

RESEARCH THAT MATTERS

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# THE IMPACT OF STIGMA AND DISCRIMINATION

Against LGBT People  
in Pennsylvania

November 2021

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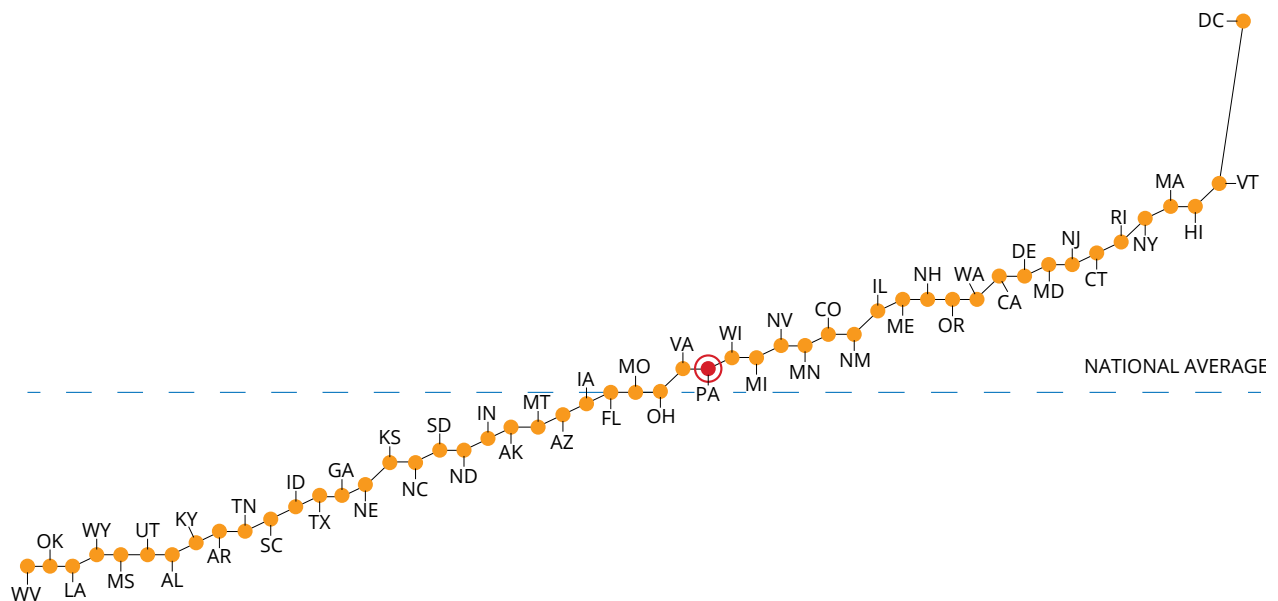
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## EXECUTIVE SUMMARY

Pennsylvania is home to an estimated 416,000 LGBT adults<sup>1</sup> and approximately 74,000 LGBT youth.<sup>2</sup> The state offers some protections for LGBT people, but also lacks a number of laws and policies that have been enacted to support LGBT people in other states. Pennsylvania's statewide non-discrimination law does not expressly include protections from discrimination based on sexual orientation or gender identity, however the Pennsylvania Human Relations Commission has interpreted the law to protect LGBT people since 2018.<sup>3</sup> This decision expanded statewide legal protections for LGBT people even before the U.S. Supreme Court held that discrimination based on sexual orientation and gender identity violates federal non-discrimination laws.<sup>4</sup> Despite these protections, Pennsylvania lacks several other types of supportive laws and policies that have been enacted in other states, including an LGBT-inclusive hate crimes law, LGBT-inclusive anti-bullying policies, and a ban on the practice of conversion therapy. In terms of social climate, Pennsylvania ranks 24<sup>th</sup> in the nation, as measured by public support for LGBT rights and acceptance of LGBT people.<sup>5</sup>

### Social acceptance of LGB people, ranked by state



<sup>1</sup> KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., LGBT PEOPLE IN THE UNITED STATES NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES 3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-ND-Protections-Update-Apr-2020.pdf>.

<sup>2</sup> KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES 2-3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

<sup>3</sup> PENNSYLVANIA HUMAN RELATIONS COMMISSION, PENNSYLVANIA HUMAN RELATIONS COMMISSION GUIDANCE ON DISCRIMINATION ON THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT (2018), <https://www.phrc.pa.gov/About-Us/Publications/Documents/General%20Publications/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf>.

<sup>4</sup> *Bostock v. Clayton Cty*, 590 U.S. \_\_ (2020).

<sup>5</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), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Divide-Dec-2014.pdf>.

The legal landscape for LGBT people in Pennsylvania likely contributes to an environment in which LGBT people continue to experience stigma and discrimination. Stigma and discrimination can take many forms, including discrimination and harassment in employment and other settings; bullying and harassment at school and family rejection of LGBT youth; overrepresentation in the criminal legal system; and violent victimization. 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 the U.S. and in Pennsylvania specifically, including discrimination and harassment in employment, housing, and places of public accommodation; 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 Pennsylvania can create a more supportive environment for LGBT people, it will reduce the 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 Pennsylvania experience discrimination in employment, housing, and public accommodations:

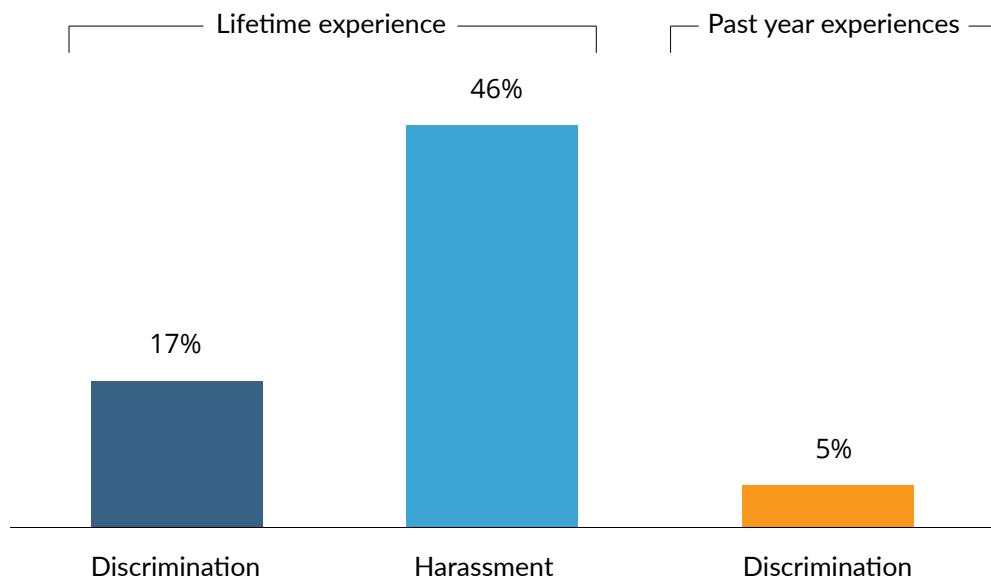
- A 2021 nationwide survey of LGBT employees found that nearly half (47%) of LGBT respondents from Pennsylvania reported experiencing workplace discrimination or harassment because of their sexual orientation or gender identity at some point in their lives.<sup>6</sup> More specifically, 17% of respondents from Pennsylvania reported experiencing employment discrimination (including being fired or not hired) because of their sexual orientation or gender identity. Forty-six percent of LGBT respondents from Pennsylvania reported experiencing at least one form of harassment (verbal, physical, or sexual harassment) at work because of their sexual orientation or gender identity.
- In response to the 2021 survey, 5% of LGBT employees from Pennsylvania reported that they had experienced discrimination (including being fired or not hired) within the year following the U.S. Supreme Court's decision in *Bostock v. Clayton County*, extending non-discrimination protections to LGBT people nationwide.<sup>7</sup>

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<sup>6</sup> Analysis of data from the Employment Experiences Survey conducted by the Williams Institute and Morning Consult. The sample included 42 respondents from Pennsylvania. For more information and complete methodology, see BRAD SEARS ET AL., WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

<sup>7</sup> *Id.*

### Experiences of discrimination and harassment against LGBT employees in Pennsylvania, lifetime and past year



Source: Employment Experiences Survey, 2021

- In 2019, 10% of discrimination suits brought before the City of Pittsburgh's Human Relations Commission were based on sexual orientation, gender identity, or gender expression.<sup>8</sup>
- In response to a 2016 poll, 57% of Pennsylvania residents—both LGBT and non-LGBT—said that they thought that gay and lesbian people experience a lot of discrimination in the U.S.,<sup>9</sup> and 61% said that they thought that transgender people experience a lot of discrimination in the U.S.<sup>10</sup>
- The 2015 U.S. Transgender Survey found that among respondents in Pennsylvania, 23% of transgender people who held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression.<sup>11</sup> Further, 21% of transgender respondents in the state 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, and 10% reported that they experienced homelessness in the past year because of being transgender.<sup>12</sup> In addition, of those respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 31% experienced at least one type of mistreatment

<sup>8</sup> Ashley Murray, *Pittsburgh LGBT Workplace Protections Exceeded Federal Standards For Years*, PITTSBURGH POST-GAZETTE, <https://www.post-gazette.com/local/city/2020/06/16/Pittsburgh-employment-protections-LGBT-gender-identity-sexual-discrimination/stories/202006160120>.

