

RESEARCH THAT MATTERS

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# THE IMPACT OF STIGMA AND DISCRIMINATION

Against LGBT People  
in Michigan

April 2019

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## EXECUTIVE SUMMARY

Michigan is home to over 311,000 LGBT adults and 61,000 LGBT youth. LGBT people in Michigan lack important legal protections that have been extended in other states. For example, statewide statutes in Michigan do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. Though the Michigan Civil Rights Commission has issued guidance interpreting state laws to protect LGBT people from discrimination, the state legislature has challenged that decision. State laws in Michigan also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Michigan ranks 20<sup>th</sup> in the nation on public support for LGBT rights and acceptance of LGBT people.

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



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

In this study, we provide data and research documenting the prevalence of several forms of stigma and discrimination against LGBT adults and youth in Michigan, including discrimination and harassment in employment, housing, and public accommodations; bullying and harassment in schools; and family

rejection of LGBT youth. We discuss the implications of such stigma and discrimination on LGBT individuals, in terms of health and economic security; on employers, in terms of employee productivity, recruitment, and retention; and on the economy, in terms of health care costs and reduced productivity.

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

## KEY FINDINGS

### Prevalence of Stigma and Discrimination against LGBT People

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

- A 2016 survey of faculty at the University of Michigan found that 28% of LGBTQ+ faculty members reported experiencing at least one discriminatory event over the previous 12 months.<sup>1</sup>
- The 2015 U.S. Transgender Survey report found that 22% of transgender respondents from Michigan experienced harassment or mistreatment on the job in the past year, and 27% reported being fired, being denied a promotion, or not being hired for a job they applied for in the past year because of their gender identity or expression.<sup>2</sup> In addition, one-quarter of respondents from Michigan said that they had experienced some form of housing discrimination in the past year, and nearly one-third of respondents said they had been discriminated against or harassed at a place of public accommodation in the past year.<sup>3</sup>
- A 2012 survey of 1,000 Michigan residents who identified as LGBT and LGBT allies found evidence of sexual orientation and gender identity discrimination in the state.<sup>4</sup> In response to the survey, 55% of respondents reported experiencing some form of discrimination or harassment based on their sexual orientation, 19% reported experiencing some form of discrimination or harassment based on their gender expression, and 16% reported experiencing some form of discrimination based on their gender identity.<sup>5</sup>

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<sup>1</sup> Results of the 2016 University of Michigan Faculty Campus Climate Survey on Diversity, Equity and Inclusion 4 (2016) <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-FACULTY-REPORT-FINAL.pdf>.

<sup>2</sup> The survey used a non-probability sampling method. NAT'L CENTER FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: MICHIGAN STATE REPORT 1 (2017), available at <http://www.transequality.org/sites/default/files/docs/usts/USTS-MI-State-Report.pdf>.

<sup>3</sup> Id.

<sup>4</sup> Michigan Department of Civil Rights, Report on LGBT Inclusion Under Michigan Law with Recommendations for Action (2013), [http://www.michigan.gov/documents/mdcr/MDCR\\_Report\\_on\\_LGBT\\_Inclusion\\_409727\\_7.pdf](http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf), at 47, citing K. Morrison & S. McCornack, A State-Wide Study of LGBTQ Attitudes and Experiences: Challenges and Concerns (2012) (presented to the Michigan Fairness Forum).

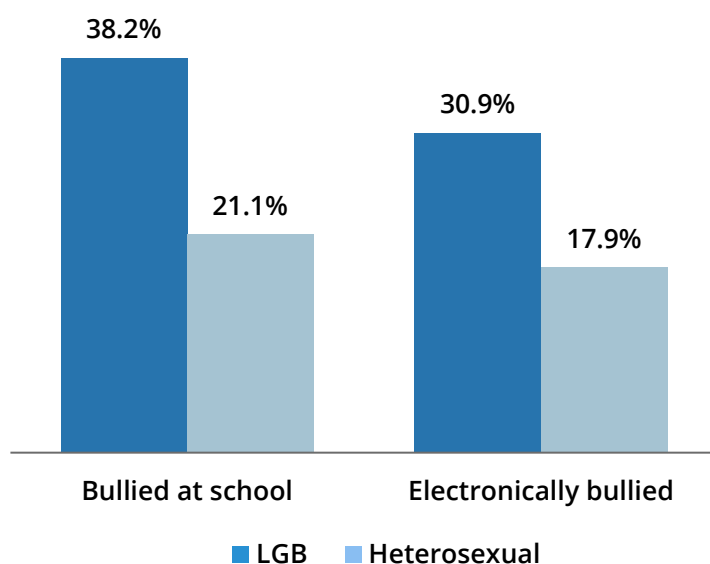
<sup>5</sup> Id.

- In response to a 2016 poll, 60% of Michigan residents said that they thought that gay and lesbian people experience a lot of discrimination in the U.S. and 61% of Michigan residents said that they thought that transgender people experience a lot of discrimination in the U.S.<sup>6</sup>
- An analysis of aggregated public opinion data collected from 2011 through 2013 found that 80% of Michigan residents, non-LGBT and LGBT, thought that LGBT people experience discrimination in the state.<sup>7</sup>
- Discrimination against LGBT people in Michigan has also been documented in a number of court cases and the media. Instances of employment discrimination documented in these sources involve private and public sector workers in a range of occupations. Examples of discrimination in housing and public accommodations have also been documented in these sources.

#### LGBT youth in Michigan experience bullying and harassment at school.

- The 2017 Michigan Youth Risk Behavior Survey found that LGB students were more likely to report being bullied at school (38.2% v. 21.1%) and electronically bullied (30.9% v. 17.9%) in the 12 months prior to the survey than heterosexual students.<sup>8</sup>

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



<sup>6</sup> PRRI, American Values Atlas: Michigan, <http://ava.prri.org/#discrimination/2016/States/blkdis/m/US-MI> (under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes;” under dropdown menu for “Year” select “2016”).

<sup>7</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

<sup>8</sup> Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 165, 168 (2018), available at <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.

- In addition, LGB students in Michigan were more likely than heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (16.5% v. 6.9%).<sup>9</sup>
- The 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 72% of respondents from Michigan said they had experienced verbal harassment based on their sexual orientation at school, and 58% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.<sup>10</sup> Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender expression (22%) at school in the year prior to the survey.
- The 2015 U.S. Transgender Survey found that 55% of survey respondents from Michigan who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 26% reported experiencing physical assault, and 10% reported experiencing sexual violence while in school.<sup>11</sup>
- A 2016 survey of students at the University of Michigan found that 31% of LGBTQ+ students reported one or more experiences of derogatory treatment on the basis of sexual orientation or gender identity in the prior year.<sup>12</sup>

## Impact of Stigma and Discrimination on LGBT Individuals

### LGBT people in Michigan experience economic instability.

- Stigma and discrimination against LGBT workers can lead to economic instability, including lower wages and higher rates of poverty.
- Gallup polling data from 2015-2017 show that 25% percent of LGBT adults in Michigan reported that they did not have enough money for food compared to 15% of non-LGBT adults in the state.<sup>13</sup> And, 28% of LGBT adults in Michigan reported having a household income below \$24,000, compared to 20% of non-LGBT adults.<sup>14</sup>
- The 2015 National Transgender Discrimination Survey found that 19% of transgender respondents in Michigan were unemployed, and 30% were living in poverty.<sup>15</sup> In addition, 20% of

<sup>9</sup> Id.

<sup>10</sup> GLSEN, SCHOOL CLIMATE IN MICHIGAN 1 (2017),

[https://www.glsen.org/sites/default/files/Michigan%20State%20Snapshot%20-%202017%20NSCS\\_0.pdf](https://www.glsen.org/sites/default/files/Michigan%20State%20Snapshot%20-%202017%20NSCS_0.pdf).

<sup>11</sup> The National Center for Transgender Equality and The National Gay and Lesbian Task Force, Findings of the National Transgender Discrimination Survey: Michigan Results, available at

<http://www.transequality.org/sites/default/files/docs/usts/USTSMIStateReport%281017%29.pdf> (last visited July 11, 2018).

<sup>12</sup> RESULTS OF THE 2016 UNIVERSITY OF MICHIGAN STUDENT CAMPUS CLIMATE SURVEY ON DIVERSITY, EQUITY AND INCLUSION 5 (2016), available at <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-STUDENT-REPORT-FINAL.pdf>.

<sup>13</sup> LGBT Data & Demographics: Michigan, Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=26#density> (last visited Oct. 31, 2018) (percentage of adults in Michigan identifying as LGBT).

<sup>14</sup> Id.

<sup>15</sup> NAT'L CENTER FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: MICHIGAN STATE REPORT 1 (2017), available at <http://www.transequality.org/sites/default/files/docs/usts/USTS-MI-State-Report.pdf>.

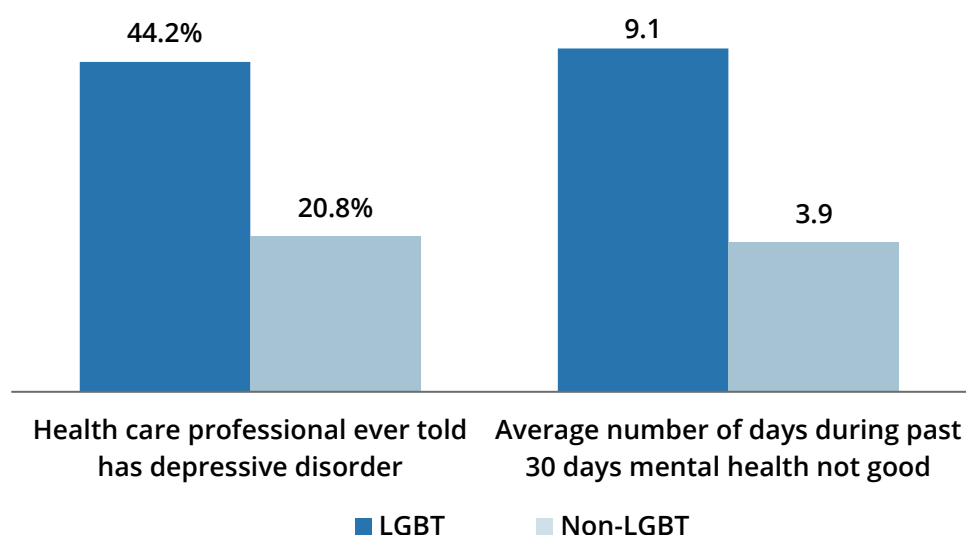


respondents in Michigan reported experiencing homelessness in the past year because they were transgender.<sup>16</sup>

### LGBT adults and youth in Michigan experience health disparities.

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT people such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased likelihood of school dropout, suicide, and substance use among LGBT youth.
- LGBT respondents to the 2015-2016 Michigan Behavioral Risk Factor Surveillance System surveys were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGBT respondents (44.2% v. 20.8%). In addition, LGBT adults in Michigan were significantly more likely to report current smoking (38.4% v. 20.3%) than non-LGBT adults.

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



- The 2017 Michigan Youth Risk Behavior Survey found that LGB students were more likely to report that they have seriously considered suicide (53.4% v. 17.2%), have made a plan about how to commit suicide (44.7% v. 13.6%), and have injured themselves in a suicide attempt requiring medical care (7.7% v. 1.8%) in the year prior to the survey than heterosexual students.<sup>17</sup> LGB students in Michigan were also more likely than heterosexual students to report smoking cigarettes (27.0% v. 8.2%), drinking (40.0% v. 28.8%), and using marijuana (44.5% v. 21.5%) in the month prior to the survey.<sup>18</sup>

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Laura Kann et al., *supra* note 8 at 181, 192, 198.

<sup>18</sup> *Id.* at 207, 270, 288.



## ECONOMIC IMPACTS OF STIGMA AND DISCRIMINATION

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

- **Productivity.** Unsupportive work environments can mean that LGBT employees are less likely to be open about their sexual orientation or gender identity at work, and more likely to be distracted, disengaged, or absent, and to be less productive. These outcomes could lead to economic losses for state and local governments, as employers, as well as private sector employers in the state. Given that an estimated 229,000 workers in Michigan identify as LGBT, the loss in productivity from a discriminatory environment could be significant.
- **Retention.** LGBT employees in less supportive work environments feel less loyal to their employers and are more likely to plan to leave their jobs. Given the average replacement costs of an employee, public and private employers risk losing \$9,660, on average, for each employee that leaves the state or changes jobs because of an unsupportive environment in Michigan.
- **Recruitment.** Many LGBT and non-LGBT workers, in particular those who are younger and more highly educated, prefer to work for companies with more LGBT-supportive policies, and in states with more supportive laws. To the extent that workers from other states perceive Michigan to be unsupportive of LGBT people, it may be difficult for public and private employers in the state to recruit talented employees from other places.

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

- Bullying, harassment, and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or unemployed or underemployed.
- In response to the 2015 U.S. Transgender Survey, of those respondents from Michigan who said they had been harassed in school, 20% said the harassment was so severe that they had to leave school.<sup>19</sup>
- School drop-out and homelessness that arise due to bullying, harassment, and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Jim Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging out cohort.

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<sup>19</sup> NATN'L CENTER FOR TRANSGENDER EQUALITY, *supra* note 15.

**Health disparities for LGBT people negatively impact the economy.**

- A more supportive legal landscape and social climate for LGBT people in Michigan is likely to reduce health disparities between LGBT and non-LGBT people, which would increase worker productivity and reduce health care costs.
- We estimate that reducing the disparity in major depressive disorder between LGBT and non-LGBT people in Michigan by 25% to 33.3% could benefit the state's economy by \$122.5 million to \$163.9 million, and reducing the disparity in current smoking by the same proportion could benefit the state's economy by \$107.9 million to \$143.8 million in increased productivity and reduced health care costs each year. To the extent that a more supportive legal landscape would reduce other health disparities, the state's economy would benefit even more.

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

Health characteristic	Reduction in disparity between LGBT and non-LGBT people in Michigan	LGBT individuals impacted	Annual reduction in costs (millions)
Major Depressive Disorder	25%–33.3%	7,700–10,300	\$122.5–\$163.9
Smoking	25%–33.3%	14,100–18,800	\$107.9–\$143.8

## DEMOGRAPHICS AND LEGAL LANDSCAPE

Michigan is home to an estimated 311,400 LGBT adults and approximately 61,200 LGBT youth who reflect the diversity of the state's overall population. There are limited legal protections for LGBT people in Michigan. However, the state is ranked in the top half of states in terms of LGBT social climate (as measured by public support for LGBT rights and acceptance of LGBT people).<sup>20</sup> And, public opinion polls also show that a majority of people in Michigan support extending discrimination protections to LGBT people.<sup>21</sup>

### DEMOGRAPHICS OF LGBT PEOPLE IN MICHIGAN

#### LGBT Adults in Michigan

Michigan is home to over 311,400 LGBT adults (4.0% of adults self-identify as LGBT),<sup>22</sup> including 32,900 transgender adults (0.43% of the adult population).<sup>23</sup> They are diverse across many socio-demographic characteristics, including age, sex, race-ethnicity, and the presence of children in the household.

- Representative data from the combined 2015-2017 Gallup Daily Tracking Surveys indicate that LGBT adults in Michigan, like LGBT adults elsewhere across the U.S., are younger than non-LGBT adults.<sup>24</sup> As shown in Table 2 below, more than half of LGBT adults in Michigan are under the age of 35.
- While similar proportions of non-LGBT adults in Michigan are male and female, LGBT adults are more likely to be female.<sup>25</sup>

<sup>20</sup> Amira Hasenbush, Andrew R. Flores, Angeliki Kastanis, Brad Sears & Gary J. Gates, Williams Inst., The LGBT Divide: A Data Portrait of LGBT People in the Midwestern, Mountain & Southern States 22 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

<sup>21</sup> Andrew R. Flores, Jody L. Herman & Christy Mallory, Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness, RESEARCH & POLITICS, Oct. – Dec. 2015, at 1..

<sup>22</sup> LGBT Data & Demographics: Michigan, Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=26#density> (last visited Oct. 31, 2018) (percentage of adults in Michigan identifying as LGBT). Total adult population in the state is 7,785,662. For total population: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Oct. 31, 2018) (select advanced search, enter "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017" under topic or table name and "Michigan" under state, county or place, select "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017" 2017 estimates).

<sup>23</sup> Andrew R. Flores, Jody L. Herman, Gary J. Gates & Taylor N.T. Brown, Williams Inst., How Many Adults Identify as Transgender in the United States? 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

<sup>24</sup> LGBT Data & Demographics: Michigan, *supra* note 22.

<sup>25</sup> *Id.*

- LGBT adults in Michigan are racially and ethnically diverse: 13.7% are Black or African American, 8.1% are Latino/a or Hispanic, 6.8% are multiracial, 4.0% are of another racial or ethnic group, and 67.4% are White.<sup>26</sup>

**Table 2. Weighted characteristics of Michigan adult participants in the 2015-2017 Gallup Daily Tracking Surveys by LGBT and non-LGBT status (N = 28,497)<sup>27</sup>**

	LGBT (n = 906)	Non-LGBT (n = 27,591)
	%	%
Age		
18-24	33.3	11.9
25-34	23.5	14.4
35-49	18.9	23.1
50-64	16.4	27.7
65+	7.9	22.8
Sex		
Female	59.3	50.2
Male	40.7	49.8
Race-ethnicity		
White	67.4	79.0
African-American/Black	13.7	10.9
Latino/a or Hispanic	8.1	4.0
More than one race	6.8	3.2
All other racial/ethnic groups	4.0	2.9
Children under 18 in household (among those ages 25+)	27.5	32.6

- Many LGBT adults in Michigan have children in their households, in the context of same- and different-sex relationships, married and unmarried, and as single parents. Approximately 27.5% of LGBT adults age 25 and older in Michigan (approximately 58,000 individuals) are raising children.<sup>28</sup> Data from the 2011-2013 American Community Survey indicate there were approximately 14,600 cohabitating same-sex couples living in Michigan, 18.2% of whom were raising children.<sup>29</sup> While different-sex married couples are more likely to be raising children than

<sup>26</sup> *Id.* Individual proportions of respondents who reported identifying as Asian, American Indian or Alaska Native, or Native Hawaiian or Other Pacific Islander were combined because of limited sample size.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> LGBT Data & Demographics: Michigan, Williams Inst., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=SS&area=26#demographic> (last visited Oct. 31, 2018).

same-sex couples, among cohabiting couples with children, same-sex couples are about twice as likely to be raising adopted children as different-sex couples in the state (10% vs. 4%).<sup>30</sup>

## LGBT Youth in Michigan

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants that is managed by the Centers for Disease Control and Prevention (CDC). The YRBS is one of the few sources of data about LGB youth in grades 9 through 12.<sup>31</sup> In 2016 and 2018, the CDC published reports on the health and well-being of youth from states and large urban school districts that included measures of sexual orientation on the YRBS.<sup>32</sup> Based on these data, we estimate that 9.2% of youth in grades 9 through 12 identify as LGB in the U.S.<sup>33</sup>

An estimated 61,200 LGBT youth ages 13 to 17 live in Michigan, including approximately 59,400 LGB youth<sup>34</sup> (2,100 of whom are also transgender<sup>35</sup>) and approximately 1,800 transgender youth who are not LGB. A total of approximately 3,950 youth ages 13 to 17 in Michigan identify as transgender.<sup>36</sup>

<sup>30</sup> HASENBUSH ET AL., *supra* note 20 at 25.

<sup>31</sup> Questions to identify transgender participants were not included in the 2015 or 2017 YRBS surveys.

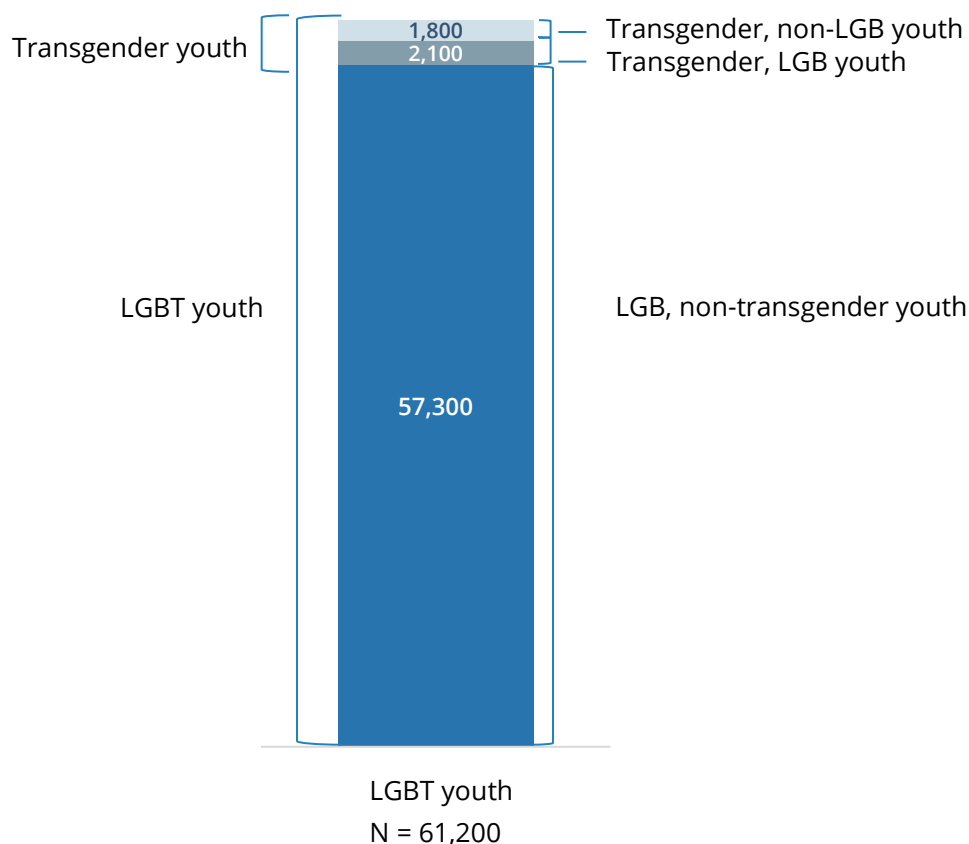
<sup>32</sup> See Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 125 (2018), available at <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>; Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83 (2016), available at <http://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>.

<sup>33</sup> In the 2015 YRBS, 8.0% of youth in the national sample identified as LGB. In the 2017 YRBS, 10.4% of youth in the national sample identified as LGB. We averaged the percentage of youth identifying as LGB across these two samples to produce a larger sample size and, thus, a more reliable estimate.

<sup>34</sup> We assume the same distribution of sexual orientation across all youth, including those who declined to answer this question on the YRBS and those who are not enrolled in school. 2017 Population Estimates (based on projections from the 2010 Census), American FactFinder Table PEPSYASEX, Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017, available at <https://factfinder.census.gov/bkmk/table/1.0/en/PEP/2017/PEPSYASEX>.

