affirming system for all youth requires that stakeholders learn from and build on experts in the field, including youth, to identify what such programming and practices look like on the ground. Listening sessions around these issues with youth in the system are an important first step in building a more affirming and liberating system. LGBTQ-GNCT and youth-oriented centers that adopt an intersectional lens and work with diverse populations could provide key stakeholders with important information on how to think beyond gender binaries. Those organizations that draw on positive youth development programming for youth of color and LGBTQ-GNCT youth are likely to be especially useful. Interviews with frontline staff would also help increase our understanding of how SOGIE shapes their routine encounters with youth.

Along with the development of gender-affirming programming, the justice system should commit to collecting data on youth SOGIE to track the number of LGBTQ-GNCT youth that enter the system through different pathways. By combining these data with information about racial and ethnic disparities, new SOGIE data will allow systems to monitor outcomes across both race and SOGIE.

Finally, evaluations of programs seeking to transform traditional gender norms should be conducted and promoted. Programs such as the Young Women's Freedom Center (YWFC) in San Francisco, CA, and One Circle Foundation in San Rafael, CA, expend most of their energy developing leadership skills in spaces that serve youth along the gender spectrum at the same time. Ongoing research is needed to evaluate whether these programs lead to positive outcomes for youth while also dismantling gender norms.

DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

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