<sup>9</sup> *The American Values Atlas*, PRRI, <http://ava.prri.org/#lgbt/2020/States/lgbtdis/m/US-PA> (last visited Sept. 29, 2021).

<sup>10</sup> *The American Values Atlas*, PRRI, <http://ava.prri.org/#lgbt/2020/States/srvref/m/US-PA> (last visited Sept. 29, 2021).

<sup>11</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: PENNSYLVANIA STATE REPORT 1 (2017) [https://transequality.org/sites/default/files/docs/usts/USTSPASStateReport\(1017\).pdf](https://transequality.org/sites/default/files/docs/usts/USTSPASStateReport(1017).pdf).

<sup>12</sup> *Id.* at 2.

in the past year because of being (or being perceived to be) transgender.<sup>13</sup>

- Incidents of discrimination against LGBT people in employment, housing, and in places of public accommodation in Pennsylvania have also been documented in a number of court cases, media reports, and other sources.

LGBT youth in Pennsylvania experience bullying and harassment at school:

- Data collected by the state in 2019 indicate that, when compared to heterosexual students, LGB students in Pennsylvania were almost twice as likely to report being bullied both at school (32.9% vs. 17.2%)<sup>14</sup> and electronically (26.8% vs. 12.3%)<sup>15</sup> in the year prior to the survey. Similarly, LGB students in the state were more likely than heterosexual students to report being in a physical fight in the year prior to the survey (26.2% vs. 20.5%),<sup>16</sup> and to report being threatened or injured with a weapon on school property (10.9% vs. 6.8%).<sup>17</sup>
- A 2020 survey at Pennsylvania State University found that 22% of all students reported hearing insensitive or disparaging remarks on the basis of sexual orientation sometimes while on campus; 7% heard such remarks often, and 3% very often.<sup>18</sup> Respondents were more likely to report hearing insensitive or disparaging remarks on the basis of non-binary or gender nonconforming identity, with 33% hearing those remarks sometimes, 21% often, and 16% very often.<sup>19</sup>
- Among Pennsylvania students interviewed through the 2019 GLSEN National School Climate survey of LGBTQ middle- and high-school students, 10% reported experiencing physical assault at school because of either their sexual orientation or gender expression in the year prior to the survey.<sup>20</sup> Similarly, 24% said they had experienced physical harassment at school based on their sexual orientation, and 20% based on their gender expression, in the year prior to the survey.<sup>21</sup> A majority of Pennsylvania respondents reported experiences with verbal harassment at school based on their sexual orientation (71%) or gender expression (56%) in the year prior to the survey.<sup>22</sup> Among LGBTQ students who were bullied or harassed at Pennsylvania schools, only 51% reported the incident to school staff.<sup>23</sup> And, only 22% of those who reported bullying or harassment to staff said that it resulted in effective intervention.<sup>24</sup>
- Pennsylvania students interviewed by Human Rights Watch in 2016 consistently reported that anti-LGBTQ slurs were “ubiquitous” in their schools, even in those seen as LGBT-friendly,

<sup>13</sup> *Id.*

<sup>14</sup> U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEILLANCE SYSTEM – UNITED STATES AND SELECTED SITES, 2019 tbl.30 (2020), [https://www.cdc.gov/healthyyouth/data/yrbs/2019\\_tables/pdf/2019\\_MMWR-SS\\_Tables.pdf](https://www.cdc.gov/healthyyouth/data/yrbs/2019_tables/pdf/2019_MMWR-SS_Tables.pdf).

<sup>15</sup> *Id.* at tbl.28.

<sup>16</sup> *Id.* at tbl.24.

<sup>17</sup> *Id.* at tbl.22.

<sup>18</sup> *Penn State Community Survey*, PENNSYLVANIA STATE UNIVERSITY, <https://opair.psu.edu/community-survey/dashboards/total/>.

<sup>19</sup> *Id.*

<sup>20</sup> GLSEN, SCHOOL CLIMATE FOR LGBTQ STUDENTS IN PENNSYLVANIA 1 (2019), <https://www.glsen.org/sites/default/files/2021-01/Pennsylvania-Snapshot-2019.pdf>.

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

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*



and that slurs would frequently be used to “belittle or taunt peers, whether or not the targets identified as LGBT.”<sup>25</sup> Interviews with both students and teachers suggest that, for many Pennsylvania school employees, the choice to not intervene is deliberate.<sup>26</sup>

- The 2015 U.S. Transgender Survey found that 77% of Pennsylvania respondents who were out or perceived as transgender at some point between kindergarten and 12th grade reported experiencing some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought that they were transgender.<sup>27</sup> Furthermore, 12% said that the harassment they experienced was so severe that they had to leave a K-12 school.<sup>28</sup>
- Instances of bullying and harassment in education in Pennsylvania have also been documented in a number of court cases, administrative complaints, and media reports.

## Impact of Stigma and Discrimination on LGBT Individuals

LGBT people in Pennsylvania 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 25.9% of LGBT adults in Pennsylvania reported that they did not have enough money for food, compared to 13.1% of non-LGBT adults in the state.<sup>29</sup> Similarly, 26.5% of LGBT adults in Pennsylvania reported having a household income below \$24,000, compared to 18.3% of non-LGBT adults.<sup>30</sup> In addition, 10.5% of LGBT adults in Pennsylvania reported being unemployed, compared to 5.2% of non-LGBT adults.<sup>31</sup>

LGBT adults and youth in Pennsylvania experience health disparities:

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT adults, 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 likelihoods of dropping out of school, suicide, and substance use among LGBT youth.
- LGBT adult respondents to the 2017 and 2018 Pennsylvania Behavioral Risk Factor Surveillance System survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGBT respondents (42.1% vs.

<sup>25</sup> “Like Walking Through a Hailstorm” *Discrimination Against LGBT Youth in US Schools*, HUMAN RIGHTS WATCH (2016), <https://www.hrw.org/report/2016/12/08/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools#>.

<sup>26</sup> See *id.*

<sup>27</sup> NAT’L CTR. FOR TRANSGENDER EQUALITY, *supra* note 11.

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

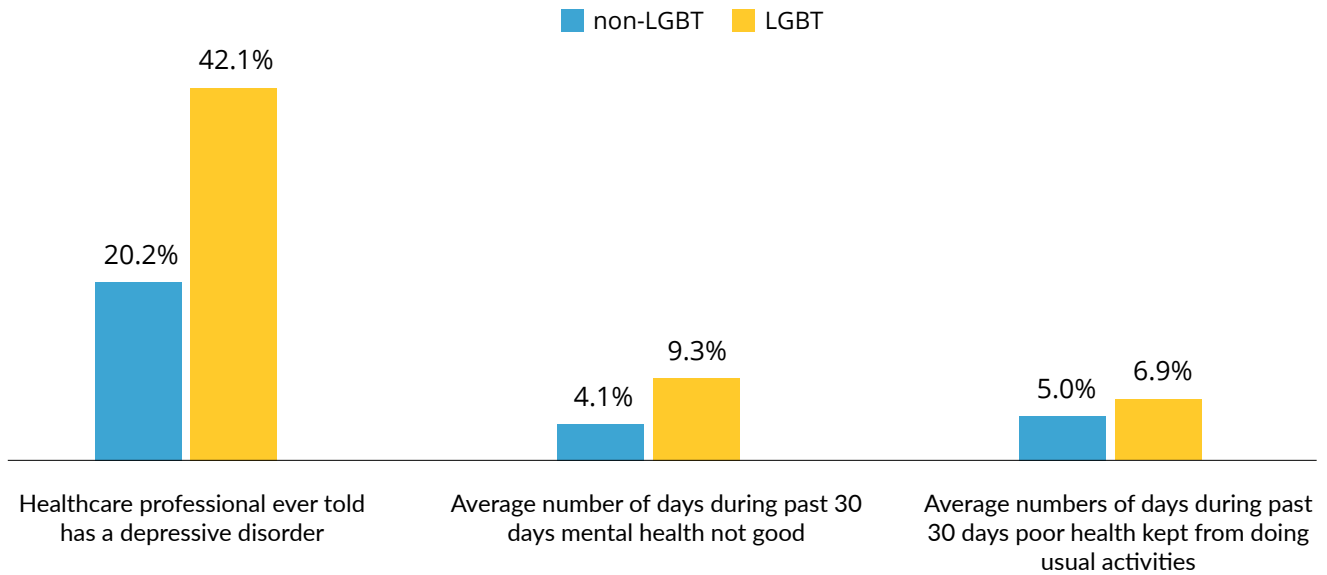
<sup>29</sup> Unpublished analyses conducted by Williams Institute scholars of data from the combined 2015-2017 Gallup Daily Tracking surveys multiplied by the estimated number of LGBT adults in Pennsylvania, see *LGBT Data & Demographics – Pennsylvania*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=42#density>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

20.2%).<sup>32</sup> In addition, LGBT adults in Pennsylvania were significantly more likely to report current smoking (31.7% vs. 17.5%) and binge drinking (31.0% vs. 16.6%) than non-LGBT adults.<sup>33</sup>

### Health characteristics of adults in Pennsylvania, by LGBT identity



Source: 2017–2018 Pennsylvania BRFSS

## 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 for private sector employers in the state. Given that an estimated 307,000 workers ages 16 and over in Pennsylvania identify as LGBT,<sup>34</sup> 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. A recent survey found that 11% of LGBT employees who live in Pennsylvania have left a job because of how they were treated by an employer based on their sexual orientation or gender identity at some point in their lives, and 38% have looked for other jobs because of how they were personally treated by their employer or because the workplace environment was uncomfortable for LGBT people in general.<sup>35</sup>

<sup>32</sup> Adjusted odds ratio (95% CI) = 2.38 (1.83, 3.09).