<sup>35</sup> Data on the percentage of transgender youth identifying as LGB are not currently available. However, data from the combined 2015-2017 Behavioral Risk Factor Surveillance System (BRFSS) restricted to transgender-identified participants ages 18-24 indicate that 46.3% identify as straight or other sexual orientation (i.e. non-LGB), and we believe that the BRFSS measure from young adults ages 18-24 provides a close approximation for youth ages 13-17. We applied this percentage among 18-24 year old adults to the estimated number of transgender youth ages 13-17 estimated in JODY L. HERMAN ET AL., WILLIAMS INST., *AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES* 4 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>. Population data (aged 13-17) derive from the 2011-2013 American Community Survey 3-Year estimates.

<sup>36</sup> *Id.*

**Figure 4. Estimates of the LGBT youth population of Michigan, ages 13-17**

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

LGB youth are more likely to be female than male. Among national participants in both the 2015 and 2017 YRBS, male and female students were equally as likely to identify as gay or lesbian.<sup>37</sup> A larger percentage of female students identified as bisexual than male students in both years.<sup>38</sup>

## LEGAL LANDSCAPE FOR LGBT PEOPLE IN MICHIGAN

Michigan's legal landscape reflects a history of state laws and policies that limit protections for LGBT people or discriminate against them. Although same-sex couples have been able to legally marry in the state since June 2015,<sup>39</sup> the state and many localities continue to lack protections from sexual orientation and gender identity discrimination in the workplace, housing, public accommodations, and other areas.

<sup>37</sup> Laura Kann et al., Youth Risk Behavior Surveillance – United States, 2017, *supra* note ; Laura Kann et al., Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83

<sup>38</sup> *Id.*

<sup>39</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

## Historical Legal Landscape

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

**Sodomy Law.** Enforcement of Michigan's sodomy law and other similar laws indicates a long history of discrimination against LGB people in the state. In 1816, the Michigan legislature enacted a law specifically targeting acts of sodomy.<sup>40</sup> The 1816 law stated that "sodomy or that infamous crime against nature, committed with mankind or beast, shall be adjudged a high crime & misdemeanor & be punished by fine & solitary [i]mprisonment at hard labour" for up to 21 years.<sup>41</sup> In 1820, the law was reformed to reduce imprisonment to three years and specify a fine of \$300.<sup>42</sup> The law changed again in 1846, when the legislature eliminated the fine, but raised the term of imprisonment to 15 years.<sup>43</sup> In 1967, the Michigan Court of Appeals held that the sodomy law applied to heterosexual acts as well as acts between people of the same sex.<sup>44</sup>

In 1903, the Michigan legislature enacted its first iteration of a "gross indecency" statute. Unlike the state's sodomy statute, the gross indecency statute initially criminalized only sexual activity between men. The law stated that where a "male person who in public or private commits or is a party to the commission of or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person" that person is guilty of a felony.<sup>45</sup> The penalty for the crime was five years of imprisonment and/or a fine of up to \$5,000.<sup>46</sup> In 1939, the gross indecency statute was revised to include acts between two women and between a man and a woman.<sup>47</sup>

In 1990, in *Michigan Organization for Human Rights v. Kelly*, the Wayne County Circuit Court held that the state's sodomy and gross indecency laws were unconstitutional as applied to private, consensual activities.<sup>48</sup> However, the laws continued to be enforced across the state to varying degrees, largely because the standard for evaluating what constituted gross indecency in Michigan remained unclear.<sup>49</sup> Some courts asked whether a defendant "acted in a way that the common sense of society would regard as indecent and improper."<sup>50</sup> Other courts followed *People v. Howell*, a plurality decision by the Michigan

<sup>40</sup> *Laws of the Territory of Michigan*, Vol. 1, page 109, § 4, enacted Nov. 4, 1816.

<sup>41</sup> *Id.*

<sup>42</sup> *Laws of the Territory of Michigan*, Vol. 1, page 562, § 4, enacted May 17, 1820.

<sup>43</sup> *The Revised Statutes of the State of Michigan*, page 682, § 16, enacted May 18, 1846.

<sup>44</sup> *People v. Askar*, 153 N.W.2d 888 (Mich. Ct. App. 1967).

<sup>45</sup> Act of June 10, 1903, No.198, 1903 Mich. Pub. Acts 295.

<sup>46</sup> *Id.*

<sup>47</sup> Act of May 26, 1939, No. 148, 1939 Mich. Pub. Acts 293-94.

<sup>48</sup> Williams N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America 1861-2003*, 273-74 (2008).

<sup>49</sup> George Painter, *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States—Michigan*, SODOMY LAWS, (last modified Aug. 10, 2004), <https://www.glapn.org/sodomylaws/sensibilities/michigan.htm>.

<sup>50</sup> See e.g. *People v. Carey*, 187 N.W. 261, 262 (Mich. 1922) (noting that indecency is determined what "common sense of society would regard as indecent and improper"); *People v. Dexter*, 148 N.W.2d 915 (Mich. Ct. App. 1967) ("The common sense of the community, as well as the sense of decency, propriety, and morality which most people entertain, is sufficient to apply the statute to each particular case, and point out what particular conduct is rendered criminal by it.").



Court of Appeals, which asserted that gross indecency could only consist of “oral and manual sexual acts committed without consent or with a person under the age of consent or any ultimate sexual act committed in public.”<sup>51</sup> The Michigan Supreme Court refused to hear a case that would have resolved this issue in 2000.<sup>52</sup> The state’s gross indecency laws remain on the books.<sup>53</sup>

Michigan’s sodomy law was struck down by the United States Supreme Court in the landmark case *Lawrence v. Texas*,<sup>54</sup> overturning its earlier decision in *Bowers v. Hardwick*.<sup>55</sup> The Court held that laws banning private, consensual sexual conduct between adults violated the Due Process Clause of the U.S. Constitution.<sup>56</sup> In *Lawrence*, both the majority and concurring opinions noted the link between sodomy laws and discrimination against LGB people, stating that “the criminal conviction carries with it other collateral consequences... such as notations on job application forms, to mention but one example”<sup>57</sup> and that a conviction under the law “would disqualify [individuals] from or restrict their ability to engage in a variety of professions, including medicine, athletic training, and interior design.”<sup>58</sup> Although Michigan’s sodomy law is no longer enforceable after *Lawrence*, the law remains on the books.<sup>59</sup>

**Marriage Equality.** Years before any state extended marriage to same-sex couples, the Michigan Legislature passed a statute restricting marriage to different-sex couples.<sup>60</sup> In November 2004, 59%<sup>61</sup> of the Michigan public voted to ban same-sex marriage by constitutional fiat.<sup>62</sup> The Michigan Marriage Amendment of 2004 stated: “To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.”<sup>63</sup> The Michigan Supreme Court interpreted the amendment as broadly as possible, construing it not only as a ban on state recognition of same-sex marriages, civil unions, and domestic partnerships, but also as forbidding any state provision of public benefits.<sup>64</sup> Although marriage equality is now recognized in all fifty states,<sup>65</sup> Michigan law still defines marriage as “inherently a unique relationship between a man and a woman.”<sup>66</sup>

<sup>51</sup> 238 N.W.2d 148 (Mich. Ct. App. 1976).

<sup>52</sup> See *People v. Lint*, 629 N.W.2d 924 (denying application for leave to appeal); *Id.* at 924-25 (Corrigan, C.J., dissenting) (noting the tension between precedent and the language of the statute: “[T]he Court of Appeals correctly reinstated the charge under current precedent. Nonetheless, the underlying statute does not require that an act of gross indecency occur in public”).

<sup>53</sup> Mich. Comp. Laws § 750.338 (1931); Mich. Comp. Laws § 750.338a (1939); Mich. Comp. Laws § 750.338b (1939).

<sup>54</sup> 539 U.S. 558 (2003).

<sup>55</sup> 478 U.S. 186 (1986).

<sup>56</sup> *Lawrence*, 539 U.S. at 558.

<sup>57</sup> *Id.* at 576.

<sup>58</sup> *Id.* at 581 (O’Connor, J., concurring).

<sup>59</sup> MICH. COMP. LAWS § 750.158 (1931).

<sup>60</sup> *Askew signs bill to ban gay marriage*, BOCA RATON NEWS, June 9, 1977, at 5A.

<sup>61</sup> Bill Schuette, *Schuette: Why I fight for Michigan’s gay marriage ban*, DET. FREE PRESS, Jan. 24, 2015, <https://www.freep.com/story/opinion/contributors/2015/01/24/gay-marriage-michigan/22257025/>.

<sup>62</sup> The Michigan Constitution authorizes initiated amendments to be passed with a simple majority of voters. MICH. CONST. art. I, § 2 (West).

<sup>63</sup> *Id.* at § 25 (West).

<sup>64</sup> See *Nat’l Pride At Work, Inc. v. Governor of Michigan*, 748 N.W.2d 524 (Mich. 2008).

<sup>65</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

<sup>66</sup> Mich. Comp. Laws Ann. § 551.1 (West 2018).

## Current Legal Landscape

Discrimination Protections. Michigan does not have any state-level non-discrimination statutes that expressly include sexual orientation or gender identity as protected characteristics.<sup>67</sup> Michigan's statewide non-discrimination statute, the Elliott-Larsen Civil Rights Act (ELCRA), prohibits discrimination on the bases of religion, race, national origin, age, sex, height, weight, familial status, and marital status in employment, housing, real estate, public accommodations, and educational facilities.<sup>68</sup> The act does not explicitly protect people from discrimination based on sexual orientation or gender identity.<sup>69</sup> However, in May 2018, the Michigan Civil Rights Commission adopted an interpretive statement defining "sex" in the ELCRA to include discrimination based on sexual orientation and gender identity.<sup>70</sup> The statement allows the Michigan Civil Rights Commission to enforce complaints of discrimination based on sexual orientation and gender identity, thereby offering protection to those discriminated against based on those characteristics.<sup>71</sup>

After Republican state legislators called upon the state's Attorney General, Bill Schuette, to reverse the statement,<sup>72</sup> he issued an opinion stating that the Commission had overstepped its authority because "it is not the role of the Civil Rights Commission to 'update' a statute" and "under Michigan law, the mechanism for evolution of statutory law is legislation."<sup>73</sup> Because the Civil Rights Commission's language is "contrary to ELCRA's plain language," Schuette argued, it is invalid.<sup>74</sup> However, the Civil Rights Commission has indicated it will continue to stand by its interpretation. At least one conservative legal group is planning to challenge the interpretation in court.<sup>75</sup> Thus, the future of state-level protections from discrimination for LGBT people in Michigan remains uncertain despite the Commission's statement. Although Michigan law does not expressly prohibit discrimination based on sexual orientation and gender identity in most areas, such as employment, housing, and public accommodations, a Michigan statute that regulates health care facilities requires that such facilities make services available without regard to patients' personal characteristics, including "sexual preference."<sup>76</sup>

<sup>67</sup> Some federal laws that prohibit discrimination based on sex, including Title VII, have been interpreted by some courts and federal agencies to also prohibit discrimination based on gender identity and sexual orientation. These laws would apply to workers and residents of Michigan, though they are not discussed here because they are outside the scope of this memo. See Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, U.S. EEOC, [https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm) (last visited May 31, 2018).

<sup>68</sup> Mich. Comp. Laws § 37.2101 (1992).

<sup>69</sup> *Id.*

<sup>70</sup> MICHIGAN CIVIL RIGHTS COMMISSION, INTERPRETIVE STATEMENT 2018-1 (2018), [https://www.michigan.gov/documents/mdcr/MCRC\\_Interpretive\\_Statement\\_on\\_Sex\\_05212018\\_625067\\_7.pdf](https://www.michigan.gov/documents/mdcr/MCRC_Interpretive_Statement_on_Sex_05212018_625067_7.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> Kathleen Gray, *GOP leaders want AG Bill Schuette to reverse LGBT protections ruling*, DETROIT FREE PRESS (June 6, 2018), <https://www.freep.com/story/news/politics/2018/06/06/lgbt-bill-schuette-michigan-civil-rights-commission/679206002/>.

<sup>73</sup> Mich. Att'y Gen. Op. No. 703514 (July 20, 2018), available at [https://content.govdelivery.com/attachments/MIAG/2018/07/20/file\\_attachments/1042428/AGFormalOpinion7305.pdf](https://content.govdelivery.com/attachments/MIAG/2018/07/20/file_attachments/1042428/AGFormalOpinion7305.pdf).

<sup>74</sup> *Id.*

<sup>75</sup> Rick Pluta, *Michigan Civil Rights Commission Taking LGBT Discrimination Complaints*, MICH. PUB. RADIO NETWORK (May 23, 2018), <http://wmuk.org/post/michigan-civil-rights-commission-taking-lgbt-discrimination-complaints>.

<sup>76</sup> MICH. COMP. LAWS ANN. § 333.20201 (West).

Executive orders signed by former governor Jennifer Granholm protect state government employees in Michigan from employment discrimination based on sexual orientation (2003)<sup>77</sup> and gender identity (2007).<sup>78</sup> The directives require executive agency heads to ensure that the non-discrimination policy is reflected in all agency programs and materials.<sup>79</sup> The directives do not permit employees to file suit in court based on a violation of the non-discrimination requirements.<sup>80</sup> The directives protect approximately 170,000 state government workers from discrimination based on sexual orientation and gender identity.<sup>81</sup>

A number of localities in Michigan have enacted local ordinances that prohibit discrimination based on sexual orientation and gender identity, creating a patchwork of legal protections for LGBT people in the state. At least 47 municipalities have enacted local ordinances barring discrimination based on sexual orientation and gender identity. These ordinances protect approximately 24% of Michigan's workforce from employment discrimination based on sexual orientation and gender identity,<sup>82</sup> and the state's executive order protects an additional 3% of the state's workforce from discrimination based on these characteristics.<sup>83</sup> An estimated 229,000 workers in Michigan, aged 16 and older, identify as LGBT (4.6% of the state's employed workforce).<sup>84</sup> The local ordinances also protect approximately 22% of Michigan's adult population from sexual orientation and gender identity discrimination in public accommodations and 23% of the adult population from such discrimination in housing.<sup>85</sup>

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

- The following municipalities have the broadest ordinances, which prohibit discrimination in employment (private and public sector), housing, and public accommodations on the basis of sexual orientation and gender identity or expression: Adrian,<sup>86</sup> Albion,<sup>87</sup> Ann Arbor,<sup>88</sup> Battle

<sup>77</sup> Mich., Exec. Directive No. 2003-24 (2003), <http://www.michigan.gov/granholm/0,4587,7-168-36898-83560--,00.html>.

<sup>78</sup> Mich., Exec. Directive No. 2007-24 (2007), [https://www.michigan.gov/formergovernors/0,4584,7-212-57648\\_36898-180697--,00.html](https://www.michigan.gov/formergovernors/0,4584,7-212-57648_36898-180697--,00.html)

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Calculated by authors using data from the American Community Survey, 2012 1-Year-Estimates, Michigan: *Sex by Class of Worker for the Civilian Population Aged 16 and Over*, FACTFINDER.COM, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_16\\_1YR\\_B24080&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B24080&prodType=table) (last visited July 16, 2018).

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAM INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

<sup>85</sup> Calculated by authors using data from the U.S. Census Bureau 2016 American Community Survey, 2016 1-Year Estimates, Michigan. U.S. Census Bureau, *Age and Sex*, FACTFINDER.COM, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_16\\_5YR\\_S0101&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_S0101&prodType=table) (last visited July 16, 2018).

<sup>86</sup> ADRIAN, MICH., CODE ch. 38, art. 3 (2014).

<sup>87</sup> Albion, Mich., Ordinance 2015-04 (July 20, 2015).

<sup>88</sup> ANN ARBOR, MICH., CODE ch. 112, § 9:159 (2014).

Creek,<sup>89</sup> Dearborn Heights,<sup>90</sup> Detroit,<sup>91</sup> East Grand Rapids,<sup>92</sup> East Lansing,<sup>93</sup> Farmington Hills,<sup>94</sup> Fenton,<sup>95</sup> Ferndale,<sup>96</sup> Grand Rapids,<sup>97</sup> Howell,<sup>98</sup> Huntington Woods,<sup>99</sup> Jackson,<sup>100</sup> Kalamazoo,<sup>101</sup> Lansing,<sup>102</sup> Linden,<sup>103</sup> Marquette,<sup>104</sup> Mt. Pleasant,<sup>105</sup> Pleasant Ridge,<sup>106</sup> Portage,<sup>107</sup> Royal Oak,<sup>108</sup> Saline,<sup>109</sup> Saugatuck,<sup>110</sup> Southfield,<sup>111</sup> Traverse City,<sup>112</sup> Trenton,<sup>113</sup> Wayland,<sup>114</sup> Westland,<sup>115</sup> Ypsilanti,<sup>116</sup> Canton Township,<sup>117</sup> Delhi Township,<sup>118</sup> Delta Township,<sup>119</sup> Kalamazoo Township,<sup>120</sup> Lathrup Village,<sup>121</sup> Meridian Township,<sup>122</sup> Oshtemo Township,<sup>123</sup> Saugatuck Township,<sup>124</sup> Union Township,<sup>125</sup> and Village of Lake Orion.<sup>126</sup>

- Grand Ledge and the Village of Douglas prohibit discrimination in private and public sector employment, housing, and public accommodations on the basis of sexual orientation, but do not prohibit discrimination based on gender identity.<sup>127</sup>

<sup>89</sup> BATTLE CREEK, MICH., CODE ch. 214 § 1-10 (2013).

<sup>90</sup> DEARBORN HEIGHTS, MICH., CODE ch. 2, art. VI, § 581 (2006).

<sup>91</sup> DETROIT, MICH., CODE ch. 27, art. 1, § 1 (2008).

<sup>92</sup> East Grand Rapids, Mich., Code ch. 10 § 601 (2015).

<sup>93</sup> EAST LANSING, MICH., CODE ch. 22, art 2, § 22-31 (2005).

<sup>94</sup> Farmington Hills, Mich., Code ch. 13.5, § 1-5 (2014).

<sup>95</sup> FENTON, MICH., CODE ch. 15-5, art 1 (2014).

<sup>96</sup> FERNDAL, MICH., CODE ch. 28, § 4 (2006).

<sup>97</sup> GRAND RAPIDS, MICH., CODE ch. 9, art. 3, § 341-47 (1994).

<sup>98</sup> HOWELL, MICH., CODE ch. 209 § 1-5 (2016).

<sup>99</sup> Huntington Woods, Mich., Code ch. 19 § 4 (2001).

<sup>100</sup> JACKSON, MICH., CODE ch. 15, art. 3 § 1 (2017).

<sup>101</sup> KALAMAZOO, MICH., CODE ch. 18, art. 2 § 17 (2009).

<sup>102</sup> LANSING, MICH., CODE ch. 298 § 10 (2006).

<sup>103</sup> *Linden passes anti-discrimination ordinance*, TRI-COUNTY TIMES, Sep. 11, 2013, [https://www.tctimes.com/news/linden-passes-anti-discrimination-ordinance/article\\_c2828a2a-1ae3-11e3-8f3b-0019bb2963f4.html](https://www.tctimes.com/news/linden-passes-anti-discrimination-ordinance/article_c2828a2a-1ae3-11e3-8f3b-0019bb2963f4.html).

<sup>104</sup> MARQUETTE, MICH., CODE ch. 2, art. 3 § 371-75 (2015).

<sup>105</sup> Mt. Pleasant, Mich., Code ch. 39 § 1 (2012).

<sup>106</sup> Pleasant Ridge, Mich., Code ch. 40 § 4 (2013).

<sup>107</sup> PORTAGE, MICH., CODE ch. 24, art. 7 § 148-52 (2016).

<sup>108</sup> ROYAL OAK, MICH., CODE ch. 402 § 1-5 (2013).

<sup>109</sup> SALINE, MICH., CODE ch. 46, art. 1, § 106 (2018).

<sup>110</sup> SAUGATUCK, MICH., CODE ch. 130 § 3 (2007).

<sup>111</sup> SOUTHFIELD, MICH., CODE ch. 122 § 9.380 (2015).

<sup>112</sup> Traverse City, Mich., Code ch. 605 § 1-5 (2010).

<sup>113</sup> TRENTON, MICH., CODE ch. 2, art. X § 701-05 (2013).

<sup>114</sup> Wayland, Mich., Ordinance 234 (May 18, 2015).

<sup>115</sup> WESTLAND, MICH., CODE ch. 54 § 1-5 (2017).

<sup>116</sup> YPSILANTI, MICH., CODE ch. 58 § 61-65 (1997).

<sup>117</sup> Canton Township, Mich., Code ch. 36, § 1-5 (2014).

<sup>118</sup> Delhi Township, Mich., Code ch. 20 § 1-5 (2013).

<sup>119</sup> Delta Charter Township, Mich., Code ch. 27 § 1-5 (2013).

<sup>120</sup> Kalamazoo Township, Mich., Ordinance 573 (July 22, 2013).

<sup>121</sup> LATHRUP VILLAGE, MICH., CODE art. VII, § 251-53 (2014).

<sup>122</sup> Meridian Township, Mich., Code ch. 30 (2013).

<sup>123</sup> Oshtemo Township, Mich., Code ch. 174 § 1-5 (2013).

<sup>124</sup> SAUGATUCK TOWNSHIP, MICH., CODE ch. 2, art. 5 § 251-53 (2007).

<sup>125</sup> Union Charter Township, Mich., Ordinance 2012-06 (Oct. 10, 2012).

<sup>126</sup> Lake Orion Village, Mich., Ordinance 618 (Oct. 6, 2016).

<sup>127</sup> AJ Trager, *Two Michigan Cities Pass Nondiscrimination Ordinance*, PRIDE SOURCE (June 30, 2016), <https://pridesource.com/article/77177-2/>; DOUGLAS, MICH., CODE ch. 91 § 20-22 (1995).

- Bay City prohibits discrimination in housing, public accommodations, and public sector employment on the basis of sexual orientation and gender identity, but does not extend its protections to private sector employment.<sup>128</sup>
- Flint prohibits discrimination in housing and real estate on the basis of sexual orientation and gender identity.<sup>129</sup>
- Birmingham and Saginaw prohibit discrimination in housing and real estate on the basis of sexual orientation, but do not prohibit discrimination based on gender identity.<sup>130</sup>

The ordinances generally specify the municipal body or agent responsible for accepting and investigating reports of discrimination. In many municipalities, such as Ann Arbor, Detroit, and Jackson, a human rights commission is responsible for receiving and investigating complaints.<sup>131</sup> Other localities, including Kalamazoo, Ypsilanti, and Marquette, give their City Manager or City Attorney the responsibility.<sup>132</sup> Most municipalities give the entity charged with investigating the complaint discretion in deciding how to remedy violations, including entering into conciliation agreements, pursuing injunctive relief, and prosecuting the violation as a municipal civil infraction. For example, in Albion, the City Manager investigates complaints of discrimination and can decide whether to refer the complaint to a proper state body or agency, to proceed with informal mediation or conciliation procedures, or to recommend that the City Attorney prosecute the violation as a municipal civil infraction.<sup>133</sup> In Albion, as in the vast majority of municipalities with these ordinances, the penalty for a municipal civil infraction is a fine of up to \$500, with an increased penalty for repeat violations.<sup>134</sup>

Some municipalities lack meaningful enforcement mechanisms. For example, Lathrup, Saugatuck, and Union Charter expressly state that if a respondent refuses to admit to the discriminatory practice and details their response in writing to the Township Manager, the municipality will take no further action against the respondent.<sup>135</sup> Grand Rapids also lacks concrete enforcement mechanisms. Although the city's ordinance states that discrimination on the basis of sexual orientation and gender identity "is contrary to [the city's] public policy" there is no reporting mechanism or remedy for those who

<sup>128</sup> BAY CITY, MICH., CODE ch. 66 §5 1-56 (2016).