<sup>33</sup> Adjusted odds ratio (95% CI) = 1.98 (1.48, 2.66) (smoking); adjusted odds ratio (95% CI) = 1.81 (1.33, 2.46) (binge drinking).

<sup>34</sup> CONRON & GOLDBERG, *supra* note 1.

<sup>35</sup> Analysis of data from the Employment Experiences Survey, *supra* note 6



Given the average replacement costs of an employee, public and private employers risk losing \$10,790, on average, for each employee who leaves the state or changes jobs because of an unsupportive environment in Pennsylvania.<sup>36</sup>

- **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 Pennsylvania 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, experience homelessness, or become unemployed or underemployed.
- Underattendance at school and experiences with 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 Annie E. 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.<sup>37</sup> The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging-out cohort.

Health disparities for LGBT people negatively impact the economy:

- A more supportive legal landscape and social climate for LGBT people in Pennsylvania 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 Pennsylvania by 25% to 33.3% could benefit the state's economy by \$169.5 to \$225.4 million annually.<sup>38</sup> Reducing the disparity in current smoking by the same proportion could benefit the state's economy by \$111.5 to \$148.7 million,<sup>39</sup> and similarly reducing the disparity in binge drinking could benefit the state's economy by \$69.7 to \$93.1 million in

<sup>36</sup> According to the most recently available data, the annual mean wage in Pennsylvania is \$53,950. See *May 2020 State Occupational Employment and Wage Estimates Pennsylvania*, U.S. BUREAU OF LABOR STATS., [https://www.bls.gov/oes/current/oes\\_pa.htm](https://www.bls.gov/oes/current/oes_pa.htm) (last visited Sept. 29, 2021). Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Pennsylvania as of May 2020. *Id.*; HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees>.

<sup>37</sup> ANNIE E. CASEY FOUND., COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE 5 (2013), <https://assets.aecf.org/m/resourcedoc/JCYOI-CostAvoidance-2013.pdf>.

<sup>38</sup> Methods discussed in full report, see *infra* notes 324–330 and accompanying text.

<sup>39</sup> Methods discussed in full report, see *infra* notes 331–337 and accompanying text.

increased productivity and reduced health care costs each year.<sup>40</sup> To the extent that a more supportive legal landscape would reduce other health disparities, the state's economy would benefit even more.

**Reduction in costs associated with major depressive disorder, smoking, and binge drinking in Pennsylvania if LGBT disparities were reduced**

HEALTH CHARACTERISTIC	REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN PENNSYLVANIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
Major Depressive Disorder	25%–33.3%	10,300–13,700	\$169.5–\$225.4
Smoking	25%–33.3%	14,700–19,600	\$111.5–\$148.7
Binge Drinking	25%–33.3%	14,900–19,900	\$69.7–\$93.1

<sup>40</sup> Methods discussed in full report, see *infra* notes 338–343 and accompanying text.

## DEMOGRAPHICS AND LEGAL LANDSCAPE

Pennsylvania is home to an estimated 416,000 adults and 74,000 youth who identify as lesbian, gay, bisexual, or transgender (LGBT).<sup>41</sup> However, LGBT people in Pennsylvania lack important state-level legal protections that have been extended in other states. Additionally, Pennsylvania ranks 24<sup>th</sup> in the nation on LGBT social climate, as measured by public support for LGBT rights and acceptance of LGBT people. However, public opinion polls also show that a majority of adults in Pennsylvania support extending discrimination protections to LGBT people.

### DEMOGRAPHICS OF LGBT PEOPLE IN PENNSYLVANIA

#### LGBT Adults in Pennsylvania

Pennsylvania is home to approximately 416,000 LGBT adults (4.1% of adults in the state self-identify as LGBT),<sup>42</sup> including 43,800 transgender adults (0.44% of the adult population).<sup>43</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 Pennsylvania, like LGBT adults elsewhere across the U.S., are younger than non-LGBT adults.<sup>44</sup> As shown in Table 1 below, more than half of LGBT adults in Pennsylvania are under the age of 35 compared to 27% of non-LGBT adults.<sup>45</sup>

While similar proportions of non-LGBT adults in Pennsylvania are male as are female, LGBT adults in the state are more likely to be female.<sup>46</sup>

<sup>41</sup> For more information on these estimates, see *infra* note 41 (adults); CONRON, *infra* note 53 (youth). Consistent with the literature on LGBT people, “LGBTQ”—with the Q representing questioning or queer—is often used to capture individuals who identify their sexual orientation or gender identity using such terms, including those whose identities are less developed or more fluid. Within existing research, this is generally the case for studies involving youth, though adults certainly question their sexual orientation or gender identity and can identify as queer. See, e.g., *6% of Non-Transgender Sexual Minority Adults in the US Identify as Queer*, WILLIAMS INST. (Jan. 22, 2020), <https://williamsinstitute.law.ucla.edu/press/sexual-minority-queer-press-release>. However, few studies relevant to this report include measures to allow for the identification and analysis of LGBT adults who specifically identify as queer or questioning; hence, we generally use “LGBT” unless supported by the underlying study.

<sup>42</sup> KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., *LGBT PEOPLE IN THE UNITED STATES NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES 3* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-ND-Protections-Update-Apr-2020.pdf>; *LGBT Data & Demographics – Pennsylvania*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=42#density>.

<sup>43</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? 4* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.

<sup>44</sup> Unpublished analyses conducted by Williams Institute scholars of data from the combined 2015–2017 Gallup Daily Tracking surveys multiplied by the estimated number of LGBT adults in Pennsylvania, see WILLIAMS INST. (2019), *supra* note 42.

<sup>45</sup> *Id.*

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

LGBT adults in Pennsylvania are racially and ethnically diverse. Nearly one-third (32.4%) of LGBT adults in Pennsylvania are people of color.<sup>47</sup> Comparatively, 81.1% of non-LGBT adults in Pennsylvania are white.<sup>48</sup>

**Table 1. Weighted characteristics of Pennsylvania adult participants in the 2015–2017 Gallup Daily Tracking Surveys by LGBT and non-LGBT status (n = 45,016)**

	LGBT (N = 1,519)	NON-LGBT (N = 43,497)
	%	%
<b>Age</b>		
18–24	29.9	11.7
25–34	25.7	15.1
35–49	19.8	21.9
50–64	16.5	27.3
65+	8.1	24.0
<b>Sex</b>		
Female	55.6	50.8
Male	44.4	49.2
<b>Race/ethnicity</b>		
White	67.6	81.1
African American or Black	12.5	8.4
Latino/a or Hispanic	11.8	5.7
More than one race	5.0	2.3
All other racial/ethnic groups	3.1	2.4
<b>Children under 18 in household (among those ages 25+)</b>	26.8	32.5

Many LGBT adults in Pennsylvania are raising children in the context of same- and different-sex relationships, while married and unmarried, and as single parents. Among LGBT adults ages 25 and older in Pennsylvania, 27% are raising children.<sup>49</sup> Data from the 2011–2013 American Community Surveys indicate that there were approximately 22,340 cohabiting same-sex couples living in Pennsylvania, 15.9% of whom were raising children.<sup>50</sup>

## LGBT Youth in Pennsylvania

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants managed by the U.S. Centers for Disease Control and

<sup>47</sup> Results reported in Table 1; 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 among LGBT respondents.

<sup>48</sup> See discussion *supra* note 44.

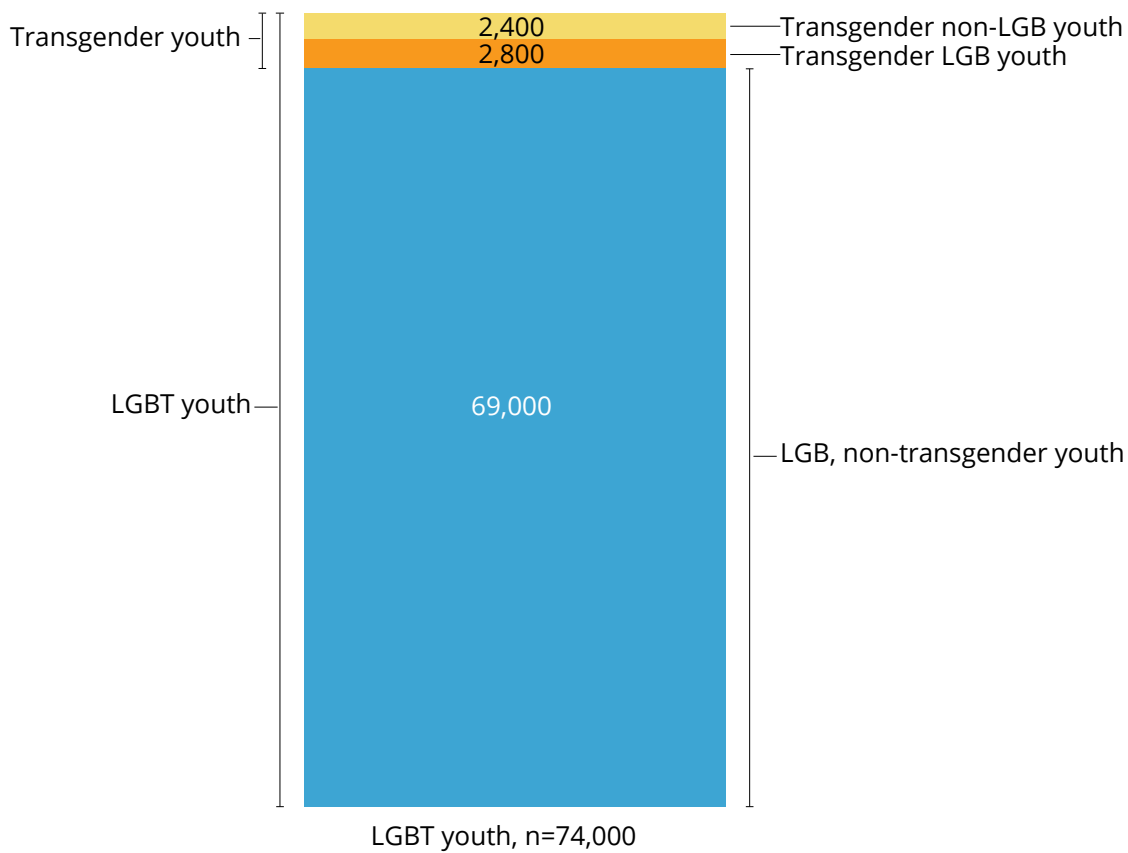
<sup>49</sup> WILLIAMS INST. (2019), *supra* note 42.

<sup>50</sup> *Same-Sex Couple Data & Demographics – Pennsylvania*, WILLIAMS INST. (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=SS&area=42#density>.

Prevention (CDC).<sup>51</sup> The YRBS is one of the few sources of data about LGB youth in grades 9–12 in the U.S.<sup>52</sup> Based on YRBS data, we estimate that 9.2% of youth in grades 9–12 identify as gay, lesbian, or bisexual in the U.S.<sup>53</sup>

We estimate that there are approximately 74,000 LGBT youth ages 13–17 in the state of Pennsylvania.<sup>54</sup> This includes approximately 71,000 LGB youth (approximately 2,800 of whom are also transgender) and approximately 2,400 transgender youth who are not LGB.<sup>55</sup>

**Figure 2. Estimate of the LGBT youth population of Pennsylvania, ages 13–17**



<sup>51</sup> Youth Risk Behavior Surveillance System (YRBSS), CDC.GOV (Oct. 2020), <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>.

<sup>52</sup> Questions related to gender identity—allowing for the identification of transgender participants—were not included in the 2015, 2017, or 2019 YRBS national surveys.

<sup>53</sup> In the 2015 YRBS, 8.0% of youth in the national sample identified as LGB. 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 & MORTALITY WORLD REP. 1 (2016), <https://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm>. In the 2017 YRBS, 10.4% of youth in the national sample identified as LGB. Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MORBIDITY & MORTALITY WORLD REP. 1 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>. 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>54</sup> KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES 2–3 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

<sup>55</sup> *Id.* at 2. We assume the same distribution of sexual orientation across all youth in the state, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

## LEGAL LANDSCAPE FOR LGBT PEOPLE IN PENNSYLVANIA

Pennsylvania's legal landscape reflects a history of state laws and policies that limit protections for LGBT people or discriminate against them. In addition, the state and many localities continue to lack important LGBT-supportive laws enacted in other parts of the U.S. The current and historical legal landscape for LGBT people in Pennsylvania can negatively impact their everyday lives and leaves them vulnerable to stigma and discrimination based on their sexual orientation and gender identity.

### Historical Legal Landscape

Although Pennsylvania's sodomy law has been repealed and its ban on same-sex marriage has been invalidated, historical anti-LGBT laws likely have lingering negative effects on the social climate for LGBT people in the state.

**Sodomy Laws.** Enforcement of Pennsylvania's sodomy law and other similar "buggery" laws indicates a long history of discrimination against LGB people in the state. The territory of Pennsylvania is believed to have criminalized sodomy as early as 1665, while it was controlled by the Duke of York.<sup>56</sup> This crime was one of few punishable by death in the territory.<sup>57</sup> In the late 1600s, efforts by William Penn resulted in this and several other crimes having their penalties reduced, sodomy specifically reduced to a six-month term of imprisonment.<sup>58</sup> In 1700, the Pennsylvania Assembly modified the statute again, first by increasing the penalty to life imprisonment in all cases, and then by requiring that all Black offenders be given the death penalty.<sup>59</sup> This structure remained in place until 1780.<sup>60</sup>

Pennsylvania was the first of the colonies after the American Revolution to revoke the death penalty for sodomy, doing so in 1786.<sup>61</sup> There is only one documented execution related to a sodomy crime in the state from this time period.<sup>62</sup> Throughout the 1800s, the punishments for sodomy in Pennsylvania steadily lessened, with offenders being granted the right to post bail (with restrictions); by 1860, the highest penalty for sodomy in the state was 10 years in prison.<sup>63</sup> By 1941, those convicted of sodomy could go on probation, and by 1972 the crime was reduced to a misdemeanor with a two-year maximum sentence.<sup>64</sup>

Pennsylvania was the first state to enact a sodomy law that covered oral sex, doing so in 1879.<sup>65</sup> This law was enforced through the 1900's, with a newer law passed during World War I.<sup>66</sup> During this

<sup>56</sup> George Painter, *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States: Pennsylvania*, GLAPN (Aug. 10, 2004), <https://www.glapn.org/sodomylaws/sensibilities/pennsylvania.htm>.

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

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

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

<sup>62</sup> *Id.*

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

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* Similarly, the state enacted a psychopathic offender law, the Barr-Walker Act, in 1952; this was later one of the first such laws to be ruled as unconstitutional on due process grounds. See *Com. ex. re. Gerchman v. Maroney*, 203 Pa. Super. 293 (1964); *Com v. Dolley*, 209 Pa. Super. 519 (1967).

<sup>66</sup> Painter, *supra* note 56.



time period, numerous cases involving consensual, private acts of sodomy were prosecuted.<sup>67</sup> The constitutionality of these laws as applied to private, consensual sodomy was upheld routinely by state courts until a 4-3 decision by the Pennsylvania Supreme Court in 1980.<sup>68</sup> The law was formally repealed in 1995.<sup>69</sup>

**Sterilization.** While the state never enacted a sterilization law, records reflect cases of Pennsylvania doctors subjecting those they considered “sexual perverts” to castrations, vasectomies, and ovariectomies during the early 1900’s.<sup>70</sup>

**Marriage Equality.** In 1996, Congress passed the Defense of Marriage Act (DOMA), which defined marriage as a union between one man and one woman.<sup>71</sup> Soon after, states began passing analogous laws to ban same-sex marriage in their states as well.<sup>72</sup> Pennsylvania’s state legislature passed enacted its own Defense of Marriage Act the same year as the federal DOMA, defining marriage as a union “between one man and one woman.”<sup>73</sup> This legislation also enumerated that same-sex marriages that were legally valid in another state would be considered void in Pennsylvania.<sup>74</sup> In 2014, a federal district court held in *Whitewood v. Wolf* that the state’s same-sex couples have a constitutional right to marry, striking down this law.<sup>75</sup> As the state declined to appeal this ruling, Pennsylvania effectively became the 19th state in the nation to legalize same-sex marriage.<sup>76</sup> In 2015, the U.S. Supreme Court invalidated same-sex marriage bans nationwide in its decision in *Obergefell v. Hodges*.<sup>77</sup>

However, despite these decisions, the 1996 law remains codified in the Pennsylvania Consolidated Statutes.<sup>78</sup> In 2021, a state representative introduced a bill to repeal this law;<sup>79</sup> a similar measure has been introduced by a state senator.<sup>80</sup>

<sup>67</sup> *Id.*; see also *Commonwealth v. Taylor*, 26 Pa. D. 16 (1916).