<sup>129</sup> FLINT, MICH., CODE ch. 24, art. 2 § 98 (1990). The statewide vote which rejected the Emergency Financial Manager law caused Flint's broader non-discrimination ordinance, which included gender identity, to be repealed, along with all other ordinances enacted in Flint by the Emergency Financial Manager. See Crystal A. Proxmire, *Non Discrimination Ordinances Spread Equality City by City*, PRIDE SOURCE (Jan. 10, 2013).

<sup>130</sup> BIRMINGHAM, MICH., CODE ch. 66, art. 2 § 40 (1992); SAGINAW, MICH., CODE ch. 93 (1984).

<sup>131</sup> ANN ARBOR, MICH., CODE ch. 112, § 9:159 (2014); DETROIT, MICH., CODE ch. 27, art. 1, § 1 (2008); JACKSON, MICH., CODE ch. 15, art. 3 § 1 (2017).

<sup>132</sup> KALAMAZOO, MICH., CODE ch. 18, art. 2 § 17 (2009); YPSILANTI, MICH., CODE ch. 58 § 61-65 (1997); MARQUETTE, MICH., CODE ch. 2, art. 3 § 371-75 (2015).

<sup>133</sup> Albion, Mich., Ordinance 2015-04 (July 20, 2015). Some municipalities also allow its City Attorney to pursue court-ordered injunctions. E.g., BATTLE CREEK, MICH., CODE ch. 214 § 1-10 (2013); EAST LANSING, MICH., CODE ch. 22, art 2, § 22-31 (2005); SAGINAW, MICH., CODE ch. 93 (1984).

<sup>134</sup> Albion, Mich., Ordinance 2015-04 (July 20, 2015).

<sup>135</sup> LATHRUP VILLAGE, MICH., CODE art. VII, § 251-53 (2014); SAUGATUCK TOWNSHIP, MICH., CODE ch. 2, art. 5 § 251-53 (2007); Union Charter Township, Mich., Ordinance 2012-06 (Oct. 10, 2012).

experience discrimination.<sup>136</sup> Additionally, municipalities differ in providing a private right of action. Many municipal ordinances are silent on whether a private right of action exists, while others, like the Detroit, Adrian, and Saline, expressly provide complainants the right to sue.<sup>137</sup>

**Parenting Rights.** Same-sex couples may face legal barriers to securing parental rights in Michigan. Under Michigan's adoption statutes, only married couples can jointly adopt children, though any adult is eligible to adopt as an individual.<sup>138</sup> Additionally, only married partners can invoke the state's equitable parent doctrine, which allows a spouse who is not biologically related to a child born during a marriage to assert custody rights over the child upon divorce from the biologically related partner.<sup>139</sup> In 2015, the Supreme Court's decision in *Obergefell v. Hodges* guaranteed same-sex couples the right to marry, thereby granting married same-sex couples the ability to jointly adopt and invoke the equitable parent doctrine in Michigan.<sup>140</sup>

However, just days before *Obergefell* was decided, the Michigan legislature passed House Bills 4188, 4189, and 4190, authorizing religious adoption agencies to decline their services to same-sex couples (married or otherwise) based on the agencies' religious beliefs.<sup>141</sup> Currently, if an agency refuses to provide services based on the exemption, it must refer the applicant to another agency that is willing and able to provide the services or refer the applicant to the state's Department of Health and Human Services' (DHHS) website that identifies other listed agencies.<sup>142</sup> Michigan's DHHS thus allows child placement agencies to refuse potential foster and adoptive families based on religious objections to children being placed in homes headed by LGBT individuals and/or same-sex couples.

The ACLU has filed a lawsuit challenging the DHHS policy as a violation of the First Amendment's Establishment Clause and the Fourteenth Amendment's Equal Protection Clause.<sup>143</sup> The complaint alleges that the state contracts with private adoption and foster care agencies despite knowing that they regularly turn away LGBT couples on the basis of their sexual orientation and/or gender identity.<sup>144</sup>

<sup>136</sup> GRAND RAPIDS, MICH., CODE ch. 9, art. 3, § 341-47 (1994).

<sup>137</sup> DETROIT, MICH., CODE ch. 27, art. 1, § 1 (2008); ADRIAN, MICH., CODE ch. 38, art. 3 (2014); SALINE, MICH., CODE ch. 46, art. 1, § 106 (2018).

<sup>138</sup> See Mich. Comp. Laws § 710.24.

<sup>139</sup> See *Atkinson v. Atkinson*, 160 Mich. App. 601, 608-09 (1987) (establishing the equitable parent doctrine); *Kolailat v. McKennett*, 2015 Mich. App. LEXIS 2415, 4-5 (2015) (limiting use of the doctrine to married couples).

<sup>140</sup> *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); *Stankevich v. Milliron*, 882 N.W.2d 194, 197 (Mich. Ct. App. 2015) (stating that married same-sex couples can invoke the equitable parent doctrine after *Obergefell*).

<sup>141</sup> See Lindsay Masters, *Same-Sex Adoption in the Wake of Obergefell: How Recent Michigan Legislation Runs Counter to the First Amendment Rights of Prospective Adoptive Parents*, 94 U. DET. MERCY L. REV. 99, 103 (2017).

<sup>142</sup> Mich. Comp. Laws § 722.124e.

<sup>143</sup> Leslie Cooper, *Same-Sex Couples Are Being Turned Away From Becoming Foster and Adoptive Parents in Michigan. So We're Suing.*, AM. CIV. LIBERTIES UNION (Sept. 20, 2017), <https://www.aclu.org/blog/lgbt-rights/lgbt-parenting/same-sex-couples-are-being-turned-away-becoming-foster-and-adoptive>. See *Dumont v. Lyon*, No. 2:17-cv-13080-PDB-EAS (E.D. Mich. complaint filed Sept. 20, 2017).

<sup>144</sup> *Id.*

Additionally, Michigan statutes concerning parental rights use gendered terms that assume that parents are members of a different-sex couple. For example, Michigan's presumptive parentage law says "[t]he name of the husband at the time of conception or, if none, the husband at birth shall be registered as the father of the child."<sup>145</sup> The portion of the statute which regulates assistive reproductive technology (ART) also contains gendered terms; it states that "[a] child conceived by a married woman with consent of her husband following the utilization of assisted reproductive technology is considered to be the legitimate child of the husband and wife."<sup>146</sup> However, the statutes seem to apply to same-sex couples following the ruling in *Obergefell*, which guaranteed same-sex couples not only the right to marry, but to enjoy "the same benefits of marriage afforded opposite-sex couples."<sup>147</sup> Currently, the Michigan DHHS policy is to list both parents on a child's birth certificate when one parent is the child's birth mother and the birth mother is married to her female partner at the time of the child's birth.<sup>148</sup>

However, male same-sex couples still face barriers to establishing parental rights to children conceived through tissue donation. For example, in Michigan, surrogate parentage contracts are void and unenforceable against the birth mother.<sup>149</sup> Moreover, if a surrogate parenting contract is for compensation, the biological mother, biological father, surrogate carrier, or the spouse of any of such participants could each be liable for a misdemeanor punishable by a fine up to \$10,000, imprisonment for up to one year, or both.<sup>150</sup> And, a person other than the participating parties to the agreement (e.g., a physician) who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation could be liable for a felony punishable by a fine up to \$50,000, imprisonment for up to five years, or both.<sup>151</sup> As such, couples seeking to grow their families through surrogacy can only enter into altruistic surrogacy agreements, and even then, the agreement will not be enforceable in court.

**Safe Schools and Youth.** Michigan's anti-bullying law, the Matt Epling Safe School Law, requires that school districts adopt and enforce policies against bullying of students.<sup>152</sup> Unlike many state anti-bullying laws, Michigan's statute does not include an enumerated list of personal characteristics based on which students are likely to be bullied, such as race, sex, sexual orientation, or gender identity.<sup>153</sup>

**Gender Marker and Name Changes.** Michigan allows individuals to change their gender marker and name on identification documents. In Michigan, a legal name change can be obtained by petitioning the

<sup>145</sup> Mich. Comp. Laws § 333.2824(1).

<sup>146</sup> MICH. COMP. LAWS § 333.2824(6).

<sup>147</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

<sup>148</sup> IVD Memorandum 2017-02, MICH. DEP'T OF HEALTH AND HUM. SERVICES (June 6, 2017), available at <https://dhhs.michigan.gov/ChildSupport/policy/Documents/2017-012.pdf>.

<sup>149</sup> Mich. Comp. Laws § 722.855.

<sup>150</sup> MICH. COMP. LAWS §§ 722.857, 722.859.

<sup>151</sup> MICH. COMP. LAWS § 722.859(3).

<sup>152</sup> Mich. Comp. Laws § 380.1310b.

<sup>153</sup> 18 states and the District of Columbia have enumerated anti-bullying laws that include sexual orientation and gender identity along with other personal characteristics. State Maps, GLSEN.ORG, <http://www.glsen.org/article/state-maps> (last visited July 2, 2018).



court.<sup>154</sup> All applicants must submit documentation regarding any criminal records and be fingerprinted.<sup>155</sup> Individuals in Michigan may update their name on a driver's license or Michigan identification card by submitting proof of the legal name change ordered by a court to a Michigan Secretary of State office along with supporting documentation.<sup>156</sup>

Individuals in Michigan may change the gender marker on their driver's license or identity card by providing a passport denoting their gender. To change a passport, the applicant must present a physician's statement certifying that they have undergone clinical treatment for gender transition.<sup>157</sup> Individuals are no longer required to provide proof of gender reassignment surgery in order to change the gender marker on their driver's license or identification card.<sup>158</sup> In order to change the gender marker on a birth certificate, applicants are required to provide "an affidavit of a physician certifying that sex-reassignment surgery has been performed" along with an application and payment of an amendment fee.<sup>159</sup>

**Other protections.** Michigan law requires local police to report to the state crimes "motivated by prejudice or bias based on race, ethnic origin, religion, gender or sexual orientation."<sup>160</sup> There is no reporting requirement for crimes based on gender identity.<sup>161</sup> Moreover, Michigan has no provision for crimes motivated by sexual orientation or gender identity in its general hate crimes law,<sup>162</sup> despite occasional attempts by the House of Representatives to consider adding an amendment to that effect.<sup>163</sup> Thus, there is an anomaly in Michigan's hate crimes regulatory framework: the state gathers data on crimes motivated by prejudice but does not classify these offenses as hate crimes.

Michigan lacks several other legal protections for LGBT people that have been enacted in other states, including, for example, a ban on professional health care providers from engaging in efforts to change people's sexual orientation or gender identity<sup>164</sup> and a law that requires health care providers to offer coverage for transition-specific medical care.<sup>165</sup> The state's Medicaid policy takes no explicit stance

<sup>154</sup> Mich. Comp. Laws § 711.1.

<sup>155</sup> Id.

<sup>156</sup> *How to Change Your Name on a Driver's License or State ID Card*, MICH. SECRETARY OF STATE, <https://www.michigan.gov/sos/0,1607,7-127--25240--00.html> (last visited July 2, 2018).

<sup>157</sup> Know your rights | Passports, NAT'L CTR. FOR TRANSGENDER EQUALITY, <https://transequality.org/know-your-rights/passports> (last visited July 2, 2018).

<sup>158</sup> Tresa Baldas, *Transgender Win: Sex-Change Rules Eased for Michigan Driver's License*, DET. FREE PRESS (Aug. 24 2016), <https://www.freep.com/story/news/local/michigan/2016/08/24/michigan-eases-sex-change-rules-drivers-licenses-no-surgery-needed/89265354/>

<sup>159</sup> MICH. PUB. HEALTH CODE § 333.2831; *ID Documents Center | Michigan*, NAT'L CTR. FOR TRANSGENDER EQUALITY, <https://transequality.org/documents/state/michigan> (last visited July 2, 2018).

<sup>160</sup> Mich. Comp. Laws Ann. § 28.257a (West)

<sup>161</sup> Id.

<sup>162</sup> MICH. COMP. LAWS ANN. § 750.147b (West).

<sup>163</sup> Cheyna Roth, *Lawmakers and prosecutor want to add sexual identity to hate crimes definition*, MICH. RADIO (Nov. 16, 2017), <http://michiganradio.org/post/lawmakers-and-prosecutor-want-add-sexual-identity-hate-crimes-definition>.

<sup>164</sup> 14 states in the U.S. and the District of Columbia have such bans, which generally prohibit therapists and other medical professionals from trying to change a youth's sexual orientation or gender identity (research on file with the authors).

<sup>165</sup> At least 15 states and the District of Columbia have such laws (research on file with the authors).

regarding transgender health coverage and care,<sup>166</sup> nor does the state include transgender and transition-related healthcare in its state employee health benefits scheme.<sup>167</sup> However, insurers cannot categorically exclude all health services related to gender transition nor deny or limit coverage for gender transition if doing so “results in discrimination against a transgender individual.”<sup>168</sup>

## PUBLIC OPINION

In 2014, Williams Institute scholars created the LGB Social and Political Climate Index to characterize the social environment in which LGB people reside.<sup>169</sup> The Index summarizes four items about acceptance of LGB people and attitudes toward LGB rights: 1) approval of marriage for same-sex couples; 2) approval of adoption rights for same-sex couples; 3) approval of laws that protect lesbians and gay men from employment discrimination; and 4) belief that homosexuality is a sin.<sup>170</sup> The Index provides climate scores for each state and the District of Columbia, denoting relative levels of social and political support for LGBT people across the U.S., with higher index scores indicating greater levels of social acceptance of LGB people and lower scores indicating lower acceptance. Out of all states, Michigan ranks 20th in its level of support for LGBT people and issues.

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<sup>166</sup> *Healthcare Laws and Policies: Medicaid Coverage for Transition-Related Care*, MOVEMENT ADVANCEMENT PROJECT, <http://www.lgbtmap.org/img/maps/citations-medicaid.pdf> (last visited Apr. 29, 2018).

<sup>167</sup> *Healthcare Laws and Policies: State Employee Coverage for Transition-Related Care*, MOVEMENT ADVANCEMENT PROJECT, <http://www.lgbtmap.org/img/maps/citations-healthcare-state-employees.pdf> (last visited July 5, 2018).

<sup>168</sup> *Bulletin 2016-10-INS*, MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES, [http://www.michigan.gov/documents/difs/Bulletin\\_2016-10-INS\\_516961\\_7.pdf](http://www.michigan.gov/documents/difs/Bulletin_2016-10-INS_516961_7.pdf) (last visited Apr. 29, 2018).

<sup>169</sup> Amira Hasenbush, Andrew R. Flores, Angeliki Kastanis, Brad Sears, and Gary J. Gates, Williams Institute, *The LGBT Divide: A Data Portrait of LGBT People in the Midwestern, Mountain & Southern States* 5 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

<sup>170</sup> *Id.* at 6.

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

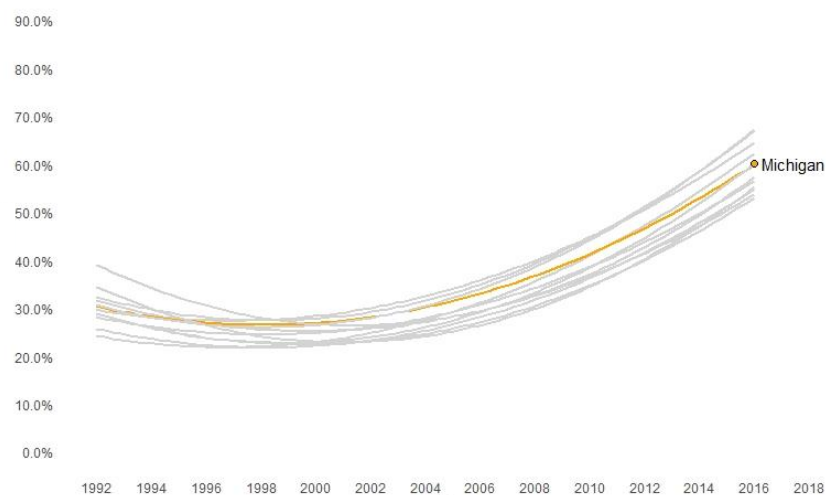


Although Michigan ranks below 19 states in terms of support for LGB people, attitudes toward LGBT people in the state are improving over time. Figure 6 shows an increase in acceptance of same-sex marriage in Michigan, among other Midwestern states, from 1992 to 2016.<sup>171</sup> In 1992, only 32% of Michigan residents supported marriage equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise. A poll of people living in Michigan conducted by the Cooperative Congressional Election Survey in November 2016 showed the state as decidedly in favor of marriage equality at 59%.<sup>172</sup> In 2017, 66% of Michigan residents supported marriage for same-sex couples.<sup>173</sup>

<sup>171</sup> Longitudinal changes in support for marriage equality are rooted in two causes: generational change and attitude change. Andrew R. Flores & Scott Barclay, Williams Inst., Trends in Public Support for Marriage Same-Sex Couples by State (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Supportfor-Same-Sex-Marriage-2004-2014.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. Gregory B. Lewis and Charles W. Gossett, Changing Public Opinion on Same-Sex Marriage: The Case of California, 36 *POLITICS & POLICY* 4 (2008).

<sup>172</sup> Stephen Asolabehere & Brian F. Schaffner, CCES Common Content, 2016, doi: 10.7910/DVN/GDF6Z0, Harvard Dataverse, V. 1 (2017).

<sup>173</sup> MSU Institute for Public Policy and Social Research, <http://ippsr.msu.edu/survey-research/state-state-survey-soss/soss-data/soss-74-spring-2017>.

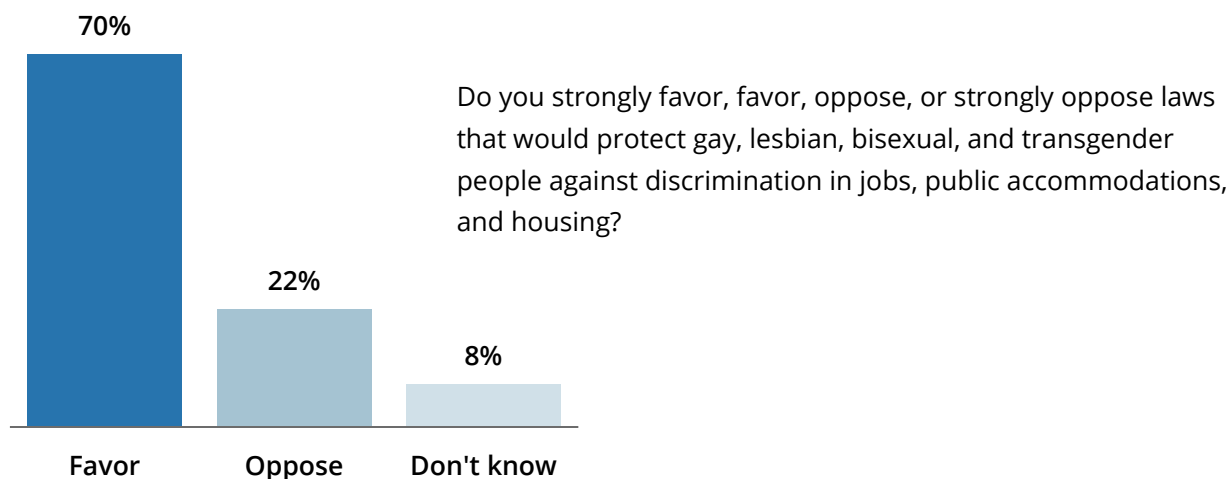
**Figure 6. Public support for same-sex marriage in the Midwest, 1992-2016**

In addition, recent public opinion surveys also indicate that the majority of people from Michigan support expanding non-discrimination protections to include LGBT people. The 2017 American Values Survey, a survey of over 40,000 Americans across the U.S., found that public attitudes in Michigan have also remained clearly in favor of policies that would protect LGBT people from discrimination, with 70% supporting such policies and 22% opposing them.<sup>174</sup> A majority (62%) of Michigan residents in this same survey also reported that they were opposed to policies that would allow small businesses to refuse service to lesbian and gay people for religious reasons.<sup>175</sup> In addition, estimates based on a 2011 survey of the American public found that 79% of people from Michigan were supportive of Congress passing laws to protect transgender people from employment discrimination.<sup>176</sup>

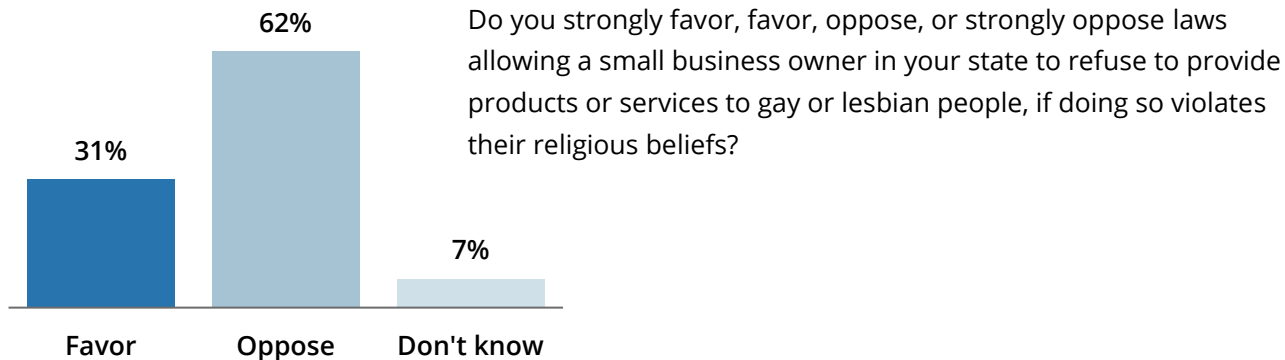
<sup>174</sup> Of the survey, 1,354 respondents were Michigan residents. Public Religion Research Institute, *2017 Methodology*, available at <http://ava.prii.org/methodology-2017>.