<sup>68</sup> *Com. v. Bonadio*, 490 Pa. 91 (1980).

<sup>69</sup> *Painter*, *supra* note 56.

<sup>70</sup> *Id.*

<sup>71</sup> 28 U.S.C. § 1738B (1996).

<sup>72</sup> Margaret Talbot, *Now for the Mini-DOMA’s*, THE NEW YORKER (July 2, 2013), <https://www.newyorker.com/news/daily-comment/now-for-the-mini-domas>.

<sup>73</sup> 23 Pa. Cons. Stat. § 1704.

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

<sup>75</sup> *Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014).

<sup>76</sup> *Gay Marriage Timeline*, PROCON, <https://gaymarriage.procon.org/gay-marriage-timeline/>, (last updated June 9, 2021); See also, Michael Muskal, *Pennsylvania Governor Abandons Appeal on Same-Sex Marriage Ruling*, LA TIMES (May 21, 2014, 1:37 PM), <https://www.latimes.com/nation/nationnow/la-na-pennsylvania-governor-no-appeal-same-sex-marriage-20140521-story.html>.

<sup>77</sup> 135 S. Ct. 1732 (2015).

<sup>78</sup> See 23 Pa. Cons. Stat. § 1704.

<sup>79</sup> Pat Bannister, *Same-Sex Marriage is Legal in Pennsylvania But Some of its Laws Are Stuck in the Past*, ABC27, (May 20, 2021), <https://www.abc27.com/news/pennsylvania/same-sex-marriage-is-legal-in-pennsylvania-but-some-of-its-laws-are-stuck-in-the-past>.

<sup>80</sup> Eric Heyl, *PA Considering Measures to Legally Recognize Same-Sex Marriages*, PATCH, (Apr. 20, 2021), <https://patch.com/pennsylvania/pittsburgh/pa-considering-measures-legally-recognize-same-sex-marriages>.

## Current Legal Landscape

**Discrimination Protections.** There is no federal law that expressly prohibits discrimination based on sexual orientation and gender identity. However, many states and localities maintain their own sexual orientation and gender identity non-discrimination protections across a wide range of settings, including in employment, housing, credit, and in places of public accommodation.<sup>81</sup> These laws can at times provide a broader range of remedies than, and reach entities who are otherwise not covered by, analogous federal laws.<sup>82</sup> Pennsylvania's non-discrimination law—the Pennsylvania Human Relations Act (PHRA) in the context of employment, public accommodation, housing, and commercial property—does not expressly include sexual orientation or gender identity.<sup>83</sup>

In June 2020, the Supreme Court held in *Bostock v. Clayton County* that the prohibition on sex discrimination contained within Title VII of the Civil Rights Act of 1964 also bars discrimination based on sexual orientation and gender identity.<sup>84</sup> This decision immediately extended federal protections from employment discrimination to LGBT workers across the country. Additionally, while the decision itself addressed only discrimination in employment, it has had implications before courts<sup>85</sup> and administrative agencies<sup>86</sup> analyzing both federal and state sex non-discrimination laws that apply in other contexts.

The Pennsylvania Human Relations Commission (PHRC), which enforces the PHRA, issued guidance in 2018 formally interpreting the PHRA's prohibition on sex discrimination as inclusive of both sexual orientation and gender identity.<sup>87</sup> In June 2020, the Chairman of the PHRC issued a statement that this

<sup>81</sup> CHRISTY MALLORY, LUIS A. VASQUEZ & CELIA MEREDITH, WILLIAMS INST., LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *BOSTOCK V. CLAYTON COUNTY* 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> 43 Pa. Cons. Ann. § 952(a).

<sup>84</sup> 590 U.S. \_\_ (2020).

<sup>85</sup> See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, No. 20-1163, 2021 WL 2637992 (U.S. June 28, 2021) (applying *Bostock* to find that acts of gender identity discrimination violate an analogous prohibition on sex discrimination within Title IX of the Education Amendments of 1972); *Adams v. Sch. Bd. of St. Johns Cty., Fla.*, 3 F.4th 1299 (11th Cir. 2020), *reh'g en banc granted*, 9 F.4th 1369 (11th Cir. 2021) (same); *Tarrant Cty. Coll. Dist. v. Sims*, 621 S.W.3d 323 (Tex. App. 2021) (applying *Bostock* to the Texas Commission on Human Rights Act's analogous prohibition on sex discrimination); *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. Ct. App. 2020) (same, Minnesota Human Rights Act).

<sup>86</sup> See, e.g., CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity Is Illegal, CONSUMERFINANCE.GOV (Mar. 09, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal> (noting that the Consumer Financial Protection Bureau issued an interpretive rule interpreting the Equal Credit Opportunity Act's prohibition on sex discrimination consistent with *Bostock*); NDDOLHR Now Accepting and Investigating Charges of Discrimination Based on Sexual Orientation and Gender Identity, ND.GOV, <https://www.nd.gov/labor/nddolhr-now-accepting-and-investigating-charges-discrimination> (last visited Sept. 29, 2021) ("It is the Department's opinion the *Bostock* definition of sex, may and should be applied to the North Dakota Human Rights Act, as amended, and the Housing Discrimination Act, as amended. Therefore, effective June 15, 2020, the Department will be accepting and investigating complaints of discrimination, based on sexual orientation and gender identity, in all human rights laws the Department enforces, including employment, public services, public accommodations, credit transactions, and housing.").

<sup>87</sup> PENNSYLVANIA HUMAN RELATIONS COMMISSION, PENNSYLVANIA HUMAN RELATIONS COMMISSION GUIDANCE ON DISCRIMINATION ON

prior guidance “is the law in Pennsylvania, as supported by the Supreme Court’s decision” in *Bostock*.<sup>88</sup>

**Parenting Rights.** In 1980, the Pennsylvania legislature enacted a broad adoption law which states that “any individual may become an adopting parent.”<sup>89</sup> While there has never been a statutory ban on allowing same-sex couples to jointly adopt, agencies contracted with the state and localities to facilitate adoptions can adopt their own selection criteria and typically give preference to married couples.<sup>90</sup> There are also no codified protections against sexual orientation or gender identity discrimination for prospective parents under state law. Because same-sex marriage was not legally recognized in the state until 2014, same-sex couples historically found it difficult to find organizations who would be willing to grant them a joint adoption, even if they were domestic partners.<sup>91</sup> Thus, couples attempting to start a family in the state may have chosen to pursue single-parent adoption, where one parent would be the sole legal guardian.<sup>92</sup> An additional hurdle for same-sex couples wishing to adopt in the state was that, until a decision by the Pennsylvania Supreme Court in 2002, same-sex parents were not always legally able to apply for second-parent adoption, which grants that second parent rights over the child without simultaneously relinquishing the rights of the first parent.<sup>93</sup> While same-sex parents’ right to do so is now clear, this process has yet to be formally codified in state law, requiring that some same-sex couples assume the time and expense of going through the courts to allow for such an adoption.<sup>94</sup>

In 2018, local media reported that two agencies contracted with the City of Philadelphia to find, screen, and certify foster parents, Catholic Social Services (CSS) and Bethany Christian Services, were unwilling to certify same-sex couples.<sup>95</sup> In *Fulton v. City of Philadelphia*, the U.S. Supreme Court found that the city violated the free exercise rights of CSS by refusing to allow it an exemption to the city’s

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THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT (2018), <https://www.phrc.pa.gov/About-Us/Publications/Documents/General%20Publications/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf>.

<sup>88</sup> Statement from M. Joel Bolstein, Chairman of the Pennsylvania Human Relations Commission (June 15, 2020), <https://www.phrc.pa.gov/Documents/Statement%20from%20M.%20Joel%20Bolstein%20Chairman%20of%20the%20PHRC.doc>.

<sup>89</sup> 23 PA. CONS. STAT. § 2312.

<sup>90</sup> *Requirement to Adopt in Pennsylvania*, AMERICAN ADOPTIONS, <https://www.americanadoptions.com/pennsylvania-adoption/pennsylvania-adoption-requirements> (last visited Sept. 29, 2021).

<sup>91</sup> See, e.g., Lori A. Kinkler & Abbie E. Goldberg, *Working With What We’ve Got: Perceptions of Barriers and Supports Among Small-Metropolitan Same-Sex Adopting Couples*, 60 FAMILY RELATIONS 287 (2011) (detailing the difficulty of study participants, including several in Pennsylvania, in finding adoption agencies open to working with same-sex couples, including that agency staff appeared to be “not comfortable with making matches” for them as same-sex couples, and that couples often felt “forced to conduct time-consuming searches for gay-friendly agencies, and to navigate difficult decisions, such as whether to closet themselves or whether to work with agencies in other counties or states.”).

<sup>92</sup> Sue Kerr, *‘Right kind of gay, wrong kind of queer’: Navigating LGBTQ discrimination in Pennsylvania*, PUBLICSOURCE (June 29, 2021), <https://www.publicsource.org/first-person-essay-navigating-lgbtq-discrimination-in-pennsylvania>; see also Anthony C. Infanti, *Surveying the Legal Landscape for Pennsylvania Same-Sex Couples*, 71 U. PITTSBURGH L. REV. 187, 205 (2009), [https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1336&context=fac\\_articles](https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1336&context=fac_articles).

<sup>93</sup> Kerr, *supra* note 92.

<sup>94</sup> *Id.*

<sup>95</sup> Jeremy Roebuck & Julia Terruso, *The Supreme Court Ruled Against Philly in its Fight with a Catholic Foster Group But May Not Have Ended the Dispute*, PHILADELPHIA INQUIRER (June 17, 2021), <https://www.inquirer.com/news/supreme-court-philadelphia-catholic-social-services-foster-ruling-20210617.html>.

sexual orientation non-discrimination requirements.<sup>96</sup>

**Safe Schools and Youth.** Pennsylvania’s anti-bullying law requires that school districts adopt and enforce policies against the bullying of students.<sup>97</sup> Unlike many state anti-bullying laws, however, Pennsylvania’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>98</sup>

**Gender Marker and Name Changes.** Pennsylvania allows individuals to change their name and the gender marker on their birth certificate and driver’s license. An individual may change their name by petitioning the court.<sup>99</sup> To change a gender marker on a birth certificate, the individual must submit to the Pennsylvania Department of Public Health a physician’s statement that the individual underwent “appropriate clinical treatment for gender transition.”<sup>100</sup> In order to change a gender marker on a driver’s license, the individual must present to Pennsylvania Department of Transportation, fill out the appropriate documentation, and submit a fee; individuals are not required to submit medical or other documentation to support their request.<sup>101</sup> Applicants are allowed to select from male (M), female (F), and non-binary (X) gender markers.<sup>102</sup>

**Other Protections.** Pennsylvania lacks several other important legal protections for LGBT people that have been enacted in other states, including, for example, a hate crimes law that expressly includes sexual orientation and gender identity;<sup>103</sup> a ban on the availability of the gay and transgender panic defenses in criminal cases involving LGBT victims;<sup>104</sup> and a ban on the use of conversion therapy on youth by professional health care providers.<sup>105</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>106</sup> The Index summarizes four items concerning

<sup>96</sup> *Id.*

<sup>97</sup> 1949 Act 14, PENNSYLVANIA GENERAL ASSEMBLY, <https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1949&sessInd=0&smthLwInd=0&act=14&chpt=13A&sctn=3&subscn=1> (last visited Sept. 29, 2021).

<sup>98</sup> See, e.g., *Safe Schools*, PENNSYLVANIA YOUTH CONGRESS, <https://payouthcongress.org/pa-equality-center/safe-schools> (last visited Sept. 29, 2021).

<sup>99</sup> 54 PA. CONS. STAT. §§ 701–705.

<sup>100</sup> For more information, see the Department’s policy located at <https://transequality.org/sites/default/files/docs/PA-BC-Policy.pdf>.

<sup>101</sup> *Gender Designation Options on PennDOT Driver’s Licenses and Photo ID Cards*, DMV.PA.GOV, <https://www.dmv.pa.gov/Driver-Services/Driver-Licensing/Pages/Gender-Neutral-Designation.aspx> (last visited Sept. 29, 2021).

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

<sup>103</sup> CHRISTY MALLORY, BRAD SEARS & LUIS A. VASQUEZ, WILLIAMS INST., BANNING THE USE OF GAY AND TRANS PANIC DEFENSES 44 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gay-Trans-Panic-Apr-2021.pdf>.

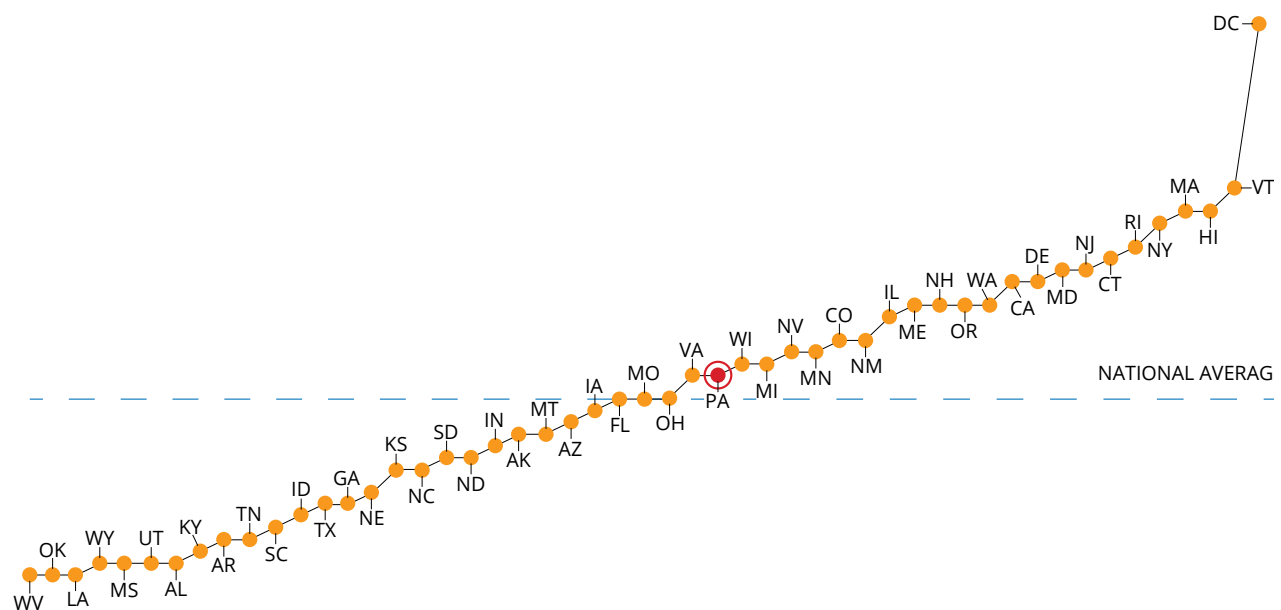
<sup>104</sup> *Id.* at 22.

<sup>105</sup> However, a number of localities have enacted their own such prohibitions, covering 26% of the state’s population. *Pennsylvania’s Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, [https://www.lgbtmap.org/equality\\_maps/profile\\_state/PA](https://www.lgbtmap.org/equality_maps/profile_state/PA) (last visited Sept. 29, 2021).

<sup>106</sup> AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST. THE LGBT DIVIDE: A DATA

acceptance of LGBT people and attitudes toward LGBT 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>107</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 LGBT people and lower scores indicating lower acceptance.<sup>108</sup> Among the states, Pennsylvania ranks 24<sup>th</sup> in its level of support for LGBT people and related issues, which is slightly higher than the national average.<sup>109</sup> However, acceptance for LGBT people in Pennsylvania is below that of other states in the Northeast.<sup>110</sup>

**Figure 3. State rankings on LGBT Social & Political Climate Index Scores, 2014**



Attitudes in Pennsylvania toward LGBT people are improving over time.<sup>111</sup> Figure 4 below shows an increase in acceptance of same-sex marriage in Pennsylvania, among other Northeast states, from 2004 to 2020.<sup>112</sup>

PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES 5–7 (2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Divide-Dec-2014.pdf>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

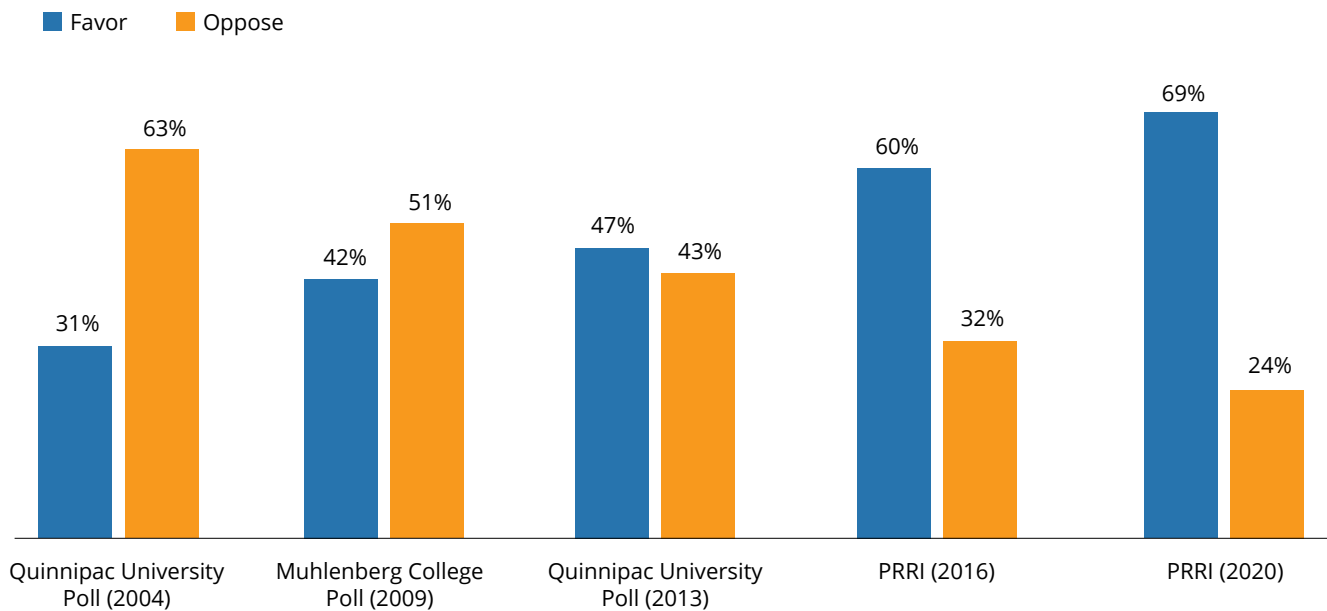
<sup>109</sup> *Id.* at 22.