<sup>175</sup> *Id.*

<sup>176</sup> Andrew R. Flores, Jody L. Herman & Christy Mallory, Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness, *RESEARCH & POLITICS* 1 (Oct.-Dec. 2015).

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

Source: American Values Survey, 2017

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

Source: American Values Survey, 2017

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

## STIGMA AND DISCRIMINATION

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

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

#### Employment Discrimination and Harassment

Discrimination against LGBT workers in the U.S., as well as in Michigan, has been widely documented. For example, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents reported having been treated unfairly by an employer in hiring, pay, or promotions.<sup>177</sup> The 2015 U.S. Transgender Survey report, based on the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity.<sup>178</sup>

#### Surveys of LGBT individuals in Michigan find similar levels of discrimination and harassment:

- A 2016 survey of faculty at the University of Michigan found that 28% of LGBTQ+ faculty members reported experiencing at least one discriminatory event over the previous 12 months.<sup>179</sup>
- The 2015 U.S. Transgender Survey report found that 22% of transgender respondents from Michigan who held or applied for a job in the prior year experienced harassment or mistreatment on the job during that year, including verbal harassment (16%), physical assault (1%), and sexual assault (1%). and other forms of mistreatment. In addition, 27% reported being fired, being denied a promotion, or not being hired for a job they applied for within the past year because of

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<sup>177</sup> *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER (June 13, 2013), <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>178</sup> SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>179</sup> Results of the 2016 University of Michigan Faculty Campus Climate Survey on Diversity, Equity and Inclusion 4 (2016) <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-FACULTY-REPORT-FINAL.pdf>.

their gender identity or expression.<sup>180</sup> Nineteen percent reported having been fired from a job because of their gender identity or expression at some point in their lives.<sup>181</sup>

- A 2012 survey of 1,000 Michigan residents who identified as LGBT and LGBT allies, also found evidence of sexual orientation and gender identity discrimination in the state.<sup>182</sup> In response to the survey, 55% of respondents reported experiencing some form of discrimination or harassment based on their sexual orientation, 19% reported experiencing some form of discrimination or harassment based on their gender expression, and 16% reported experiencing some form of discrimination based on their gender identity.<sup>183</sup>
- A 2012 survey of faculty, students, staff, and administrators at Western Michigan University found that 39.3% of gay or lesbian respondents and 76.9% of transgender respondents reported experiencing discrimination.<sup>184</sup>
- In response to a 2016 poll, 60% of Michigan residents said that they thought that gay and lesbian people experience a lot of discrimination in the U.S., and 61% of Michigan residents said that they thought that transgender people experience a lot of discrimination in the U.S.<sup>185</sup>
- Analysis of aggregated public opinion data collected from 2011 through 2013 found that 80% of Michigan residents thought that LGBT people experience discrimination in the state.<sup>186</sup>

**Instances of employment discrimination against LGBT people in Michigan have also been documented in a number of court cases and in the media. Recent examples include:**

- In 2016, a transgender woman who was employed by the City of Detroit's Office of Development and Grants announced to her coworkers that she would undergo gender confirmation surgery.<sup>187</sup> When she returned to work wearing women's clothing, two complaints were filed alleging that she violated the office dress code—a code that human resources staff said did not exist.<sup>188</sup> In

<sup>180</sup> The survey used a non-probability sampling method. The National Center for Transgender Equality and The National Gay and Lesbian Task Force, Findings of the National Transgender Discrimination Survey: Michigan Results, *available at* <http://www.transequality.org/sites/default/files/docs/usts/USTSMIStateReport%281017%29.pdf> (last visited July 11, 2018).

<sup>181</sup> *Id.*

<sup>182</sup> Michigan Department of Civil Rights, Report on LGBT Inclusion Under Michigan Law with Recommendations for Action (2013), [http://www.michigan.gov/documents/mdcr/MDCR\\_Report\\_on\\_LGBT\\_Inclusion\\_409727\\_7.pdf](http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf), at 47, *citing* K. Morrison & S. McCornack, A State-Wide Study of LGBTQ Attitudes and Experiences: Challenges and Concerns (2012) (presented to the Michigan Fairness Forum).

<sup>183</sup> *Id.*

<sup>184</sup> Roger L. Worthington, WESTERN MICHIGAN UNIVERSITY, COMPREHENSIVE CAMPUS CLIMATE STUDY FOR DIVERSITY AND INCLUSION 2012-13 46 (2013), <http://wmich.edu/sites/default/files/attachments/u5/2013/Final%20Campus%20Climate%20Study%20Full%20Report.pdf>.

<sup>185</sup> PRRI, American Values Atlas: Michigan, <http://ava.prri.org/#discrimination/2016/States/blkdis/m/US-MI> (under dropdown menu for "Select Question" select "Discrimination against gay and lesbian people" or "Discrimination against transgender people;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016").

<sup>186</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

<sup>187</sup> Mark Hicks, *Transgender worker sues Detroit over office harassment*, THE DETROIT NEWS (April 27, 2018), <https://www.detroitnews.com/story/news/local/detroit-city/2018/04/27/transgender-worker-detroit-lawsuit/34302663/>.

<sup>188</sup> *Id.*



addition, the employee's office name plate was defaced with "Mr." and a holiday gift bag containing a sex toy was left in her office along with a note that said "we don't want people like you working here."<sup>189</sup> The employee filed complaints with Detroit's Human Rights Department, the U.S. Equal Employment Opportunity Commission (EEOC), and the Michigan Department of Civil Rights.<sup>190</sup>

- In 2016, a transgender professor filed a lawsuit against Saginaw Valley State University alleging that she had been discriminated against because of her gender identity. According to the professor, when she came out to her supervisor, the supervisor responded, "You disgust me! I can't even stand to look at you! This is not about your so-called 'gender identity.' This is about you being a liar." The professor said her administrative position was abruptly eliminated after she came out.<sup>191</sup>
- In 2013, a transgender woman was fired by her employer, a funeral home, after she informed the business owner of her gender identity. The woman told the owner that when she returned to work after her vacation, she would "live and work full-time as a woman."<sup>192</sup> Just before she left for her vacation, she was fired.<sup>193</sup> The woman subsequently filed a complaint alleging sex discrimination with the EEOC, stating that the only explanation her supervisor provided for her termination was that "the public would [not] be accepting of [her] transition."<sup>194</sup> The EEOC filed a lawsuit on the woman's behalf. The district court granted the funeral home's motion for summary judgment upon finding that enforcing Title VII against the funeral home would substantially burden religious exercise, thereby violating the Religious Freedom Restoration Act.<sup>195</sup> The Sixth Circuit Court of Appeals reversed the decision and granted summary judgment in favor of the EEOC on behalf of the employee.<sup>196</sup>
- In June 2012, a male oil rigger brought suit against his former employer alleging that he had been fired after he complained about being sexually harassed by a fellow male crew member. The fellow crew member allegedly touched, grabbed, and verbally assaulted the employee. The employee reported the incidents to supervisors who allegedly told him to handle it himself by using violence. He was subsequently terminated. The district court dismissed the claim, and the Sixth Circuit Court of Appeals affirmed, holding that the termination was not related to the employee's sexual harassment complaints.<sup>197</sup>

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* No further information on these complaints is available at this time (7/24/2018).

<sup>191</sup> Kate Wells, *Transgender Professor Sues Saginaw Valley State University for Alleged Discrimination*, MICHIGAN RADIO (Apr. 8, 2016), <https://www.michiganradio.org/post/transgender-professor-sues-saginaw-valley-state-university-alleged-discrimination>.

<sup>192</sup> *EEOC v. R.G.*, 884 F.3d 560, 568 (6th Cir. 2018).

<sup>193</sup> *Id.* at 569.

<sup>194</sup> *Id.*

<sup>195</sup> *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 100 F. Supp. 3d 594, 599 (E.D. Mich. 2015).

<sup>196</sup> *EEOC v. R.G.*, 884 F.3d at 597.

<sup>197</sup> *Wasek v. Arrow Energy Services, Inc.*, 682 F.3d 463 (6th Cir. 2012).

- In May 2012, a retail store manager brought suit against his employer for sexual harassment. The employee alleged that his supervisor made comments insinuating that he was a female or had female traits. The employee alleged that the comments were intended to “bring him out of the closet,” although he had never discussed his sexual orientation.<sup>198</sup> The supervisor also allegedly called him a necrophiliac in front of his subordinates. The Sixth Circuit Court of Appeals affirmed the district court’s decision in favor of the store, holding that that the employee’s claims were not actionable under the sexual harassment hostile work environment protections in Michigan law.<sup>199</sup>
- In 2012, a lesbian woman working in the kitchen at a children’s camp reported that she was fired because of her sexual orientation.<sup>200</sup> According to the employee, she was forced to sign papers documenting that this was the reason for her termination, and was forced off the premises the same day. She filed a complaint with the EEOC in August 2012. There is no status update on her claim available from the EEOC at this time.
- An anonymous man reported in testimony to the Michigan Department of Civil Rights that he was “blackballed by every lab in the city because [he] was gay.”<sup>201</sup>
- A former store manager reported in testimony to the Michigan Department of Civil Rights that she was repeatedly ordered by her boss to fire employees and not hire people who her boss “believed to be gay.”<sup>202</sup> Because she refused to comply with her boss’s orders, her employment ended with a negotiated resignation where she was given a severance package on the condition that she not discuss the circumstances surrounding her resignation.
- A witness reported in testimony to the Michigan Department of Civil Rights that she was fired because of her sexual orientation along with three other employees, two of whom were also fired for being gay and one who was fired for vocally supporting the witness.<sup>203</sup>
- A community services coordinator reported in testimony to the Michigan Department of Civil Rights that he was discriminated against after his employer found out that he was gay.<sup>204</sup> The employee stated that he identified as gay to a reporter, who then mentioned it in a news story. The employee reported that after the story was released, his desk was moved out of his office into the hallway, his employer adjusted his schedule so that he could no longer be available for shifts at his second job, and his employer prohibited him from leaving the building in his capacity as an employee. The last restriction was particularly problematic given that part of his job

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<sup>198</sup> Kalich v. AT&T Mobility, LLC, 679 F.3d 464 (6th Cir. 2012) (quoting Kalich’s brief).

<sup>199</sup> *Id.*

<sup>200</sup> Dawn Wolfe, *Anti-Gay Boy Scout Ban Leads to Employment Discrimination – in Michigan*, PRIDESOURCE (Feb. 21, 2013), <http://www.pridesource.com/article.html?article=58611>.

<sup>201</sup> Michigan Department of Civil Rights, *supra* note 170, at 62.

<sup>202</sup> *Id.* at 61.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 63.

description was to meet with members of the press who did not always come to his place of work.<sup>205</sup>

A 2013 report issued by the Michigan Department of Civil Rights, which provided several of the specific examples above, stated that allegations of discrimination presented to the Department through hearings and written testimony occurred across a diverse range of employment industries. Specifically, the report mentioned that sexual orientation and gender identity discrimination had been reported by a police officer, a university professor, a school teacher, a store manager, an electrical engineer, a symphony conductor, hotel and food service staff and people working for a major grocery, a pharmacy, an auto company, a telecom company, a manufacturing company, an EMT provider, a security company, and other small businesses.<sup>206</sup> According to the report, much of the testimony provided was submitted anonymously in written form because the people providing the information feared retribution from their employers for discussing the matter openly.<sup>207</sup> Other LGBT people chose not to testify at all, but instead had allies testify on their behalf.<sup>208</sup>

## Discrimination in Housing and Public Accommodations

Discrimination against LGBT people in Michigan has also occurred in housing and public accommodations. In response to the 2015 U.S. Transgender Survey, 26% of respondents from Michigan reported having experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.<sup>209</sup> Further, 20% of respondents said they had become homeless at some point in the last year due to discrimination based on their gender identity.<sup>210</sup> In addition, nearly one third (30%) of Michigan respondents said they had been discriminated against or harassed at a place of public accommodation in the past year, and 38% of those who saw a health care provider in the past year reported having at least one negative experience related to being transgender.<sup>211</sup>

A 2007 matched pairs study conducted by Michigan's Fair Housing Centers also found evidence of housing discrimination against LGBT people in the state.<sup>212</sup> The study compared the treatment of same-sex partners and different-sex partners who sought to rent, buy, or obtain financing for housing in the state.<sup>213</sup> The same-sex couples in the study were provided better credentials in terms of income, down payment, and credit than the different-sex partners, and the couples were matched on personal

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at iv, 61.

<sup>207</sup> *Id.* at iv.

<sup>208</sup> *Id.* at 69 (quoting J. Cummings, testimony from Jackson forum meeting).

<sup>209</sup> The National Center for Transgender Equality and The National Gay and Lesbian Task Force, *supra* note 170 at 2.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 2, 3. Negative experiences include "being refused treatment, verbally harassed, physically or sexually assaulted, or having to teach the provider about transgender people in order to get appropriate care." *Id.* at 3.

<sup>212</sup> Fair Housing Centers of Michigan, *Sexual Orientation and Housing Discrimination in Michigan* (2007), [https://www.fhcmichigan.org/images/Arcus\\_web1.pdf](https://www.fhcmichigan.org/images/Arcus_web1.pdf).

<sup>213</sup> *Id.* at 3.

characteristics such as race and national origin.<sup>214</sup> Discrimination against the same-sex couples was found in more than one in four (27%) of the 120 paired tests that were conducted.<sup>215</sup> The types of discrimination documented in the study included higher rental rates, lower levels of encouragement, and higher application fees for the same-sex couples, as well as some behavior bordering on harassment.<sup>216</sup> Instances of housing and public accommodations discrimination against LGBT people in Michigan have also been documented in court cases, administrative complaints, and the media. Documented examples include:

- In 2015, a pediatrician refused to treat a six-day old baby because the child's parents were lesbians. As the couple sat in the examination room waiting for their child's first check-up, another pediatrician informed them of the doctor's decision not to treat the baby.<sup>217</sup> The couple stated they felt "blindsided," and called the incident "embarrassing" and "humiliating."<sup>218</sup>
- In 2016, a lesbian couple saw recruitment emails featuring photos of children in foster care waiting to be adopted. The couple was moved by the story and decided they "wanted to open [their] home" to children.<sup>219</sup> The couple relocated to a house with two spare bedrooms and a fenced-in yard in a "great school district" to prepare for the adoption. However, when the couple approached a state-licensed adoption agency, they were told the agency does not work with same-sex couples.<sup>220</sup> The couple then approached a different adoption agency and was again turned away. The ACLU is suing the Michigan Department of Health and Human Services on behalf of the couple, alleging that allowing state-contracted agencies to screen out prospective families based on religious criteria violates the First Amendment's Establishment Clause and violates the Fourteenth Amendment's Equal Protection Clause by discriminating against same-sex couples.<sup>221</sup>
- A same-sex couple reported in testimony to the Michigan Department of Civil Rights that they experienced multiple instances of discrimination while trying to plan their commitment ceremony. The couple was asked to leave a dress shop and told by a catering company that they "only do traditional weddings."<sup>222</sup>

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 9.

<sup>216</sup> *Id.* at 9.

<sup>217</sup> Tresa Baldas, *Pediatrician wouldn't care for baby with 2 moms*, DET. FREE PRESS (Feb. 18, 2015), <https://www.freep.com/story/news/local/michigan/macomb/2015/02/18/discrimination-birth/23640315/>.

<sup>218</sup> *Id.*

<sup>219</sup> Kristy Dumont & Dana Dumont, *We Were Rejected From Adopting Foster Children Because We Are Gay*, VICE: BROADLY (June 26, 2018), [https://broadly.vice.com/en\\_us/article/a3amze/we-were-rejected-from-adopting-foster-children-because-we-are-gay](https://broadly.vice.com/en_us/article/a3amze/we-were-rejected-from-adopting-foster-children-because-we-are-gay).

<sup>220</sup> Leslie Cooper, *Same-Sex Couples Are Being Turned Away From Becoming Foster and Adoptive Parents in Michigan. So We're Suing.*, AM. CIV. LIBERTIES UNION (Sept. 20, 2017), <https://www.aclu.org/blog/lgbt-rights/lgbt-parenting/same-sex-couples-are-being-turned-away-becoming-foster-and-adoptive>.

<sup>221</sup> *Id.*

<sup>222</sup> Michigan Department of Civil Rights, *supra* note 170, at 60.

- Another same-sex couple provided written testimony to the Michigan Department of Civil Rights reporting discrimination at a hotel. The couple, on a trip for their twentieth anniversary, were not permitted to rent a room with a king size bed and were instead forced to rent a room with two double beds at a higher rate.<sup>223</sup>
- Two heterosexual females who wanted to rent a one-bedroom apartment together in Holland, Michigan, were not allowed to do so when the landlord said, “[they] could not share a bedroom [because] he didn’t go for that sort of thing.”<sup>224</sup> Despite their references and credit qualifying them as renters, the landlord rented the apartment to a heterosexual couple who were “better suited to the apartment.”<sup>225</sup>
- The 2007 matched pairs study conducted by the Michigan Fair Housing Centers documented several incidents of discrimination in housing, including:<sup>226</sup>
- A landlord in Detroit told a same-sex couple who was part of the study, “No drugs, prostitution, homosexuality, one-night stands...” when they went to look at an apartment.
- In Ypsilanti, testers who were posing as a same-sex female couple were told that the rent on an apartment they looked at was \$625 per month, while the different-sex couple was quoted \$600 per month.
- In Calhoun County, a same-sex couple was shown one apartment and told that it would be available at the end of the month. A different-sex couple visiting the same property were told that there were two apartments available immediately.
- In Battle Creek, a female same-sex couple was shown one apartment, while a different-sex couple was shown two and was offered \$200 off of the first month’s rent to move in.

## BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

### Bullying and Harassment of LGBT Youth Documented in Surveys

#### Middle School and High School

Survey data indicate that LGBT youth in Michigan face harassment, bullying, and exclusion in secondary and post-secondary schools. The Centers for Disease Control and Prevention (CDC) published an analysis of 2017 Youth Risk Behavior Survey (YRBS) data on LGB youth from multiple states and certain large urban school districts, including the state of Michigan.<sup>227</sup> This analysis compared LGB to heterosexual 9th through 12th graders on a variety of indicators of health and wellbeing by sexual orientation.<sup>228</sup> The

<sup>223</sup> Id.

<sup>224</sup> Id.

<sup>225</sup> Id.

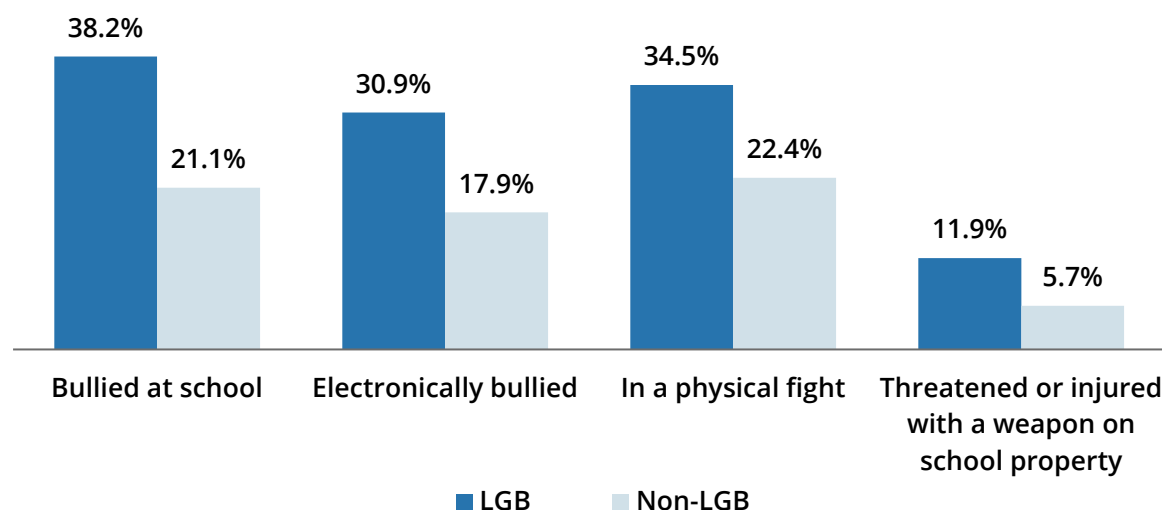
<sup>226</sup> FAIR HOUSING CENTERS OF MICHIGAN, *supra* note 212 at 12-13.

<sup>227</sup> Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, *supra* note 32.

<sup>228</sup> The study also compared students who said they were “not sure” of their sexual orientation to LGB and non-LGB students. We have not included the “not sure” students in our analysis and focus only on students who identified as LGB or heterosexual.

2017 YRBS data indicate that LGBT youth in Michigan experience higher rates of being bullied and threatened with violence than heterosexual youth.

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



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

LGB students in Michigan were more likely to report being bullied at school (38.2% v. 21.1%)<sup>229</sup> and electronically bullied (30.9% v. 17.9%)<sup>230</sup> in the year prior to the survey than heterosexual students. In addition, LGB students were more likely to report being in a physical fight in the year prior to the survey (34.5% v. 22.4%)<sup>231</sup> and were twice as likely to report being threatened or injured with a weapon on school property (11.9% v. 5.7%).<sup>232</sup> Not surprisingly, LGB students were more than twice as likely as heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (16.5% v. 6.9%).<sup>233</sup>

Findings from the 2017 Michigan YRBS are consistent with 2017 YRBS findings from other states and large urban school districts and with findings from the 2015 Michigan YRBS.<sup>234</sup> In addition, a 2011 CDC meta-analysis of YRBS data collected from 2001 through 2009 found that, nationally, LGB students were more likely to experience bullying and violence at school than heterosexual students, confirming that bullying is a disproportionate problem for LGB students.<sup>235</sup>

<sup>229</sup> *Id.* at 168.

<sup>230</sup> *Id.* at 165.

<sup>231</sup> *Id.* at 159.

<sup>232</sup> *Id.* at 156.

<sup>233</sup> *Id.* at 102.

<sup>234</sup> *Id.*; Laura Kann et al., Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015, *supra* note 32.

<sup>235</sup> Laura Kann et al., *supra* note 227 at 11.