<sup>110</sup> *Id.*

<sup>111</sup> Longitudinal changes in support for marriage equality are rooted in two causes: generational change and attitude change. See ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST., TRENDS IN PUBLIC SUPPORT FOR MARRIAGE SAME-SEX COUPLES BY STATE (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-Trends-Public-Support-SS-Couples-Apr-2015.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. See Gregory B. Lewis & Charles W. Gossett, *Changing Public Opinion on Same-Sex Marriage: The Case of California*, 36 POL. & POL'Y 4 (2008).

<sup>112</sup> E.g., *The American Values Atlas*, PRRI, [http://ava.prri.org/#lgbt/2020/States/lgbt\\_ssm/m/US-PA](http://ava.prri.org/#lgbt/2020/States/lgbt_ssm/m/US-PA) (last visited Sept. 29, 2021) (select year from drop down menu to see results from prior years); Press Release, Quinnipiac Univ. Polling Inst.,

Figure 4. Public support for same-sex marriage in Pennsylvania, 2004–2020



Percentages do not add to 100% because “don’t know” responses are not shown

In addition, recent public opinion surveys indicate that a majority of Pennsylvanians support expanding non-discrimination protections to include LGBT people. Data from the 2020 American Values Atlas survey, which is administered to 50,000 people across the U.S.,<sup>113</sup> show that public attitudes in Pennsylvania favor of policies that would protect LGBT people from discrimination in employment, housing, and public accommodations. Among respondents from Pennsylvania, 75% indicated their support for such policies, while only 20% opposed them.<sup>114</sup> A majority (65%) of Pennsylvania 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>115</sup> Estimates based on a 2011 survey of the American public found that 82% of Pennsylvania respondents supported passage of a federal law to protect transgender people from employment discrimination, higher than the national average at the time (75%).<sup>116</sup>

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Pennsylvania Voters Want Stricter Gun Control, Quinnipac University Poll Finds (Jan. 30, 2013), <https://poll.qu.edu/Poll-Release-Legacy?releaseid=1836>; MUHLENBERG COLLEGE INST. OF PUBLIC OPINION, SURVEY OF PENNSYLVANIANS ON GAY AND LESBIAN RIGHTS ISSUES, [http://www.hongyidu.com/media/contentassets/pdf/about/polling/gay\\_and\\_lesbian\\_rights5-7-09.pdf](http://www.hongyidu.com/media/contentassets/pdf/about/polling/gay_and_lesbian_rights5-7-09.pdf) (2009); Press Release, Quinnipac Univ. Polling Inst., Leave Gay Marriage to States, Not U.S. Constitution, Pennsylvania Voters Tell Quinnipac University Poll (Mar. 18, 2004), <https://poll.qu.edu/Poll-Release-Legacy?releaseid=300>.

<sup>113</sup> About the American Values Atlas, PRRI, <http://ava.prri.org/about> (last visited Sept. 29, 2021).

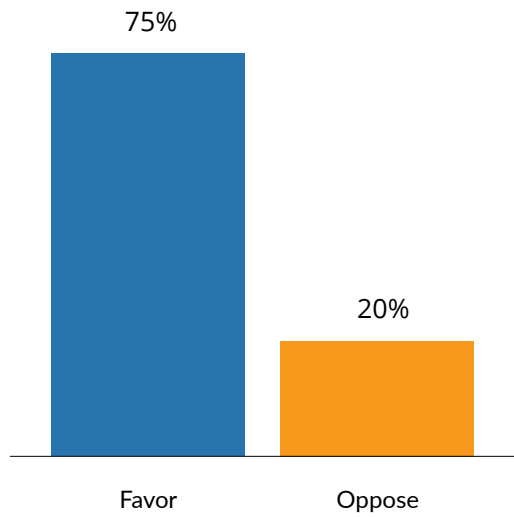
<sup>114</sup> The American Values Atlas, PRRI, <http://ava.prri.org/#lgbt/2020/States/lgbtdis/m/US-PA> (last visited Sept. 29, 2021).

<sup>115</sup> The American Values Atlas, PRRI, <http://ava.prri.org/#lgbt/2020/States/srvref/m/US-PA> (last visited Sept. 29, 2021).

<sup>116</sup> Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, RES. & POL'Y 1, 4 (2015), <https://journals.sagepub.com/doi/pdf/10.1177/2053168015612246>.

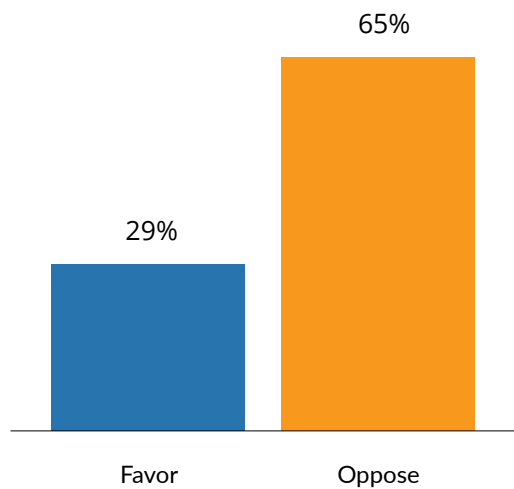


**Figure 5. Support for LGBT-supportive non-discrimination policies among adults in Pennsylvania**



Percentages do not add to 100% because “don’t know” responses are not shown  
Source: American Values Survey, 2020

**Figure 6. Support for laws permitting small businesses to refuse services to gay and lesbian people among adults in Pennsylvania**



Percentages do not add to 100% because “don’t know” responses are not shown  
Source: American Values Survey, 2020

In summary, Pennsylvania is above the national average in terms of its level of support for LGBT people, and residents of Pennsylvania support protections against discrimination for LGBT people.

## STIGMA AND DISCRIMINATION

LGBT adults in Pennsylvania 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, administrative complaints, and anecdotal reports to the media. The bullying and harassment of LGBT youth in Pennsylvania has been similarly documented. Research also suggests that a number of LGBT youth in Pennsylvania, like LGBT youth elsewhere in the country, face rejection by their families.

### DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

A recent Williams Institute study found that employment discrimination against LGBT people in the U.S. continues to be persistent and widespread. The data, collected in May of 2021, indicate that 46% of LGBT workers in the U.S. have been fired, not hired, or harassed because of their sexual orientation or gender identity at some point in their lives.<sup>117</sup> These experiences are ongoing: nearly one-third (31%) of respondents reported experiencing discrimination or harassment within the past five years.<sup>118</sup>

LGBT respondents to the survey from Pennsylvania reported similar rates of discrimination and harassment. Nearly half (47%) of LGBT employees living in Pennsylvania said they had experienced discrimination or harassment at some point in their lives.<sup>119</sup> More specifically, 17% of respondents from Pennsylvania reported experiencing employment discrimination (including being fired or not hired) because of their sexual orientation or gender identity. Forty-six percent of LGBT respondents from Pennsylvania reported experiencing at least one form of harassment (verbal, physical, or sexual harassment) at work because of their sexual orientation or gender identity.