Bullying and harassment of LGBT youth in Michigan has also been documented in other sources. For instance, the 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 72% of respondents from Michigan said they had experienced verbal harassment based on their sexual orientation at school, and 58% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.<sup>236</sup> Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender expression (22%) at school in the year prior to the survey.<sup>237</sup> In addition, 12% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and 10% of respondents said they had experienced physical assault because of their gender expression at school in the year prior to the survey.<sup>238</sup> Further, 60% of transgender student respondents from Michigan reported that they were unable to use the bathroom or locker room at school that aligns with their gender identity, and 52% were prevented from using their preferred name or pronouns in school.<sup>239</sup> Around half (55%) of student respondents from Michigan reported having access to a Gay-Straight Alliance or similar club in school.<sup>240</sup>

Of students who were bullied or harassed at school, only 44% of students reported the incident to school staff.<sup>241</sup> Only one fourth (25%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.<sup>242</sup>

Additionally, in response to the 2015 U.S. Transgender Survey, 55% of survey respondents from Michigan who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 26% reported experiencing physical assault, and 10% reported experiencing sexual violence while in school.<sup>243</sup> Further, 20% of respondents said the harassment was so severe that they had to leave school.<sup>244</sup>

Recent instances of discrimination, bullying, and harassment against LGBT students in Michigan have also been documented in lawsuits, administrative complaints, and the media:

- One gay high school student, interviewed in 2017, was verbally harassed after coming out. Other students called him “disgusting” and called him a “thing.”<sup>245</sup> He also had sharp pencils thrown at

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<sup>236</sup> GLSEN, SCHOOL CLIMATE IN MICHIGAN 1 (2017), [https://www.glsen.org/sites/default/files/Michigan%20State%20Snapshot%20-%202017%20NSCS\\_0.pdf](https://www.glsen.org/sites/default/files/Michigan%20State%20Snapshot%20-%202017%20NSCS_0.pdf). The survey included 739 respondents from Michigan.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.* at 2.

<sup>241</sup> *Id.* at 1.

<sup>242</sup> *Id.*

<sup>243</sup> The survey used a non-probability sampling method. The National Center for Transgender Equality and The National Gay and Lesbian Task Force, *supra* note 70.

<sup>244</sup> *Id.*

<sup>245</sup> Chris Azzopardi, *Being Gay in High School Today*, METRO PARENT (Oct. 11, 2017), <https://www.metroparent.com/daily/education/school-issues/gay-high-school-today/>.



his neck. In one incident, students filmed him with their phones and said “look at the gay kid.” The student chose to eat outside for the rest of the year in order to avoid harassment.<sup>246</sup>

- In 2017, a photo was posted on Instagram threatening to bring an assault rifle to a Petoskey High School’s Gay Straight Alliance meeting. The post was in the form of a meme said, “When you walk into the GSA (Gay Straight Alliance) meeting with a fully loaded AR-15...this is where the fun begins.”<sup>247</sup> Another post on the account showed a sign reading, “Homosexuals are possessed by demons.”<sup>248</sup> Police discovered that the account was operated by a group of students at Petoskey High School, and confirmed that “there was no credibility to the threat.”<sup>249</sup> School administrators said they took “appropriate action” against the students responsible for the post.<sup>250</sup>
- In 2016, a large rock outside of Hastings High School in Hastings, Michigan, was painted with anti-gay remarks. The rock was covered in different colors of paint, with “rainbows are gay,” “hunt bucks not men,” and “class of 16 we’re not gay” written on it.<sup>251</sup> One student at the high school who was not openly LGB told local media outlets that “[Being gay is] not something that is highly accepted at that school. . . [t]here are others like me but they’re not out and open about it either. If they are, they kind of get messed with.”<sup>252</sup>
- In 2016, the Michigan Department of Education received comments on its proposal concerning how schools should treat LGBT kids. More than a dozen LGBT students came to one board meeting to testify in support of the proposal, citing their own stories as evidence of bullying and discrimination in Michigan schools. One student, who identified as “openly bisexual and gender non-conforming” explained that he suffered “constant bullying” in middle school, and was forced to transfer schools twice before he found a school where he felt accepted.<sup>253</sup> He first transferred to a charter school where an assistant principal said that she found it “interesting and fascinating that [he] was transgender, because she was a scientist.”<sup>254</sup> The student’s father also described his child’s experiences with his gender identity and sexuality at school: “The school district we lived in had no guidelines for transgender youth. And bullying by students, and the administration, caused [my child] to live in fear. He withdrew from this abusive situation.”<sup>255</sup>
- In 2016, the Office for Civil Rights at the U.S. Department of Education was investigating the Bedford School District for not allowing transgender students to access restrooms consistent with

<sup>246</sup> *Id.*

<sup>247</sup> Meghan Morelli, *Police investigating alleged threat against Petoskey High School students*, UPNORTHLIVE.COM (Mar. 8, 2017), <http://upnorthlive.com/news/local/police-investigating-alleged-threat-against-petoskey-high-school-students>.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> Michael Dupre, *Hastings High School rock painted with anti-gay phrases*, FOX 17 NEWS (May 20, 2016), <https://fox17online.com/2016/05/20/hastings-high-school-rock-painted-with-anti-gay-phrases/>.

<sup>252</sup> *Id.*

<sup>253</sup> Kate Wells, *Transgender students speak out for state LGBT proposals*, MICHIGAN RADIO (Apr. 13, 2016), <http://michiganradio.org/post/transgender-students-speak-out-state-lgbt-proposals>.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

their gender identity. The school had forced transgender students to use single stall, gender-neutral bathrooms, even if they had requested to use restrooms matching their gender identity.<sup>256</sup>

- The grandparents and guardians of a transgender six-year old reported in testimony to the Michigan Department of Civil Rights that their granddaughter's public school refused to accept her transition, and instead continued to treat her like a boy.<sup>257</sup> The grandparents transferred the girl to a school in a different city, which resulted in significant hardship for the family: "[T]he mileage and wear and tear on the vehicles plus all of the gasoline that we were using at four dollars a gallon was more than we could bear. After one year . . . we decided that we would, as a family, have to sell our beautiful home in our great neighborhood and move closer to Ann Arbor."<sup>258</sup>

### Higher Education

A 2016 survey of students at the University of Michigan found that 31% of LGBTQ+ students reported one or more experiences of derogatory treatment on the basis of sexual orientation or gender identity in the prior year.<sup>259</sup> Moreover, LGBTQ+ students were less likely than non-LGBTQ+ students to report feeling that they "are valued and belong" at the university and less likely than non-LGBTQ+ students to report feeling that they "are thriving and growing" at the university.<sup>260</sup> LGBTQ students also reported less agreement with the idea that they receive fair treatment than non-LGBTQ students.<sup>261</sup>

Instances of discrimination and harassment against LGBT students in Michigan have also been documented in lawsuits, administrative complaints, and the media. For example, in 2017, a student at the University of Michigan came out via social media on National Coming Out Day in October. The student received support from friends, but his roommates "started using gay slurs and saying 'All gays go to hell.'"<sup>262</sup> Fearing for his safety, he began staying at friends' apartments rather than his dorm. The student later discovered that many of his belongings had been thrown out the window, resulting in around \$680 in losses.<sup>263</sup> The student's request for a personal protection order against one of his roommates was granted by a judge.<sup>264</sup>

In 2018, two gay students at Northern Michigan University were interviewed by a local media outlet about their experiences. In one instance, one of the students attended a party with her girlfriend, where two men filmed them dancing. When the couple told them to stop filming, the men got mad; when the couple

<sup>256</sup> Kate Wells, *Feds Investigate Michigan School District for Transgender Discrimination*, MICHIGAN RADIO (Apr. 7, 2016), <https://www.michiganradio.org/post/feds-investigate-michigan-school-district-transgender-discrimination>.

<sup>257</sup> Michigan Department of Civil Rights, *supra* note 170, at 59.

<sup>258</sup> *Id.* at 59-60.

<sup>259</sup> RESULTS OF THE 2016 UNIVERSITY OF MICHIGAN STUDENT CAMPUS CLIMATE SURVEY ON DIVERSITY, EQUITY AND INCLUSION 5 (2016), available at <https://diversity.umich.edu/wp-content/uploads/2017/11/DEI-STUDENT-REPORT-FINAL.pdf>.

<sup>260</sup> *Id.* at 26, 27.

<sup>261</sup> *Id.* at 28.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

left, the men threw a rock at their car.<sup>265</sup> In another instance, a party-goer said it was “cool” the two women were gay, put his arms around them, and whispered something vulgar.<sup>266</sup> After the couple told the man to leave them alone, he “got belligerent, pulled a knife out of his pocket and flicked it open, and said, ‘Don’t tell me what to do.’”<sup>267</sup>

## Family Rejection

For many youth, the challenges that they face at school are compounded by unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.<sup>268</sup> For example, in one study about the challenges that youth face, LGBT youth ranked non-accepting families as the most important problem in their lives (26%), followed by school and bullying problems (21%), and fear of being open about being LGBT (18%).<sup>269</sup> In contrast, non-LGBT youth ranked classes/exams/grades (25%), college/career (14%), and financial pressures related to college or job (11%) as the most important problems in their lives.<sup>270</sup>

<sup>265</sup> Brian Cabell, *Being Gay at NMU*, WORD ON THE STREET (Mar. 11, 2018), <https://wotsmqt.com/being-gay-at-nmu/>.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> E.g., Darrel Higa, Marilyn J. Hoppe, Taryn Lindhorst, Shawn Mincer, Blair Beadnell, Diane M. Morrison, Elizabeth A. Wells, Avry Todd & Sarah Mountz, *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 YOUTH SOC'Y 1, 8 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 788 (2006); Anthony R. D'Augelli, Arnold H. Grossman & Michael T. Starks, *Parents' Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 J. MARRIAGE & FAMILY 474 (2005); Les Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RESEARCH 329 (2004); Brian N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 733 (2002); Bryan E. Robinson, Lynda Henley Walters & Patsy Skeen, *Responses of Parents to Learning that their Child is Homosexual and Concern over AIDS: A National Survey*, 1 J. HOMOSEXUALITY 59, 67 (1989); CHRISTY MALLORY, BRAD SEARS, AMIRA HASENBUSH & ALEXANDRA SUSMAN, WILLIAMS INST., ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

<sup>269</sup> HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS 2 (2012), [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America\\_Report.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf).

<sup>270</sup> *Id.*

## EFFECTS OF STIGMA AND DISCRIMINATION

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

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

### ECONOMIC INSTABILITY

#### Wage Gaps for LGBT People

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

In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all studies found an earnings penalty for gay men, with an average of -11%.<sup>271</sup> For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.<sup>272</sup> Klawitter concluded that her analysis "shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians."<sup>273</sup> However, despite this premium, most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.<sup>274</sup>

Klawitter posited several reasons to explain why gay men may face more discrimination in the workplace, including that straight men in the U.S. have less positive attitudes towards gay men than lesbians, and

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<sup>271</sup> Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 *INDUST. REL.* 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

<sup>272</sup> *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

<sup>273</sup> *Id.* at 21.

<sup>274</sup> M.V. Lee Badgett & Alyssa Schneebaum, *The Impact of Wage Equality on Sexual Orientation Poverty Gaps*, Williams Inst. Univ. of Cal. L.A. Sch. of Law (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

that straight men are more likely to be in wage-determining senior positions than women.<sup>275</sup> Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.<sup>276</sup> She also noted that other research reviews have found that lesbians who do not fit the norms for femininity have a harder time securing employment.<sup>277</sup> Finally, Klawitter noted that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in more highly regulated government sector jobs, but this pattern is not observed for lesbians—who have significant earnings premiums in the private and non-profit sectors, but none in government employment.<sup>278</sup>

A simple comparison<sup>279</sup> of median incomes in Michigan also suggests that men in same-sex couples may face a wage gap. An analysis of Census 2000 data found that the median income of men in same-sex couples in the state was 32% lower than the median income of men in different-sex marriages.<sup>280</sup>

In addition, a forthcoming study, based on representative data from 27 states, finds “clear evidence that self-identified transgender individuals have significantly lower employment rates and household incomes and significantly higher poverty rates than non-transgender individuals.”<sup>281</sup> The study concludes that transgender adults who are wage earners experience a “household income penalty” equivalent to 12% of annual household income.<sup>282</sup>

A growing body of research supports that, for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2015 study found that the overall wage gap for men of color in same-sex couples was greater than what the sum of the race and sexual orientation wage gaps would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers.”<sup>283</sup>

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with sexual orientation non-discrimination laws, men and women in

<sup>275</sup> Klawitter, *supra* note 271 at 21-22.

<sup>276</sup> *Id.* at 22.

<sup>277</sup> E.g., LOTTA SAMELIUS & ERIK WÄGBERG, SIDA, SEXUAL ORIENTATION AND GENDER IDENTITY ISSUES IN DEVELOPMENT (2005), [http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development\\_718.pdf](http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development_718.pdf).

<sup>278</sup> Klawitter, *supra* note 271 at 22.

<sup>279</sup> Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

<sup>280</sup> The median income of women in same-sex couples in Michigan is higher than that of women in different-sex marriages, but lower than the median income of men with either same-sex or different-sex partners. ADAM P. ROMERO, AMANDA BAUMLE, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: MICHIGAN 2 (2007), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/MichiganCensus2000Snapshot.pdf>.

<sup>281</sup> Carpenter et al., *Transgender Status, Employment, and Income* (forthcoming 2017) (on file with authors).

<sup>282</sup> *Id.*

<sup>283</sup> Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUSTR. REL. 59, 96 (2015).

same-sex couples had a wage premium (3% and 2% respectively), and they earned approximately 0.3% more for each year the policy was in effect.<sup>284</sup> Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings<sup>285</sup> and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men, especially in private-sector jobs.<sup>286</sup> Furthermore, a 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and rate of employment by 2% for gay men.<sup>287</sup>

## Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have higher household incomes than non-LGBT people, those averages can mask that LGBT people are also disproportionately poor<sup>288</sup> and that poverty is concentrated in certain groups within the LGBT community such as female same-sex couples, people of color, transgender people, youth, and the elderly. For example, key findings from a 2013 study on poverty in the LGBT community include:

- 7.6% of lesbian couples are in poverty, compared to 5.7% of married different-sex couples;
- Over 1 in 5 children of same-sex couples are in poverty, compared to 12.1% of children of married different-sex couples;
- African American same-sex couples have poverty rates more than twice that of married different-sex African American couples; and
- Female same-sex couples who live in rural areas are much more likely to be poor (14.1%), compared to lesbian couples in large cities (4.5%).<sup>289</sup>

Similarly, research on the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have enough money to feed themselves or their families, and nearly half of LGB adults aged 18-44 who are raising children (46%) participated in SNAP, the federal food stamps program.<sup>290</sup>

<sup>284</sup> Gary J. Gates, *The Impact of Sexual Orientation Anti-Discrimination Policies on the Wages of Lesbians and Gay Men* (Cal. Center for Pop. Research, 2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>285</sup> Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011).

<sup>286</sup> Marieka M. Klawitter, *Multilevel Analysis of the Effects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J. POL. ANALYSIS & MGMT. 334 (2011). See also Marieka M. Klawitter & Victor B. Flatt, *The Effects of State and Local Anti-Discrimination Policies on Earnings for Gays and Lesbians*, 17 J. POL. ANALYSIS & MGMT. 658 (1998).

<sup>287</sup> Ian Burn, *Legal Differences in Non-Discrimination Laws and the Effect of Employment Protections for Gay Men* (Feb. 2015) (unpublished manuscript available at the Princeton University repository). The study also found that state non-discrimination laws with stronger damages, statutes of limitations, and attorney's fees increase the positive impact on gay men's wages. *Id.*

<sup>288</sup> M.V. Lee Badgett, Laura E. Durso & Alyssa Schneebaum, Williams Inst., *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

<sup>289</sup> *Id.* at 1-3.

<sup>290</sup> Taylor N.T. Brown, Adam P. Romero & Gary J. Gates, WILLIAMS INST., *FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

The 2015 U.S. Transgender Survey found that, nationally, 29% of respondents were living at or near the federal poverty line, which was twice the rate of poverty in the U.S. general population (29% v. 12%).<sup>291</sup> Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of Black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of White respondents.<sup>292</sup>

In a 2013 study on poverty, Badgett et al. suggested that social climate and policy are linked determinants of LGB poverty: “LGB people who live in non-coastal regions of the U.S. or rural communities are more likely than those in urban and coastal regions to be in poverty. These geographic areas are more likely to have social climates that are less accepting of LGB identities, increasing the stress and discrimination that LGB people face. These locales may also be less likely to offer legal protections that would guard against major life events, such as job loss or health issues that often contribute to poverty.”<sup>293</sup>

Building from that thesis, a 2014 report by the Williams Institute linked greater socio-economic disparities for LGBT people to region, a lack of legal protections, and a poor social climate.<sup>294</sup> The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination, and in regions of the country such as the Midwest, with a poorer social climate and fewer legal protections.<sup>295</sup> For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in the states with protective laws to \$11,000 in states that lack such laws.<sup>296</sup>

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

- 25% of LGBT adults in Michigan reported that they do not have enough money for food, compared to 15% of non-LGBT adults.<sup>297</sup>
- 28% of LGBT adults in Michigan reported having a household income below \$24,000, compared to 20% of non-LGBT adults.<sup>298</sup>

<sup>291</sup> JAMES ET AL., *supra* note 178 at 144.

<sup>292</sup> *Id.*

<sup>293</sup> BADGETT, DURSO & SCHNEEBAUM, *supra* note 288 at 25.

<sup>294</sup> HASENBUSH ET AL., *supra* note 20.

<sup>295</sup> Press Release, Williams Inst., LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: “It’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.”

<sup>296</sup> HASENBUSH ET AL., *supra* note 20.

<sup>297</sup> LGBT Data & Demographics: Michigan, *supra* note 22.

<sup>298</sup> *Id.*



- 10% of LGBT adults in Michigan reported that they were unemployed, compared to 5% of non-LGBT adults.

In addition, the 2015 National Transgender Discrimination Survey found that 19% of transgender respondents in Michigan were unemployed, and 30% were living in poverty.<sup>299</sup> One-fifth of respondents in Michigan reported experiencing homelessness in the past year because they were transgender.<sup>300</sup>

## HEALTH DISPARITIES FOR LGBT PEOPLE

### Health Disparities for LGBT Adults

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climate, have been shown to contribute to health disparities for LGBT people. Substantial research has documented that LGBT people experience disparities on a range of health outcomes, and health-related risk factors, compared to their non-LGBT counterparts. Research shows that mood<sup>301</sup> and anxiety disorders,<sup>302</sup> attempted suicide,<sup>303</sup> and self-harm<sup>304</sup> are more common among sexual minorities (LGBs) than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender people.<sup>305</sup> In addition, LGB people are more likely to report tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.<sup>306</sup> As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in Michigan indicate that LGBT adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

### Health Disparities for LGB Adults in Michigan

One source for assessing health disparities between LGBT and non-LGBT people in Michigan is the Michigan Behavioral Risk Factor Surveillance System (BRFSS).<sup>307</sup> Since 2011, the Michigan Department of

<sup>299</sup> Nat'l Center for Transgender Equality, 2015 U.S. Transgender Survey: Michigan State Report 1 (2017).

<sup>300</sup> *Id.* at 2.

<sup>301</sup> Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005).

<sup>302</sup> King et al., *supra* note 301; Wendy B. Bostwick, Carol J. Boyd, Tonda L. Hughes & Sean Esteban McCabe, *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010).

<sup>303</sup> King et al., *supra* note 301; Susan D. Cochran & Vickie M. Mays, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 J. EPIDEMIOLOGY 516 (2000).

<sup>304</sup> Balsam et al., *supra* note 301. For comprehensive reviews of research on LGBT health, see INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011); *THE HEALTH OF SEXUAL MINORITIES: PUBLIC HEALTH PERSPECTIVES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER POPULATIONS* (Ilan H. Meyer & Mary E. Northridge eds., 2007).

<sup>305</sup> See INSTITUTE OF MEDICINE, *supra* note 304 at 193-97.

<sup>306</sup> Cochran & Mays, *supra* note 303; AMERICAN LUNG ASSOC., *SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY* (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012).

<sup>307</sup> About BRFSS, U.S. Centers for Disease Control & Prevention, <https://www.cdc.gov/brfss/about/index.htm> (last visited Oct. 31, 2018); Behavioral Risk Factor Surveillance System, Michigan Department of Health and Human Services, [https://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_5104\\_5279\\_39424---.00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71550_5104_5279_39424---.00.html) (last visited Oct. 31, 2018).



Health and Human Services has included a state-added sexual orientation measure on its BRFSS, and in the 2015 and subsequent BRFSS questionnaires, the sexual orientation question was modified to include a transgender response option.<sup>308</sup> The Michigan BRFSS has never included an independent transgender identity question. In the analysis presented here, we utilized data from a combined dataset of the 2015 and 2016 Michigan BRFSS, noting where our results are similar or dissimilar to patterns observed in the general population.

We assessed the health of LGBT and non-LGBT adults on three health outcomes that are widely viewed as stress-coping responses<sup>309</sup> and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking; as well as two other health indicators (the number of days respondents experienced poor mental health during the month prior to the survey and respondents' experiences of feeling limited in their usual activities because of poor health). In our analyses we include individuals who identified as lesbian, gay, bisexual, or transgender (LGBT) and those who identified as heterosexual/straight (heterosexual).<sup>310</sup>

The proportions of LGBT ( $n = 460$ ) and non-LGBT ( $n = 18,744$ ) people in Michigan who reported each health outcome are shown below. The proportions are weighted to reflect the population of Michigan, as recommended by the Centers for Disease Control and Prevention when analyzing these data.<sup>311</sup>

**Mental Health.** Estimates of the proportions of LGBT and non-LGBT adults in the 2015-2016 Michigan BRFSS who reported certain health characteristics are presented in Figure 10. LGBT adults in the sample were significantly more likely to have ever been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when

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Administered jointly by the CDC and the Michigan Department of Health and Human Services, the Michigan BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices.

<sup>308</sup> The 2015 and 2016 Michigan BRFSS sexual orientation measures asked respondents the following: "Next, I'm going to ask you a question about sexual orientation. Do you consider yourself to be: A - Heterosexual, that is, straight; B - Homosexual, that is [if male insert "gay," if female insert "lesbian"]; C - Bisexual, D - Transgender, or E - Something else." 2015 Michigan Behavioral Risk Factor Survey, Dec. 29 2014, available at

[https://www.michigan.gov/documents/mdch/2015\\_MiBRFS\\_Questionnaire\\_12.29.14\\_478485\\_7.pdf](https://www.michigan.gov/documents/mdch/2015_MiBRFS_Questionnaire_12.29.14_478485_7.pdf).

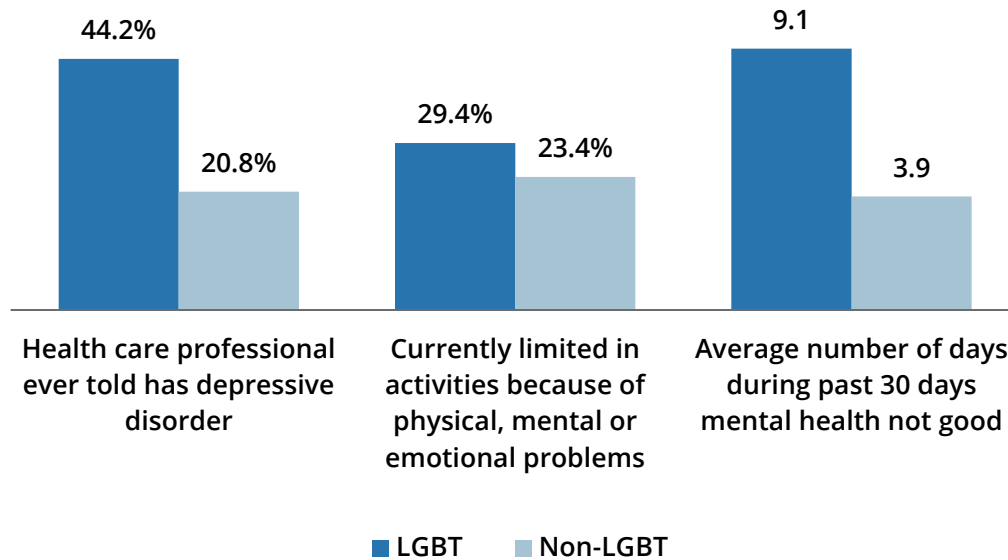
<sup>309</sup> See, e.g., Richard T. Liu & Lauren B. Alloy, Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud, Carol A. Paronis, Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

<sup>310</sup> The 2015 and 2016 Michigan BRFSS questionnaires conflate sexual orientation and gender identity and allow only one response for both sexual orientation and gender identity in the single question assessing identity. Therefore, for example, a participant who is transgender must choose between selecting "transgender" or their sexual orientation, such as heterosexual/straight, and cannot select both. Here we coded respondents as "non-LGBT" if they selected "Heterosexual, that is, straight." However, there may be individuals who are transgender and heterosexual who selected "Heterosexual, that is, straight." These LGBT individuals would have been coded as "heterosexual." We also did not include respondents who identified as "something else" in these analyses.

<sup>311</sup> Behavioral Risk Factor Surveillance System Weighting BRFSS Data: BRFSS 2015, U.S. Centers for Disease Control and Prevention, [https://www.cdc.gov/brfss/annual\\_data/2015/pdf/weighting\\_the\\_data\\_webpage\\_content.pdf](https://www.cdc.gov/brfss/annual_data/2015/pdf/weighting_the_data_webpage_content.pdf) (last visited Oct. 2, 2018). LGBT survey respondents in Michigan were younger than the non-LGBT survey respondents. In order to make "fair" comparisons between sexual orientation groups, we use statistical controls to make the two groups comparable on age.

compared to non-LGBT adults in Michigan (44.2% v. 20.8%).<sup>312</sup> LGBT respondents reported, on average, more days of not being in good mental health in the month prior to the survey than non-LGBT respondents (9.1 days v. 3.9 days).<sup>313</sup> Also, greater percentages of LGBT respondents than non-LGBT respondents reported being limited in their activities because of mental, physical, or emotional problems (29.4% v. 23.4%).<sup>314</sup>

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



Source: 2015-2016 Michigan BRFSS

**Substance Use.** Estimates of the proportions of LGBT and non-LGBT adults in the 2015-2016 Michigan BRFSS who reported engaging in substance use, specifically smoking and drinking alcohol, are presented in Figure 11. LGBT adults in Michigan were significantly more likely to be current smokers than non-LGBT adults (38.4% v. 20.3%).<sup>315</sup> Additionally, greater proportions of LGBT adults than non-LGBT adults were identified as binge drinkers (28.3% v. 18.7%)<sup>316</sup> and heavy drinkers (8.1% v. 6.8%),<sup>317</sup> though these differences were not statistically significant.

<sup>312</sup> Adjusted odds ratio (95% CI) = 2.87 (2.25, 3.67).

<sup>313</sup> Adjusted b = 4.49, p < 0.01.

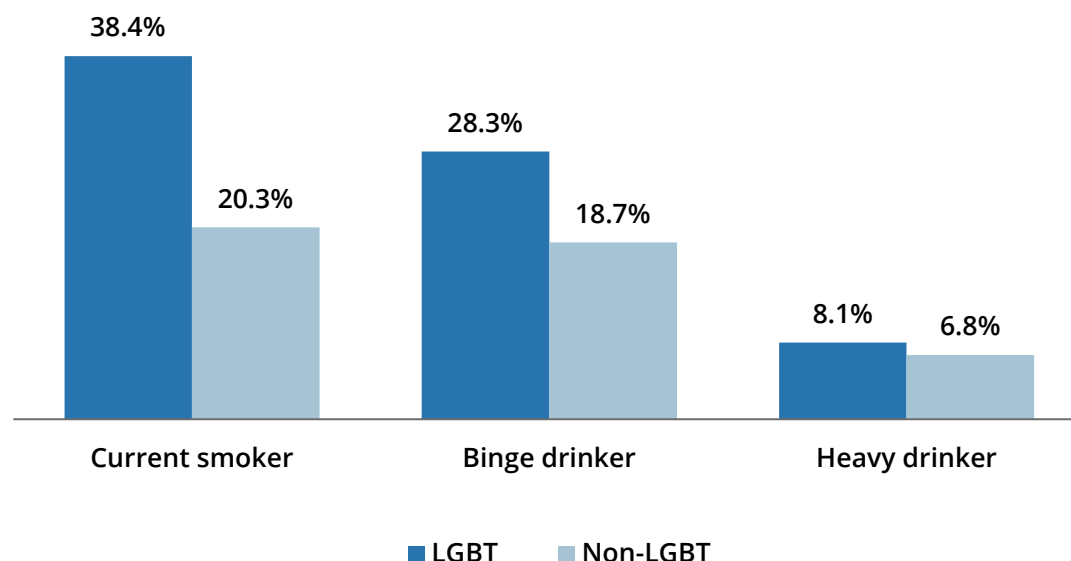
<sup>314</sup> Adjusted odds ratio (95% CI) = 1.95 (1.47, 2.60).

<sup>315</sup> Adjusted odds ratio (95% CI) = 2.07 (1.60, 2.68).

<sup>316</sup> Adjusted odds ratio (95% CI) = 1.18 (0.88, 1.57). Binge drinking is defined in the BRFSS as five or more alcoholic drinks on one occasion for males and four or more alcoholic drinks on one occasion for females.

<sup>317</sup> Adjusted odds ratio (95% CI) = 1.09 (0.68, 1.73). Heavy drinking is defined as more than 14 drinks per week among males and more than 7 drinks per week among females.

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



Source: 2015-2016 Michigan BRFSS

Our findings are consistent with analyses of BRFSS data collected in other states and with analyses of National Health Interview Survey data. For example, an analysis of BRFSS data collected in 10 states<sup>318</sup> in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts.<sup>319</sup> Similarly, an analysis of data from the 2013 National Health Interview Survey found that LGB adults aged 18-64 in the U.S. were more likely to be current smokers (27.2% lesbian or gay v. 29.5% bisexual v. 19.6% non-LGB).<sup>320</sup> A recent 2018 analysis of 2016 BRFSS data compared health-related behavior across sexual orientation and transgender identity and found that gay men, lesbian women, and bisexual women were significantly more likely to be current smokers than their heterosexual counterparts.<sup>321</sup> Two studies analyzing BRFSS data from Massachusetts<sup>322</sup> and Washington State<sup>323</sup> found disparities across a range of health outcomes and behaviors for LGB respondents, including poor

<sup>318</sup> In 2010, 12 states had added a question about sexual orientation to their BRFSS surveys (Alaska, Arizona, California, Colorado, Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Washington, and Wisconsin), but data from two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the study was based on data collected in the remaining 10 states. John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 AM. J. PREV. MED. 337, 338 (2014).

<sup>319</sup> *Id.* at 340.

<sup>320</sup> Brian W. Ward et al., *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, 77 NATIONAL HEALTH STATS. REPORT 1, 4 (2015), available at <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

<sup>321</sup> Cunningham, T. J., Xu, F., & Town, M. (2018). Prevalence of Five Health-Related Behaviors for Chronic Disease Prevention Among Sexual and Gender Minority Adults – 25 U.S. States and Guam, 2016. *MMWR Morbidity and Mortality Weekly Report*, 67(32): 888-893.

<sup>322</sup> Kerith J. Conron, Matthew J. Mimiaga, Stewart J. Landers, *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUBLIC HEALTH 1953 (2010).

<sup>323</sup> Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUBLIC HEALTH 460 (2010).

physical and mental health, activity limitation, tension or worry, smoking, excessive drinking, and drug use.

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

Empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to anti-LGBT policies and unsupportive social climates. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*<sup>324</sup> and by the Institute of Medicine of the National Academies.<sup>325</sup> Research also suggests that stigmatizing campaigns around the passage of anti-LGBT policies, or negative media messaging that draws attention to unsupportive social climates, may exacerbate these disparities.

The minority stress model suggests that unsupportive social climates, created by anti-LGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for LGBT people compared to non-LGBT people.<sup>326</sup> Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.<sup>327</sup> This research has demonstrated that both interpersonal experiences of stigma and discrimination, such as being fired from a job for being LGBT, and structural stigma, such as living in a state without LGBT-supportive laws, contribute to minority stress.<sup>328</sup>

A number of studies have found evidence of links between minority stressors and negative mental health outcomes in LGB people, including a higher prevalence of psychiatric disorders,<sup>329</sup> including

<sup>324</sup> *Healthy People 2020*, DEP'T OF HEALTH AND HUMAN SERV., [https://www.healthypeople.gov/sites/default/files/HP2020\\_brochure\\_with\\_LHI\\_508\\_FNL.pdf](https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf) (last visited Jan. 3, 2016).

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

<sup>325</sup> INSTITUTE OF MEDICINE, *supra* note 304 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

<sup>326</sup> Ilan H. Meyer, Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence, 129 *PSYCHOL. BULL.* 674 (2009); INSTITUTE OF MEDICINE, *supra* note 304.

<sup>327</sup> *Id.*; Am. Psych. Assoc., *Stress in America: The Impact of Discrimination* 8, 22 (2016).

<sup>328</sup> See Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth, 47 *ANN. BEHAV. MED.* 48 (2014).

<sup>329</sup> E.g., Katie A. McLaughlin, Mark L. Hatzenbuehler & Katherine M. Keyes, Responses to Discrimination and Psychiatric Disorders among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals, 100 *AM. J. PUBLIC HEALTH* 1477 (2010); Ellen D.B. Riggle, Sharon S. Rostosky & Sharon G. Horne, Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election, 6 *SEXUALITY RESEARCH & SOCIAL POLICY* 80 (2009).

depression<sup>330</sup> and psychological distress,<sup>331</sup> as well as loneliness, suicidal intention,<sup>332</sup> deliberate self-harm,<sup>333</sup> and low self-esteem.<sup>334</sup> Studies have also linked minority stress in LGB people to an increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders.<sup>335</sup>

For example, a 2016 study by the American Psychological Association, based on a nationally representative sample, linked experiences of discrimination to increased stress and poorer health for LGBT people.<sup>336</sup> The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% v. 23%) in the prior 30 days than adults who were non-LGBT.<sup>337</sup> Job stability was a current source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults.<sup>338</sup> The study also found that many LGBT respondents had experienced discrimination.<sup>339</sup> Nearly one-fourth (23%) of the LGBT adults reported that they had ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; nearly

<sup>330</sup> E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. OF COUNSELING PSYCHOL. 302 (2006).

<sup>331</sup> E.g., Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001); David M. Heubner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?*, 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. OF HEALTH & SOC. BEHAV. 38 (1995).

<sup>332</sup> David M. Huebner, Gregory M. Rebchook & Susan M. Kegeles, *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men*, 94 AM. J. OF PUB. HEALTH 1200 (2004).

<sup>333</sup> James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRITISH J. OF PSYCHIATRY 479 (2004).

<sup>334</sup> E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being among HIV-positive Latino Gay Men*, 27 HISP. J. OF BEHAV. SCI. 101 (2005).

<sup>335</sup> E.g., Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, Wendy B. Bostwick, Tonda L. Hughes, Brady T. West & Carol J. Boyd, *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUBLIC HEALTH 1946 (2010); Mark L. Hatzenbuehler, Katie A. McLaughlin, Katherine M. Keyes & Deborah S. Hasin, *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUBLIC HEALTH 452 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

<sup>336</sup> AM. PSYCH. ASSOC., *supra* note 327.

<sup>337</sup> *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% v. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% v. 20%).

<sup>338</sup> *Id.*

<sup>339</sup> The percentage of respondents who were reported as having experienced discrimination said that they had either experienced "at least one of the five day-to-day stressors 'less than once a year' or more often; or ever experienced one of nine major forms of discrimination." The five day-to-day stressors included: 1. You are treated with less courtesy or respect than other people; 2. You receive poorer service than other people at restaurants or stores; 3. People act as if they think you are not smart; 4. People act as if they are afraid of you; 5. You are threatened or harassed." The nine major forms of discrimination included: 1. Have you ever been unfairly fired from a job? 2. Have you ever been unfairly denied a promotion? 3. For unfair reasons, have you ever been not hired for a job? 4. Have you ever been unfairly stopped, searched, questioned, physically threatened or abused by the police? 5. Have you ever been unfairly discouraged by a teacher or advisor from continuing your education? 6. Have you ever been unfairly prevented from moving into a neighborhood because the landlord or a realtor refused to sell or rent you a house or apartment? 7. Have you ever moved into a neighborhood where neighbors made life difficult for you or your family? 8. Have you ever been treated unfairly when receiving health care? 9. Have you ever been treated unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.)? Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology, <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Dec. 5, 2016) (see Measurement with Experience with Discrimination).

one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to continue their education; and one-third (33%) reported being unfairly not hired for a job.<sup>340</sup>

Studies have also linked a lack of legal protections and a poor state social climate to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGB people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws.<sup>341</sup> A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional ban on marriage for same-sex couples, and rates were unchanged in states that did not pass bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”<sup>342</sup> Drawing on these findings and prior research, Hatzenbuehler concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”<sup>343</sup>

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

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthful social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.<sup>344</sup>

Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, and can put them in danger of verbal and physical harassment. For

<sup>340</sup> AM. PSYCH. ASSOC., *supra* note 327 at 6-7.

<sup>341</sup> Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUBLIC HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. *Id.* at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. *Id.* at 2277.

<sup>342</sup> Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 335 at 456. *See also*, Ben Lennox Kail, Katie L. Acosta & Eric R. Wright, *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUBLIC HEALTH 1101 (2015).

<sup>343</sup> Mark L. Hatzenbuehler, *The Health Consequences of Hate*, COLUMBIA UNIV. (Apr. 26, 2016), <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

<sup>344</sup> Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities*, 106 AM. J. PUB. HEALTH 98 (2014).



example, a 2008 survey of transgender and gender non-conforming people in Washington, D.C. found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney related problems.<sup>345</sup> Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom.<sup>346</sup>

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health, which would heighten observed disparities in less accepting places.<sup>347</sup> Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, contribute to LGBT health disparities in Michigan.

## Health Disparities for LGBT Youth

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC analysis of 2017 YRBS data from a number of states and large urban school districts reported high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,<sup>348</sup> that disproportionately impact LGB youth.<sup>349</sup> Analyses of YRBS data from prior years also indicated sexual orientation disparities in mental health and health risk behaviors.<sup>350</sup> Finally, a 2011 meta-analysis of 18 studies found that, compared to non-LGB youth, LGB youth were more likely to report depression and more than twice as likely to think about suicide, over three times as likely to report that they had attempted suicide, and more than four times as likely to have attempted suicide such that they needed medical attention.<sup>351</sup>

Other studies have linked health disparities and risk behaviors among LGB youth to discrimination and unsupportive environments. For example, a 2017 study found that marriage equality at the state level was associated with a statistically significant decline (14%) in the proportion of LGB youth reporting that

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<sup>345</sup> Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives*, 19 J. PUBLIC MANAGEMENT & SOCIAL POL'Y. 65, 75 (2013).

<sup>346</sup> *Id.* at 71, 76.

<sup>347</sup> Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 335 at 452.

<sup>348</sup> See, e.g., Liu & Alloy, *supra* note 309; Kassel et al., *supra* note 309; Brady & Sonne, *supra* note 309.

<sup>349</sup> Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, *supra* note 32.

<sup>350</sup> Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, *supra* note 32; Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors among Students in Grades 9–12 – Youth Risk Behavior Surveillance, Selected Sites, United States 2001–2009*, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1 (2011).

<sup>351</sup> Michael P. Marshal, Laura J. Dietz, Mark S. Friedman, Ron Stall, Helen Smith, James McGinley, Brian C. Thoma, Pamela J. Murray, Anthony D'Augelli & David A. Brent, *Suicide and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

they attempted suicide in the past year.<sup>352</sup> Similarly, a 2011 study of youth in Oregon found that, in general, LGB youth were more likely to have attempted suicide than heterosexual youth, and that LGB youth in unsupportive school environments were at a 20% greater risk of attempting suicide than were LGB youth in supportive school environments.<sup>353</sup> High levels of school-based victimization have been associated with higher levels of illicit drug use and risky sexual behavior.<sup>354</sup> Research has also linked unsupportive family environments to depression and suicidality,<sup>355</sup> high levels of stress,<sup>356</sup> tobacco use,<sup>357</sup> and illicit drug use<sup>358</sup> in LGB youth and young adults.

Studies of transgender youth have also found evidence of associations between discrimination, abuse, and poorer health. For example, a 2010 study found that transgender respondents who had experienced gender-related abuse in their youth reported significantly higher rates of major depression and suicidality during that period of their lives than those who had not had such experiences.<sup>359</sup>

### Health Disparities for LGBT Youth in Michigan

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

As shown in Figure 12, LGB high school students in Michigan were significantly more likely to report feeling sad or hopeless and suicidal than heterosexual students. During the 12 months prior to the survey, two-thirds of LGB students in Michigan (67.8%) reported feeling so sad or hopeless every day for over two weeks that they stopped doing some of their usual activities.<sup>360</sup> This was double the rate of heterosexual students who reported the same (32.3%). An affirmative answer to this question is part of the diagnostic definition of major depressive disorder.<sup>361</sup>

<sup>352</sup> Julia Raifman et al., Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts, 171 JAMA PEDIATRICS 350 (2017) [doi: 10.1001/jamapediatrics.2016.4529].

<sup>353</sup> Mark L. Hatzenbuehler, The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth, 127 PEDIATRICS 896 (2011).

<sup>354</sup> Daniel E. Bontempo & Anthony D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 30 J. ADOL. HEALTH 362 (2002); Kann et al., *supra* note 227 at 11.

<sup>355</sup> Another study found that LGBT youth who were rejected by their families in adolescence were 5.9 times more likely to report high levels of depression and 8.4 times more likely to have attempted suicide than LGBT youth who had not been rejected. Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

<sup>356</sup> Mark L. Hatzenbuehler & Katie A. McLaughlin, Structural Stigma and Hypothalamic-Pituitary-Adrenocortical Axis Reactivity in Lesbian, Gay, and Bisexual Young Adults, 47 ANN. BEHAV. MED. 39 (2014).

<sup>357</sup> Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth, 47 ANN. BEHAV. MED. 48 (2014).

<sup>358</sup> Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Sexual Orientation Disparities in Adolescent Drug Use*, 46 ADDICTIVE BEHAVIORS 14 (2015).

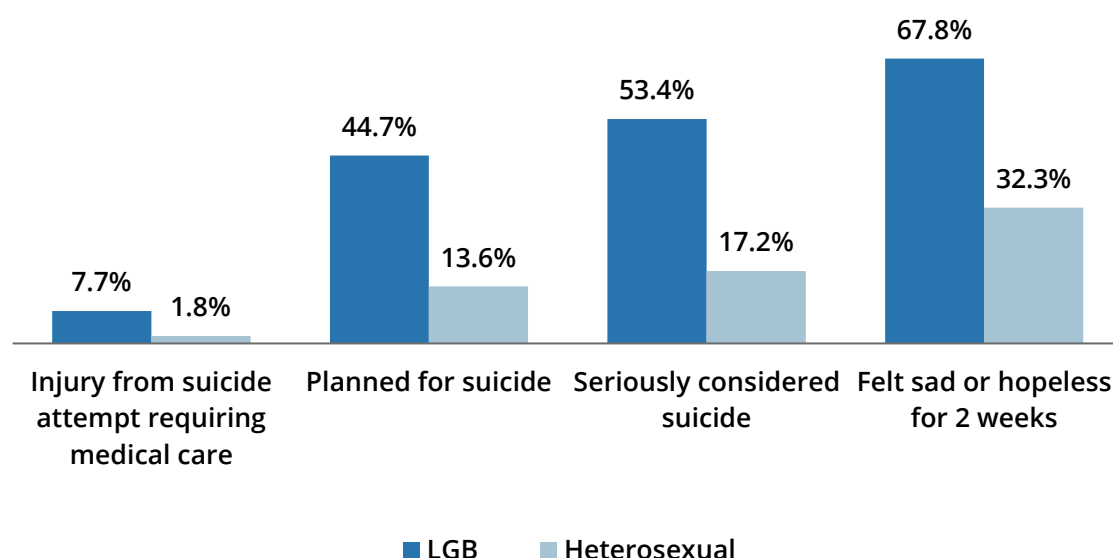
<sup>359</sup> Larry Nuttbrock, Sel Hwahng, Walter Bockting, Andrew Rosenblum, Mona Mason, Monica Macri & Jeffrey Becker, *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

<sup>360</sup> Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, *supra* note 32 at 185.

<sup>361</sup> See *Diagnostic Criteria for Major Depressive Disorder and Depressive Episodes*, PSNPALTO.COM, <http://www.psnpalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> (last visited May 4, 2016).



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



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

LGB high school students in Michigan were more likely to have seriously considered suicide, planned for suicide, and injured themselves in a suicide attempt requiring medical care than non-LGB students. LGB students were more than three times as likely to have seriously considered suicide (53.4% v. 17.2%)<sup>362</sup> and to have made a plan about how to attempt suicide (44.7% v. 13.6%)<sup>363</sup> in the year prior to the survey compared to heterosexual students. LGB students were more than four times as likely to report being injured from a suicide attempt in a way that had to be treated by a doctor or a nurse in the year prior to the survey as heterosexual students (7.7% v. 1.8%).<sup>364</sup>

**Substance Use.** Data from the 2017 Michigan YRBS indicate that LGB high school students in Michigan are more likely to report drinking, smoking, and other substance abuse than heterosexual students. LGB students in Michigan were more likely to report having smoked cigarettes on one or more days in the month prior to the survey (27.0% v. 8.2%)<sup>365</sup> and were also more likely to report that they had smoked cigarettes on 20 or more days in the month prior to the survey (8.6% v. 2.5%) than heterosexual students.<sup>366</sup> LGB students were also more likely to have had at least one drink in the month prior to the survey than heterosexual students (40.0% v. 28.8%).<sup>367</sup>

<sup>362</sup> Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, *supra* note 32 at 189.

<sup>363</sup> *Id.* at 192.

<sup>364</sup> *Id.* at 198.

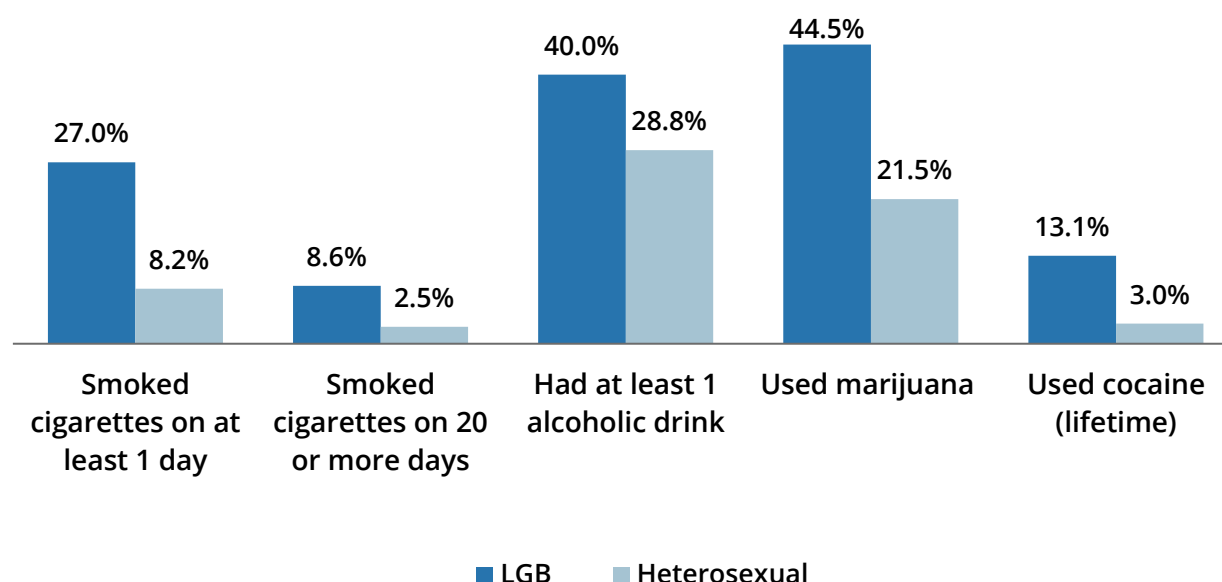
<sup>365</sup> *Id.* at 207.

<sup>366</sup> *Id.* at 210.

<sup>367</sup> *Id.* at 270.

In addition, LGB high school students were more likely to report illicit drug use than heterosexual students in the state of Michigan. LGB students were more likely to report having used marijuana (44.5% v. 21.5%)<sup>368</sup> in the month prior to the survey, and were over four times as likely as heterosexual students to report ever having used cocaine (13.1% v. 3.0%).<sup>369</sup>

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



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

These findings are consistent with the 2017 YRBS data collected in other states and large urban school districts. In terms of mental health, like LGB youth in Michigan, LGB youth in the national YRBS sample were more likely to report that they felt so sad or hopeless that they stopped doing their usual activities for a period of time,<sup>370</sup> that they had seriously considered suicide,<sup>371</sup> that they had made a suicide plan,<sup>372</sup> and that they had made a suicide attempt that resulted in an injury that had to be treated by a doctor or nurse.<sup>373</sup> In terms of substance use, LGB youth in the national sample, similarly to LGB youth in Michigan, reported higher rates of smoking cigarettes,<sup>374</sup> drinking alcohol,<sup>375</sup> marijuana use,<sup>376</sup> and cocaine use.<sup>377</sup>

<sup>368</sup> *Id.* at 288.

<sup>369</sup> *Id.* at 294.

<sup>370</sup> *Id.* at 185.

<sup>371</sup> *Id.* at 188.

<sup>372</sup> *Id.* at 191.

<sup>373</sup> *Id.* at 197.

<sup>374</sup> *Id.* at 206, 209.

<sup>375</sup> *Id.* at 269.

<sup>376</sup> *Id.* at 287.

<sup>377</sup> *Id.* at 293.

## ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION

In 2014, USAID and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look at three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape on Michigan's economy: 1) discrimination and harassment in the workplace and other settings; 2) health disparities experienced by LGBT people; and 3) bullying and harassment of youth.<sup>378</sup> In our analysis, we draw on data specific to Michigan, and illustrate the magnitude of some of the costs resulting from different types of stigma and discrimination. Due to limited available data on LGBT people in the state, we are able to estimate only a few of the costs related to LGBT stigma and discrimination in Michigan.

### FRAMEWORK FOR ANALYSIS

In a 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.<sup>379</sup> In the micro-level analysis, the authors considered five types of discrimination against LGBT people and explained how they might be linked to harmful economic outcomes:

1. Police abuse and over-incarceration
2. Higher rates of violence
3. Workplace harassment and discrimination
4. Discrimination and bullying of LGBT students in schools
5. Health disparities<sup>380</sup>

After considering these, the authors concluded that “human rights violations experienced by LGBT people diminish economic output and capacity at the micro-level. When LGBT people are targets of violence, denied equal access to education, stigmatized in communities, and discouraged from

<sup>378</sup> The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on effects of such stigma and discrimination against LGBT people in Michigan.

<sup>379</sup> M.V. Lee Badgett, Sheila Nezhad, Kees Waaldijk & Yana van der Meulen Rodgers, USAID & Williams Inst., *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and the defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

<sup>380</sup> *Id.*

pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy.”<sup>381</sup>

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender minorities and economic development in emerging economies, measured by per capita GDP.<sup>382</sup> Notably, they found that non-discrimination laws in particular “have an especially strong correlation with GDP per capita. The importance of nondiscrimination laws could be related to their stronger connection to the treatment of LGBT people in the workplace and other settings that have direct economic relevance.”<sup>383</sup>

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

Before we turn to the analysis, five important points:

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

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

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

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

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<sup>381</sup> *Id.* at 6.

<sup>382</sup> *Id.* at 10.

<sup>383</sup> *Id.* at 3.

racial-ethnic wage gaps in the U.S. would both eliminate the poverty gap between same-sex and different sex-couples, as well as lift many non-LGBT people out of poverty.<sup>384</sup>

Finally, as the authors of the USAID and Williams Institute study emphasize, to move this analysis beyond this framework and the illustrations of economic impact below, we need more complete and better data on LGBT populations.<sup>385</sup> In particular, the routine inclusion of sexual orientation and gender identity measures on large population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of two data sets specific to LGBT people in Michigan that were unavailable just a few years ago—data from the Youth Risk Behavior Survey (YRBS) and the Behavioral Risk Factor Surveillance System (BRFSS). We also need more research about the lived experiences of LGBT people and the effectiveness of legal protections to further assess the impact of LGBT supportive laws and climates on LGBT people.<sup>386</sup>

## ECONOMIC IMPACT IN THE WORKPLACE AND OTHER SETTINGS

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

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

In addition, discrimination in employment, housing, and other areas of life can result in LGBT people experiencing economic instability, including poverty and homelessness. When LGBT people experience economic instability, they are more likely to rely on government benefits and services, which increases the costs of these programs to the state.

<sup>384</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

<sup>385</sup> See, e.g., Mariella Arrendondo et al., Documenting Disparities for LGBT Students: Expanding the Collection and Reporting of Data on Sexual Orientation and Gender Identity (2016), available at <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

<sup>386</sup> BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 379 at 49.

## The Business Case for Diversity

Over the past two decades, many employers have adopted non-discrimination policies to protect LGBT employees and created more inclusive workplace environments, even when not legally required to do so.<sup>387</sup> In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part, because the companies perceive that the policies will have a positive impact on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination and 75% included gender identity.<sup>388</sup> Further, 64% offered domestic partner benefits and 40% had transgender-inclusive benefits policies.<sup>389</sup>

Of the 28 Fortune 500 companies headquartered in Michigan,<sup>390</sup> at least 23 include sexual orientation in their non-discrimination policies, and at least 19 also include gender identity:<sup>391</sup> General Motors, Ford Motor, DowDuPont, Penske Automotive Group, Whirlpool, Lear (sexual orientation only), Kellogg, DTE Energy, Stryker, Autoliv, Ally Financial, BorgWarner, SpartanNash, Masco (sexual orientation only), CMS Energy, American Axle & Manufacturing, Kelly Services, WABCO (sexual orientation only), Visteon, Steelcase, Domino's Pizza, Wolverine World Wide (sexual orientation only), and Herman Miller.<sup>392</sup>

<sup>387</sup> M.V. Lee Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* (2001); Nicole C. Raeburn, *Changing Corporate America From Inside Out: Lesbian and Gay Workplace Rights* (2004).

<sup>388</sup> DARYL HERRSCHAFT ET AL., HUMAN RIGHTS CAMPAIGN, *DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT PEOPLE 5* (2009), [https://issuu.com/hrcworkplace/docs/hrc\\_degrees\\_of\\_equality\\_2009](https://issuu.com/hrcworkplace/docs/hrc_degrees_of_equality_2009); DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, *CORPORATE EQUALITY INDEX 2016: RATING AMERICA'S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 7* (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

<sup>389</sup> DEENA FIDAS & LIZ COOPER, *supra* note 388.

<sup>390</sup> Jessica Strachan, *Here are Michigan's Fortune 500 Companies*, PATCH.COM (May 30, 2018), <https://patch.com/michigan/detroit/here-are-michigan-s-fortune-500-companies>.

<sup>391</sup> Unless otherwise noted, the information about individual companies' policies is from the Human Rights Campaign report, *Corporate Equality Index 2016: Rating America's Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*. DEENA FIDAS & LIZ COOPER, *supra* note 388.

<sup>392</sup> GM's Code of Conduct, General Motors, <https://investor.gm.com/static-files/265a1dc0-adc5-4d38-ab41-2c58e575692d> (last visited Nov. 26, 2018); Code of Conduct Handbook, Ford Motor Co., [https://corporate.ford.com/content/dam/corporate/en/company/corporate-governance/COC-Handbook\\_Public-Vsn\\_CURRENT\\_english\\_11082017.pdf](https://corporate.ford.com/content/dam/corporate/en/company/corporate-governance/COC-Handbook_Public-Vsn_CURRENT_english_11082017.pdf) (last visited Nov. 26, 2018); Code of Conduct, DowDuPont, [http://s21.q4cdn.com/813101928/files/doc\\_downloads/corp\\_gov/dwdp-code-of-conduct-final-01sept2017-002.pdf](http://s21.q4cdn.com/813101928/files/doc_downloads/corp_gov/dwdp-code-of-conduct-final-01sept2017-002.pdf) (last visited Nov. 26, 2018); Detailer – Penske Collision Center, Job Description, <https://www.linkedin.com/jobs/view/detailer-penske-collision-center-san-diego-at-penske-automotive-group-973909486> (last visited Nov. 26, 2018); Non-Discrimination and Anti-Harassment Policy, Whirlpool, <http://www.whirlpoolcorp.com/non-discrimination-and-anti-harassment-policy/> (last visited Nov. 26, 2018); Equal Employment Opportunity Policy, Lear, [http://lear.com/user\\_area/content\\_media/raw/EqualEmploymentOpportunityPolicy.pdf](http://lear.com/user_area/content_media/raw/EqualEmploymentOpportunityPolicy.pdf) (last visited Nov. 26, 2018); Living Our Values: Kellogg Company's Global Code of Ethics, Kellogg, <https://www.kelloggcompany.com/content/dam/kellogg-company/files/KGlobalCodeofEthics.pdf> 16 (last visited Nov. 26, 2018); DTE Energy Way: Code of Conduct, DTE Energy, <https://www.newlook.dteenergy.com/wps/wcm/connect/5ffb7155-2b3e-4981-a3a2-d6dc0bb66197/DTE%2BEnergy%2BWWay.pdf?MOD=AJPERES> C6 (last visited Nov. 26, 2018); Corporate Policy 2: Equal Employment Opportunity and Affirmative Action, Stryker, <https://www.stryker.com/content/dam/stryker/corporate/policies/en-us/127328> (last visited Nov. 26, 2018); Standards of

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,<sup>393</sup> the business case for diversity is clear:

Today, diversity and inclusion are a given. They are among the core principles of amici in the conduct of their businesses. The value of diversity and inclusion in the workplace has been well-documented following rigorous analyses. Amici and others recognize that diversity is crucial to innovation and marketplace success. Members of the lesbian, gay, bisexual, and transgender (“LGBT”) community are one source of that diversity.<sup>394</sup>

In fact, a 2011 study found that when enacting non-discrimination policies, 92% of the leading companies in the U.S. did so based on a general argument that diversity is good for business, and 53% made that link specifically to LGBT-supportive policies and practices.<sup>395</sup> Similarly, a 2013 Williams Institute study found that over 60% of corporate respondents that offered transition-related health care coverage to their employees did so because of the business benefits.<sup>396</sup> Some of the specific business-related outcomes that have motivated employers to adopt LGBT-supportive policies include: recruiting and retaining talented employees, sparking new ideas and innovations, attracting and serving a diverse customer base, and enhancing employee productivity.<sup>397</sup>

Business Conduct & Ethics, Autoliv,

[https://www.autoliv.com/sites/default/files/Autoliv%20Standards%20of%20Business%20Conduct%20and%20Ethics\\_Marc%202015\\_0.pdf](https://www.autoliv.com/sites/default/files/Autoliv%20Standards%20of%20Business%20Conduct%20and%20Ethics_Marc%202015_0.pdf) (last visited Nov. 26, 2018); Ally Code of Conduct and Ethics, Ally, <https://www.ally.com/files/pdf/policies-charters/code-of-conduct-and-ethics.pdf> (last visited Nov. 26, 2018); Code of Ethical Conduct, BorgWarner, <https://www.borgwarner.com/legal/code-of-ethical-conduct> (last visited Nov. 26, 2018); Our Benefits, SpartanNash, <https://careers.spartannash.com/creative/working-benefits> (last visited Nov. 26, 2018); Candidate Agreement, Masco, <http://masco.com/careers/agreement/> (last visited Nov. 26, 2018); 2018 Code of Conduct, CMS Energy, <https://www.consumersenergy.com/-/media/CE/Documents/employee-code-of-conduct.ashx?la=en&hash=9393DDE96C376014A888304A17D4A84722B4F511> (last visited Nov. 26, 2018); Careers, American Axle & Manufacturing, <https://www.aam.com/join-us/careers> (last visited Nov. 26, 2018); Commitment to Corporate Social Responsibility, WABCO, <https://www.wabco-auto.com/ru/suppliers/suppliers-information/corporate-responsibility/> (last visited Nov. 26, 2018); 2017 Corporate Sustainability Report, Visteon, [https://www.visteon.com/company/csr/docs/2017\\_CSR.pdf](https://www.visteon.com/company/csr/docs/2017_CSR.pdf) (last visited Nov. 26, 2018); Careers, Steelcase, <https://www.steelcase.com/asia-en/discover/steelcase/careers/> (last visited Nov. 26, 2018); DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2016: RATING AMERICA’S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf> (Domino’s Pizza); Code of Conduct & Compliance, Wolverine World Wide, <https://www.wolverineworldwide.com/wp-content/uploads/2014/08/CodeOfConductEnglish2013.pdf> (last visited Nov. 26, 2018); Discrimination and Harassment, Herman Miller, <https://www.hermanmiller.com/legal/discrimination-and-harassment/> (last visited Nov. 26, 2018).

<sup>393</sup> 135 S. Ct. 2584 (2015).

<sup>394</sup> Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571, 14-574), available at [http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556\\_379\\_Employers\\_and\\_Organizations\\_Representing\\_Employers.pdf](http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf).

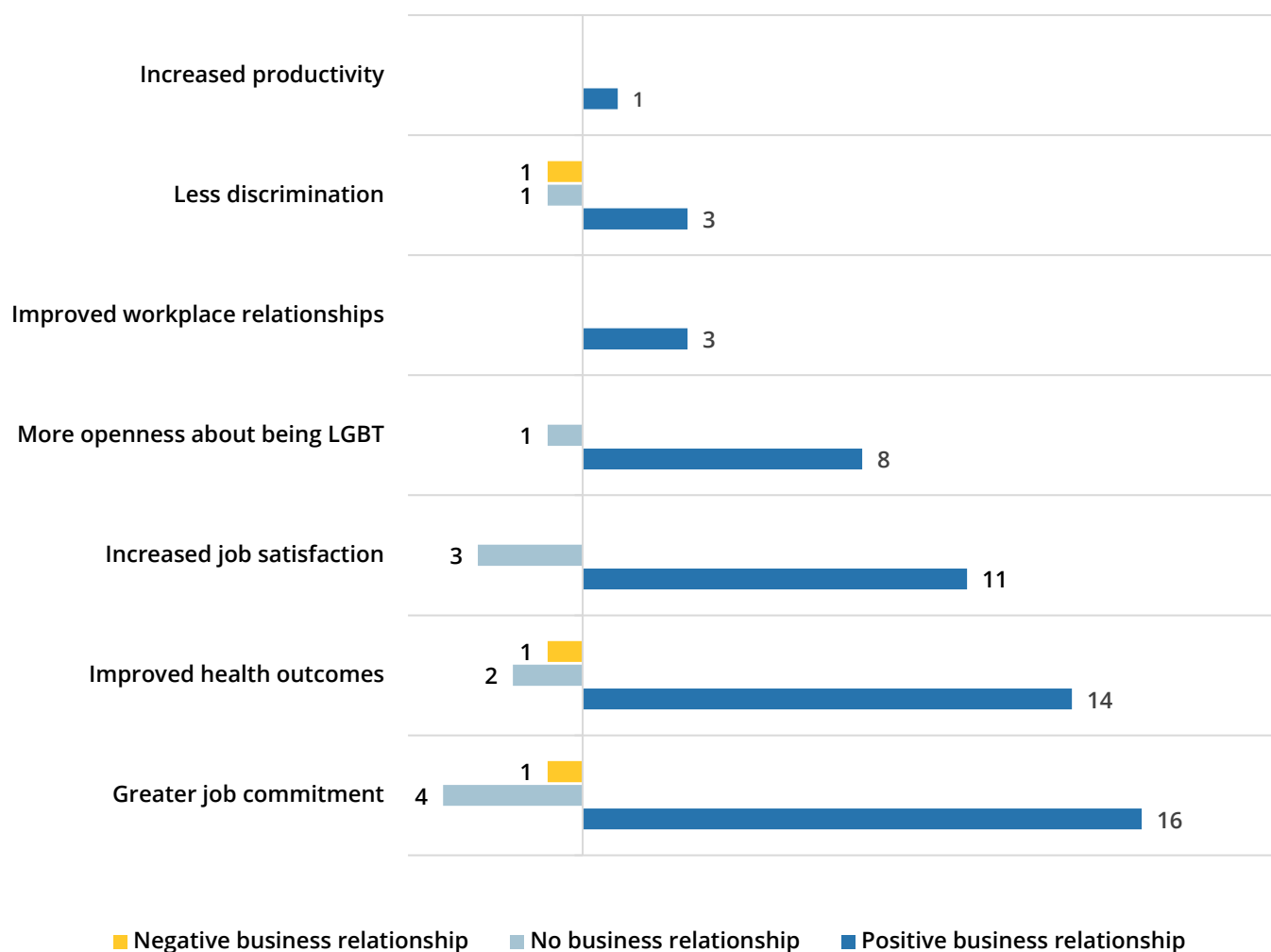
<sup>395</sup> BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

<sup>396</sup> Jody L. Herman, Williams Inst., Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefit Plans: Findings from a Survey of Employers 3 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

<sup>397</sup> *Id.*; SEARS & MALLORY, *supra* note 395.

Academic research conducted over the past two decades supports the business case for LGBT inclusion. In 2013, the Williams Institute reviewed 36 academic studies examining the effects of LGBT-supportive policies, and concluded that the research supports the existence of many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers (Figure 14).<sup>398</sup>

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



A 2014 literature review of academic studies similarly concluded that LGBT-supportive policies have positive effects on LGBT employees in terms of mental health, workplace relationships, and job

<sup>398</sup> M.V. Lee Badgett, Laura Durso, Angeliki Kastanis, & Christy Mallory, Williams Inst., The Business Impact of LGBT Supportive Workplace Policies (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-May-2013.pdf>.



satisfaction.<sup>399</sup> Many of the underlying studies included in the 2013 and 2014 literature reviews focused on three specific areas of the case for business diversity: employee recruitment, productivity/engagement, and retention. Studies focused on these outcomes have shown the following:

### Recruitment

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.<sup>400</sup>
- LGBT employees prefer to work in states with more supportive laws and social environments.<sup>401</sup>
- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.<sup>402</sup>
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,<sup>403</sup> particularly younger and more highly educated workers.<sup>404</sup>

### Productivity/Engagement

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, increased productivity, and job satisfaction.<sup>405</sup>
- When LGBT employees are open about their sexual orientation or gender identity at work, teams that include both LGBT and non-LGBT workers may be more productive and more competent.<sup>406</sup>

<sup>399</sup> Ozeren Emir, Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

<sup>400</sup> Harris Interactive, Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples, *PRNEWswire.COM* (Oct. 4, 2010),

<http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>; SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, THE POWER OF “OUT” 2.0: LGBT IN THE WORKPLACE 29 (2013).

<sup>401</sup> Out & Equal et al., *Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, HARRIS POLL (Oct. 30, 2014), [http://media.theharrispoll.com/documents/FINAL\\_2014\\_Out\\_Equal\\_Workplace\\_Survey\\_Release\\_10.30.2014.pdf](http://media.theharrispoll.com/documents/FINAL_2014_Out_Equal_Workplace_Survey_Release_10.30.2014.pdf).

<sup>402</sup> Russell Shrader, Broadening Partner Benefits to Improve Recruitment and Retention among LGBT Employees in United States Institutions of Higher Education, 40 *PUBLIC ADMIN. Q.* 180 (2016).

<sup>403</sup> SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 20 (2016); Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, *PRNEWswire.COM* (Oct. 4, 2010), <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>.

<sup>404</sup> Andrew R. Flores, Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact 3 *POLITICS, GROUPS, AND IDENTITIES* 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, The Impact of College Experience of Political and Social Attitudes, 31 *SEX ROLES* 31 (1994); Gay Marriage, *PEWRESEARCH.ORG*, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

<sup>405</sup> Yuan-Hui Tsai, Sheng-Wuu Joe, Wei-Te Liu, Chieh-Peng Lin, Chou-Kang Chiu & Chaio-Chih Tang, *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 *REV. MANAG. SCI.* 197 (2015); SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 20 (2016); BADGETT ET AL., *supra* note 398.

<sup>406</sup> Benjamin A. Everly, Margaret J. Shih & Geoffrey C. Ho, *Don't Ask, Don't Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 *J. EXPERIMENTAL SOCIAL PSYCH.* 407, 409 (2012).; SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 22, 63 (2016).

- Negative outcomes related to unsupportive policies and environments could lead to economic losses for state and local governments, as employers, and private businesses in Michigan. Since the state government of Michigan employs 170,000 people,<sup>407</sup> its own loss in productivity from a discriminatory environment could be significant.

## Retention

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.<sup>408</sup>
- LGBT employees in unsupportive environments feel less committed to their jobs.<sup>409</sup>
- When a worker leaves a job, costs include a loss in productivity due to the unfilled position, the costs of hiring and training a new employee, and lower initial rates of productivity of the new employee.<sup>410</sup> A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.<sup>411</sup> This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs – up to 213% of annual salary.<sup>412</sup> Based on the average annual mean wage in Michigan,<sup>413</sup> public and private employers are at risk of losing approximately \$9,660, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people.<sup>414</sup>

<sup>407</sup> For state government workforce: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Nov. 16, 2018) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "Michigan" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over" 2017 1-year estimates).

<sup>408</sup> HEWLETT & YOSHINO, *supra* note 406 at 20.

<sup>409</sup> Belle R. Ragins, Romila Singh, John M. Cornwell, Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Scott B. Button, Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination, 86 J. APPLIED PSYCHOL. 17, 23 (2001); IAN JOHNSON & DARREN COOPER, OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 4, 47 (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, THE POWER OF OUT (2011); DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, HUMAN RIGHTS CAMPAIGN, THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION 22 (2014), [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost\\_of\\_the\\_Closet\\_May2014.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf); Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 4 (Apr. 2013) (unpublished manuscript, available online).

<sup>410</sup> HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> The annual mean wage in Michigan is \$48,300. May 2017 State Occupational Employment and Wage Estimates: Michigan, Bureau of Labor Stats, [https://www.bls.gov/oes/current/oes\\_mi.htm](https://www.bls.gov/oes/current/oes_mi.htm) (last visited Nov. 20, 2018).

<sup>414</sup> Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Michigan. *Id.*; BOUSHEY & GLYNN, *supra* note 410.

In addition, several studies have linked LGBT-supportive policies and workplace environments to bottom line gains, including improved productivity, profitability, and stock prices when compared to firms without such policies.<sup>415</sup>

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

### Illustration of Costs of Discrimination against Transgender People

As discussed above, discrimination in employment, housing, and other areas of life can result in LGBT people being unemployed, underemployed, underpaid, less productive, and more reliant on government benefits and social services. The 2015 U.S. Transgender Survey (USTS) found that in Michigan, among USTS respondents who had a job or applied for a job in the past year, 6% reported having been denied a promotion, 6% reported having been fired from a job, and 23% reported having not been hired because of anti-transgender bias.<sup>416</sup>

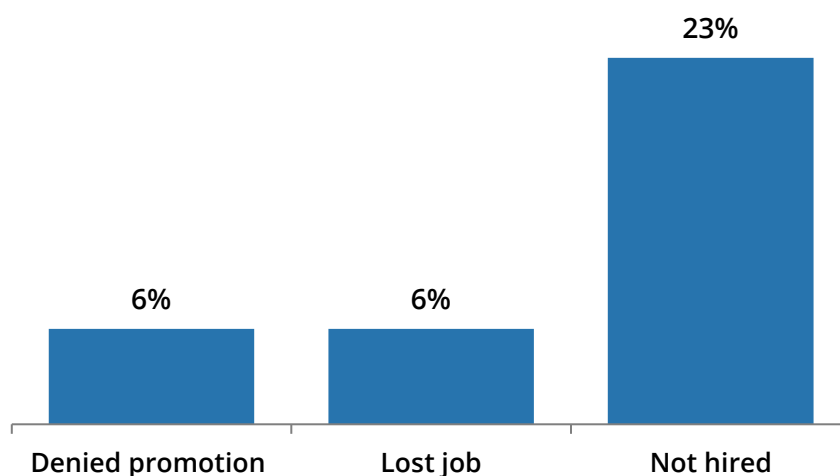
We used available data<sup>417</sup> to estimate the fiscal impact of discrimination in one of many possible areas by estimating the costs associated with Medicaid participation that results from employment discrimination against transgender people in Michigan.

<sup>415</sup> CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic profit generation, and that stocks of companies who have LGBT people in senior roles outperform those who do not); Feng Li and Venky Nagar, *Diversity and Performance*, 59 MGMT. SCI. 529 (2013) (finding improved operating returns on assets (ROA) after companies adopt domestic partner benefits for same-sex couples); Blazovich, Cook, Huston & Strawser, *supra* note 409 at 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which ... increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT ET AL., *supra* note 398 at 23 (“A ... study found that the more robust a company’s LGBT friendly policies, the better its stock performed over the course of four years (2002-2006), compared to other companies in the same industry over the same period of time.”); Garrett D. Voge, *Investor Valuation: LGBTQ Inclusion and the Effect on a Firm’s Financials* (unpublished manuscript, available at the University of Arizona Campus Repository) (2013), <http://arizona.openrepository.com/arizona/handle/10150/297778> (finding that institutional investors value LGBT-supportive corporate policies as evaluated by stock price increases after release of the LGBT Corporate Equality Index report by the Human Rights Campaign).

<sup>416</sup> These findings are based on data generated from the 2015 U.S. Transgender Survey, which was conducted by the National Center for Transgender Equality. To find out more about the U.S. Transgender Survey, visit <http://www.ustranssurvey.org>. The USTS was based on a national convenience sample of 27,715 transgender and gender non-conforming people. Additional calculations for this report were completed by the authors at The Williams Institute.

<sup>417</sup> We use prevalence findings from the U.S. Transgender Survey (USTS), coupled with estimates of the size of the transgender population in Arizona (reported in Section I.A.), to estimate the number of transgender adults in Arizona who have experienced anti-transgender bias in employment. SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>. These findings are based on data generated from the 2015 U.S. Transgender Survey, which was conducted by the National Center for Transgender Equality. To find out more about the U.S. Transgender Survey, visit <http://www.ustranssurvey.org>. The USTS was based on a national convenience sample of 27,715 transgender and gender non-conforming people. Additional calculations for this report were completed by the authors at The Williams Institute. We use data from the Henry J. Kaiser Foundation to estimate state spending per Medicaid enrollee in Arizona. Henry J. Kaiser Family Foundation, *Arizona: Medicaid Spending per Enrollee* (Full

**Figure 15. Employment discrimination due to anti-transgender bias among Michigan USTS respondents who had or applied for a job in the past year (N=634)**



Source: U.S. Transgender Survey, 2015

Job loss, including due to anti-transgender bias, can result in economic insecurity and loss of a variety of benefits, such as health care coverage. People who experience job loss may become eligible for and enroll in Medicaid. Estimates from the Centers for Medicare and Medicaid Services indicate that as of June 2018, more than 2.3 million people were enrolled in Medicaid or the Children's Health Insurance Program (CHIP) in Michigan.<sup>418</sup>

Based on findings from the U.S. Transgender Survey, we estimate that 20.5% of transgender adults in Michigan who have ever lost a job due to anti-transgender bias are currently enrolled only in Medicaid. An estimated 17.3% of transgender adults in Michigan who have never experienced such discrimination are enrolled only in Medicaid. We attribute the difference in Medicaid enrollment between these two groups (3.2%) to the elevated need for Medicaid coverage resulting from employment discrimination based on gender identity. Applying this figure to the population of transgender adults in Michigan who have ever held a job and then lost a job because of transgender bias, we estimate that 145 transgender people in Michigan have enrolled in Medicaid because of employment discrimination based on gender identity.<sup>419</sup> In 2014, average state spending per Medicaid enrollee in Michigan was approximately

or Partial Benefit), FY2014 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>418</sup> Medicaid & CHIP in Michigan, Center for Medicare and Medicaid Services, Medicaid.gov, <https://www.medicaid.gov/state-overviews/stateprofile.html?state=michigan> (last visited Nov. 19, 2018).

<sup>419</sup> According to the USTS, 17.0 percent of transgender adults in Michigan who have ever worked at a job or business have experienced job loss due to anti-transgender bias. By applying this estimate to the number of transgender adults in Michigan who have ever worked at a job or business (an estimated 81.2 percent of the population of transgender adults in Michigan, or 26,715), it is possible to estimate the number who have lost a job because of anti-transgender bias (4,542). Multiplying this

\$1,761.<sup>420</sup> Therefore, we estimate that employment discrimination experienced by transgender adults on the basis of gender identity costs Michigan approximately \$256,000 annually in state Medicaid expenditures.

## ECONOMIC IMPACT OF LGBT HEALTH DISPARITIES

Poor health “can affect people’s ability to be productive at work, reduce labor force participation when people cannot work, and burden public health care funds when individuals rely on emergency care rather than regular or preventative care.”<sup>421</sup> For these reasons, poor health, in general, imposes costs on employers and governments.<sup>422</sup> When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.<sup>423</sup>

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

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

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

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figure by 3.2 percent yields 145 transgender adults who have enrolled in Medicaid due to job loss resulting from anti-transgender bias in Michigan.

<sup>420</sup> Medicaid per enrollee figure available at Henry J. Kaiser Family Foundation, New York: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2014 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22.%22sort%22:%22asc%22%7D> (last accessed September 14, 2018). Further calculations to determine the state proportion of expenditures, based off the 2014 Federal Medical Assistance Percentage or FMAP (66.32%), were conducted by the authors. It is unclear how changes since 2014 have impacted the per-enrollee state expenditure for Medicaid. Michigan adopted Medicaid expansion under the Patient Protection and Affordable Care Act (ACA) in 2014 prior to data collection in the USTS. USTS data from Michigan residents, therefore, reflect Medicaid enrollment rates after the enactment of Medicaid expansion in the state.

<sup>421</sup> M.V. Lee Badgett, Sheila Nezhad, Kees Waaldijk & Yana van der Meulen Rodgers, *supra* note 379.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of Michigan for LGBT people would reduce observed disparities by a fraction. This is consistent with the 2009 Hatzenbuehler et al. study described above, in which health disparities for LGBT people related to mood and alcohol use disorder were lower in states with more supportive laws, but were still present.<sup>424</sup>

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

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

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

In order to best estimate the annual costs associated with MDD, we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004-2005 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.<sup>425</sup> Given the limited data about MDD among transgender people, we assume, for purposes of our analysis, that transgender people have the same rate of MDD as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.<sup>426</sup>

Applying the percentage of excess prevalence of MDD among LGB people (18.0% - 8.1% = 9.9%) to Michigan's adult LGBT population (an estimated 311,400 adults)<sup>427</sup> indicates that there are approximately 30,800 more LGBT adults who have major depressive disorder in Michigan than would be expected in the general population. As shown in Table 3 below, we further estimate that if 25% to 33.3% of the sexual orientation and gender identity disparity were reduced by improving the social climate for LGBT people, there would be between 7,700 and 10,300 fewer LGBT people living with MDD in the state.

<sup>424</sup> Hatzenbuehler, Keyes & Hasin, *supra* note 341 at 2277.

<sup>425</sup> *Id.* at 2279. For an explanation of how major depressive disorder is determined on the NESARC see U.S. Alcohol Epidemiologic Data Reference Manual, Alcohol Use and Alcohol Use Disorders in the United States, A 3-Year Follow-Up: Main Findings from the 2004-2005 Wave 2 National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), 19 (2010), [https://pubs.niaaa.nih.gov/publications/NESARC\\_DRM2/NESARC2DRM.pdf](https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf).

<sup>426</sup> E.g., George R. Brown & Kenneth T. Jones, Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study, 3 LGBT HEALTH 122 (2016).

<sup>427</sup> See Section I.A.1, *supra*.



To estimate the annual cost per person suffering from MDD, we drew from a 2015 study, *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*.<sup>428</sup> The study found that the annual total cost of MDD, nationwide, in 2010 was \$210.5 billion. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with MDD, we divided the total cost by the number of adults with the condition in 2010.<sup>429</sup> Next, we adjusted the cost per person with MDD in 2010 for inflation.<sup>430</sup> In inflation-adjusted dollars, the 2017 cost per person with MDD was \$15,908.<sup>431</sup>

For the reasons described above, we estimate that Michigan may be able to reduce the disparity in MDD between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with MDD in Michigan of approximately \$122.5 to \$163.9 million.

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

Reduction in disparity between LGBT and non-LGBT people in Michigan	LGBT individuals impacted	Annual reduction in costs (millions)
<b>25%</b>	7,700	\$122.5
<b>33.3%</b>	10,300	\$163.9

### Excess Costs Associated with Smoking among LGBT People

Our analysis of Michigan's 2015-2016 BRFSS data found that 38.4% of LGBT respondents were current smokers, compared to 20.3% of non-LGBT respondents. Applying the percentage (18.1%) of excess prevalence of smoking among LGBT people in Michigan to the state's LGBT population (311,400 adults)<sup>432</sup> indicates that there are approximately 56,400 more people who currently smoke in Michigan than would be expected in the general population.

<sup>428</sup> Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLIN. PSYCHIATRY 155 (2015). Greenberg et al. used data from the National Survey on Drug Use and Health to identify people who met the diagnostic criteria for a major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with major depressive disorder (and compared to a control group). Similarly, the prevalence of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

<sup>429</sup> The study found that, in 2010, 15,446,771 adults in the U.S. suffered from major depressive disorder. *Id.* Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

<sup>430</sup> To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at CPI Inflation Calculator, U.S. Bureau of Labor Stats., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 28, 2016).

<sup>431</sup> We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).

<sup>432</sup> See Section I.A. *supra*.

A 2010 study estimated the annual costs per current smoker in Michigan to be \$6,554.10.<sup>433</sup> The total included costs from workplace productivity losses (\$1,445.33), medical care costs (\$2,397.50), and premature death (\$2,711.27).<sup>434</sup> We adjusted for inflation<sup>435</sup> to estimate that the 2017 cost per current smoker in Michigan is \$7,648.98.

For the reasons described above, we estimate that Michigan may be able to reduce the disparity in current smoking between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with smoking in Michigan of approximately \$107.9 to \$143.8 million.

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

Reduction in disparity between LGBT and non-LGBT people in Michigan	LGBT individuals impacted	Annual reduction in costs (millions)
<b>25%</b>	14,100	\$107.9
<b>33.3%</b>	18,800	\$143.8

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

<sup>433</sup> Jill S. Rumberger, Christopher S. Hollenbeak, & David Kline, Potential Costs of Smoking Cessation: An Overview of the Approach to State Specific Analysis (2010), available at <http://www.lung.org/assets/documents/tobacco/economic-benefits.pdf>.

<sup>434</sup> *Id.* at 168-69.

<sup>435</sup> To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Nov. 23, 2016).



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

School-based bullying and harassment of LGBT youth is pervasive<sup>436</sup> and associated with an increased likelihood of school dropout,<sup>437</sup> poverty,<sup>438</sup> and suicide.<sup>439</sup> Educational attainment, especially high school completion, is a significant determinant of economic status and health across the life course.<sup>440</sup> As a result, early experiences of harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."<sup>441</sup>

Laws in Michigan do not adequately protect LGBT youth from bullying and harassment in schools.<sup>442</sup> To the extent the state's legal landscape and social climate foster an environment that is not inclusive of LGBT youth, the state is likely to experience losses in human capital, as well as costs associated with an overrepresentation of LGBT youth in foster care, the juvenile justice system, and among those experiencing homelessness. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

### School Outcomes

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

<sup>436</sup> See, e.g., Kate L. Collier, Gabriël van Beusekom, Henny M.W. Bos & Theo G.M. Sandfort, Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychological and Health Outcomes, 50 J. SEX ROLES 299 (2013); Elise D. Berlan et al., Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study, 46 J. ADOLESCENT HEALTH 366 (2010); Laura Kann et al., Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth Risk Behavior Surveillance, Selected Sites, United States, 2001–2009, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 11 (2011); JOSEPH G. KOSCIW ET AL., GLSEN, THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS (2015), available at

<https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>; EMILY A. GREYTAK, JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, GLSEN, HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS (2009), available at <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

<sup>437</sup> Jorge Srabstein & Thomas Piazza, Public Health, Safety and Educational Risks Associated with Bullying Behaviors in American Adolescents, 20 INT. J. ADOLESCENT MED. HEALTH 223 (2008).

<sup>438</sup> Sarah Brown & Karl Taylor, Bullying, Education and Earnings: Evidence from the National Child Development Study, 27 ECONOMICS EDUC. REV. 387 (2008).

<sup>439</sup> Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 INT. J. ADOLESCENT MED. HEALTH 133 (2008).

<sup>440</sup> John Lynch & George Kaplan, *Socioeconomic Factors*, in SOCIAL EPIDEMIOLOGY 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

<sup>441</sup> M.V. Lee Badgett, Sheila Nezhad, Kees Waaldijk & Yana van der Meulen Rodgers, *supra* note 379 at 26.

<sup>442</sup> See Section I.B., *supra*.

school because they felt unsafe (16.5% v. 6.9%).<sup>443</sup> Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB<sup>444</sup> high school students reported significantly higher rates of skipping school because they felt unsafe.<sup>445</sup> And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGBQ students were almost three times as likely to report not going to school because of safety concerns as their heterosexual counterparts.<sup>446</sup>

Studies based on convenience samples also indicate that many LGBT youth skip school due to bullying and harassment. A 2009 report by the National Education Association found that, nationwide, approximately half of LGBT students who said that they experienced frequent or severe verbal harassment because of their sexual orientation or gender identity missed school at least once a month, and around 70% who said they experienced frequent or severe physical harassment missed school more than once a month.<sup>447</sup> The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.<sup>448</sup> In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 14% said the harassment was so severe that they had to leave school as a result.<sup>449</sup> Other studies have found that bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism for these students.<sup>450</sup>

## Overrepresentation in State Systems and Services

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

<sup>443</sup> Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, supra note 32.

<sup>444</sup> The study defined LGB students as those students who reported in response to the survey that they had sexual contact with others of the same-sex or both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 AM. J. PUBLIC HEALTH, 255, 256 (2014).

<sup>445</sup> Id.

<sup>446</sup> Kann et al., supra note 227 at 12.

<sup>447</sup> Robert Kim, National Educ. Assn., Report on the Status of Gay, Lesbian, Bisexual and Transgender People in Education: Stepping Out of the Closet, into the Light 30 (2009), <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

<sup>448</sup> Id.

<sup>449</sup> The National Center for Transgender Equality and The National Gay and Lesbian Task Force, supra note 180.

<sup>450</sup> E.g., Joseph P. Robinson & Dorothy L. Espelage, Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice, 41 EDUC. RESEARCHER 309 (2012); Alicia L. Fedewa & Soyeon Ahn, The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature, 7 J. GLBT FAMILY STUDIES 398 (2011); Shelley L. Craig & Mark S. Smith, The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>; MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <http://www.mass.gov/cgly/YRBS09Factsheet.pdf> (last visited May 3, 2016); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement, 54 SOC. PROBLEMS 523 (2007); Stephen T. Russell, Hinda Seif & Nhan L. Truong, School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study, 24 J. ADOL. 111 (2001).

system. In addition to the human toll, there are costs to government and social service systems created by the overrepresentation of LGBT youth in these systems.<sup>451</sup>

LGBT youth are overrepresented in the foster care system; 19% of youth in foster care in Los Angeles County are LGBT, 2-3 times their proportion of the general youth and young adult population.<sup>452</sup> Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.<sup>453</sup> Of those who age out of foster care: more than 1 in 5 will experience homelessness after age 18; 1 in 4 will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19 year olds); fewer than 3% will earn a college degree by age 25 (compared to 28% of all 25 year olds); and at the age of 24, only half will be employed.<sup>454</sup>

In response to surveys conducted in 2012 and 2015, homeless youth service providers across the U.S. estimated that between 20% and 40% of their clients were LGBT.<sup>455</sup> A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth in public high school, were experiencing homelessness, compared to 3% of heterosexual youth.<sup>456</sup> Similarly, a 2015 survey of youth in Atlanta, Georgia experiencing homelessness, found that 28.2% of the respondents identified as LGBT.<sup>457</sup>

Data from the National Survey of Youth in Custody indicates that 12.2% of youth in custody identify as LGBT.<sup>458</sup> Another study found that LGBT youth made up 15% of detained youth.<sup>459</sup> Research has shown that LGBTQ youth are more likely to be detained for offenses such as running away, truancy, curfew

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<sup>451</sup> For an example of costs to the foster care system due to the overrepresentation of LGBT youth in foster care, and their increased likelihood of having multiple placements and being in congregate care, see BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST., *SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES* 41 (2014).

<sup>452</sup> *Id.* at 6.

<sup>453</sup> *Id.* (finding that LGBTQ youth in foster care have a higher total number of placements, are more likely to be in congregate care, and are more likely to have experienced homelessness).

<sup>454</sup> Jim Casey Youth Opportunities Initiative, Issue Brief: Cost Avoidance: The Business Case for Investing in Youth Aging out of Foster Care 5 (2013), [http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief\\_EMBARGOED%20until%20May%202016.pdf](http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%202016.pdf).

<sup>455</sup> Laura Durso & Gary J. Gates, Williams Inst., *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who are Homeless or At Risk of Becoming Homeless* 3 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; Soon Kyu Choi, Bianca D.M. Wilson, Jama Shelton & Gary J. Gates, Williams Inst., *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. See also Wilson et al., *supra* note 451.

<sup>456</sup> Heather L. Corliss, Carol S. Goodenow, Lauren Nichols & S. Bryn Austin, High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample, 9 AM. J. PUB. HEALTH 1683 (2011).

<sup>457</sup> AYCNA 2016 Key Findings, Atlanta Youth Count, <http://atlantayouthcount.weebly.com/2016-key-findings.html> (last visited Nov. 29, 2016).

<sup>458</sup> Allen J. Beck & David Cantor, Bureau of Justice Stats., U.S. Dep't of Justice, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012 at 20* (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

<sup>459</sup> Laura Garnette et al., *Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth and the Juvenile Justice System*, in *JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE* 162 (Francine T. Sherman & Francine H. Jacobs eds., 2011).

violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.<sup>460</sup> Other studies have shown that in some instances, LGBT youth have been punished for defending themselves against their harassers,<sup>461</sup> and there is evidence of selective enforcement against LGBT youth.<sup>462</sup>

Collectively, school-based harassment and family rejection contribute to significant “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”<sup>463</sup> For example, nationally, the Jim Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual cohort.

## CONCLUSION

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

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<sup>460</sup> Katayoon Majd, Jody Marksamer & Carolyn Reyes, Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts 71 (2009), [http://www.ncrightrights.org/wp-content/uploads/2014/06/hidden\\_injustice.pdf](http://www.ncrightrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf); Shannan Wilber, Caitlin Ryan & Jody Marksamer, Child Welfare League of America, Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care 4 (2006), <http://familyproject.sfsu.edu/sites/sites7.sfsu.edu/familyproject/files/bestpracticeslgbyouth.pdf>.

<sup>461</sup> MAJD ET AL., *supra* note 460 at 77.

<sup>462</sup> Katherine E. W. Himmelstein & Hannah Bruckner, Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study, 127 PEDIATRICS 49 (2011).

<sup>463</sup> *Id.*