These experiences in Pennsylvania, like the rest of the U.S., are on-going. About 5% of respondents from Pennsylvania reported that they had experienced discrimination (including being fired or not hired) within the year following the U.S. Supreme Court's decision in *Bostock v. Clayton County*, extending non-discrimination protections to LGBT people nationwide.<sup>120</sup>

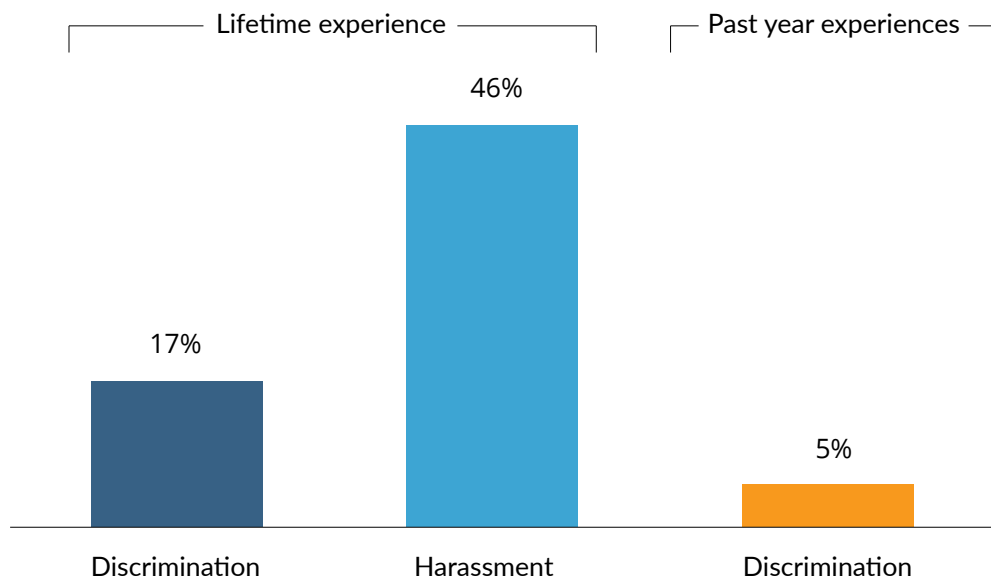
<sup>117</sup> BRAD SEARS, CHRISTY MALLORY, ANDREW R. FLORES & KERITH J. CONRON, WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

<sup>118</sup> *Id.*

<sup>119</sup> Analysis of data from the Employment Experiences Survey conducted by the Williams Institute and Morning Consult. The sample included 42 respondents from Pennsylvania. For more information and complete methodology, see *id.*

<sup>120</sup> *Id.*

Figure 7. Experiences of discrimination and harassment against LGBT employees in Pennsylvania, lifetime and past year



Source: Employment Experiences Survey, 2021

The survey asked respondents to provide more information about their experiences of discrimination and harassment based on sexual orientation and gender identity via an open-ended question.<sup>121</sup> The stories shared by respondents demonstrate the range of mistreatment faced by a diverse group of LGBT employees from Pennsylvania. Examples of the types of discrimination and harassment described by respondents from Pennsylvania included:

*"I had male co-workers try to touch me then follow up by saying, 'If you let me, I can turn you straight.'"*

**Black cisgender sexual minority woman**

*"I was on break and a male employee forced me to give him oral sex behind the building."*

**White cisgender gay man**

*"I was hit on, fetishized, harassed, called slurs, and been asked to leave my job."*

**White cisgender bisexual woman**

*"I overheard fellow employees making fun of the LGBTQ community and when I mentioned I was bisexual and it was making me uncomfortable, they began sexualizing me and making*

<sup>121</sup> For more information and complete methodology, see BRAD SEARS, CHRISTY MALLORY, ANDREW R. FLORES & KERITH J. CONRON, WILLIAMS INST., LGBT PEOPLE'S EXPERIENCES OF WORKPLACE DISCRIMINATION AND HARASSMENT 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

*disgusting comments and when I walked away, they were commenting on my body and one of them attempted to grab my arm."*  
**White bisexual non-binary person**

*"I was pushed by a fellow soldier while in the Army. This was after rumors that I was gay started."*  
**Black cisgender gay man**

*"I am asexual and a team lead. A supervisor used it as one of the reasons I was unfit for my position. She said it showed that I was either naïve or just wanted to be special and neither were characteristics of a qualified team lead."*  
**White cisgender sexual minority woman**

*"I am a very private person so I don't always tell everyone my identities. I have had co-workers and management both speculate on my sexuality and gender identity, in front of me and behind my back. I have had people touch me inappropriately in reference to my perceived sexuality. I also often heard jokes at the expense of LGBTQ people that were not directly related to me."*  
**White bisexual non-binary person**

*"Because of my bisexuality, I was not permitted to room with female employees because they were afraid I would come on to them. However, instead of my own room, they wanted me to room with men."*  
**White cisgender bisexual woman**

*"My co-workers and manager would sexually harass me. I was the only female in the department and they would make inappropriate comments about my appearance and clothes. They would also make comments about my sexual orientation."*  
**White cisgender lesbian**

*"I was told to take out the trash because it was my duty. Then a group of men tried to abuse me. When I gave up fighting for myself, they hit my head against a trash can and called me names."*  
**Black transgender gay man**

These findings reflect an extensive body of research documenting discrimination against LGBT people in the U.S. For example, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents in the U.S. reported that they had been treated unfairly by an employer in hiring, pay, or promotions, and 18% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.<sup>122</sup> Another national survey

<sup>122</sup> A SURVEY OF LGBT AMERICANS, PEW RES. CTR. (June 13, 2013), <https://www.pewsocialtrends.org/2013/06/13/a-survey->

conducted in 2017 by NPR, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health found that 20% of LGBTQ respondents reported being discriminated against when applying for jobs, and that 22% of LGBTQ respondents reported being discriminated against when trying to rent an apartment or buy a house because of their sexual orientation or gender identity.<sup>123</sup> LGBTQ people of color were more likely to report experiencing employment discrimination in response to the survey than white LGBTQ respondents.<sup>124</sup> Further, 16% of LGBTQ respondents said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity, and 18% said they had avoided going to a doctor or seeking health care because they were afraid of discrimination.<sup>125</sup> And, a 2020 survey conducted by the Center for American Progress found that 36% of LGBT people had experienced some type of discrimination within the past year.<sup>126</sup>

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, transgender respondents to the Williams Institute's May 2021 survey were significantly more likely to experience workplace discrimination based on their LGBT status (48.8%) than cisgender LGB respondents (27.8%).<sup>127</sup> Similarly, the 2020 survey by the Center for American Progress found that 62% of transgender people had experienced some type of discrimination within the last year.<sup>128</sup> In addition, the 2015 U.S. Transgender Survey (USTS)—the largest survey of transgender adults in the U.S. to date—found that 27% of respondents who held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression, and 15% reported being verbally harassed, physically attacked, and/or sexually assaulted at work in the year prior to the survey because of their gender identity.<sup>129</sup> Further, 23% of transgender respondents nationwide reported having experienced some form of housing discrimination in the past year, and 31% reported having experienced at least one type of mistreatment in a place of public accommodation in the past year.<sup>130</sup>

In response to the 2016 American Values Atlas survey, 57% of Pennsylvania residents—both LGBT and non-LGBT—said that they thought that gay and lesbian people experience a lot of discrimination in the U.S.,<sup>131</sup> and 61% said that they thought that transgender people experience a lot of discrimination

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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>123</sup> NPR, ROBERT WOOD JOHNSON FOUNDATION & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS 1 (2017), [https://www.rwjf.org/content/dam/farm/reports/surveys\\_and\\_polls/2017/rwjf441734](https://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2017/rwjf441734).

<sup>124</sup> *Id.* at 11.

<sup>125</sup> *Id.* at 1, 10.

<sup>126</sup> Sharita Gruberg et al., *The State of the LGBTQ Community in 2020*, CTR. FOR AM. PROGRESS (Oct. 6, 2020), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020>.

<sup>127</sup> SEARS, MALLORY, FLORES & CONRON, *supra* note 117, at 2.

<sup>128</sup> Gruberg et al., *supra* note 126.

<sup>129</sup> SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 12 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>130</sup> *Id.* at 13, 16.

<sup>131</sup> *The American Values Atlas*, PRRI, <http://ava.prri.org/#discrimination/2016/States/lgbt/m/US-PA> (last visited Sept. 29, 2021).

in the U.S.<sup>132</sup>

Discrimination against LGBT people in Pennsylvania has been documented in surveys, court cases, administrative complaints, and anecdotal reports to the media. Examples include:

- Reports suggest a surge of anti-transgender rhetoric across the state during the COVID-19 pandemic that frequently invokes Dr. Rachel Levine, who was the state's Health Secretary throughout 2020 and is openly transgender.<sup>133</sup> For example, a radio personality repeatedly misgendered Dr. Levine, calling her "sir" at least three times while questioning her on the state's coronavirus response.<sup>134</sup> At a college town's carnival, organizers attempted to invoke her likeness through the transphobic trope of using cisgender man in a wig and a dress to encourage participation in the carnival's "dunk tank."<sup>135</sup>
- Reports indicate that such rhetoric is also being employed against LGBT people more broadly; for example, a mask-wearing policy sign at a grocery store in Mifflinburg included a section that said members of the LGBTQ community spread "deadly diseases and sickness."<sup>136</sup>
- During the 2020 election, Pennsylvania voters reported receiving text messages with anti-transgender rhetoric, including false statements that certain candidates "endorsed sex change operations for children as young as 8" and that these procedures are "dangerous" and can cause "permanent damage to children."<sup>137</sup>
- Reporting indicates that in 2020, at least two Black transgender women in Pennsylvania were murdered, with another experiencing a near-fatal attack, due to their transgender status.<sup>138</sup>
- In 2019, 10% of discrimination suits brought before the City of Pittsburgh's Human Relations Commission were based on sexual orientation, gender identity, or gender expression.<sup>139</sup> That Commission has enforced discrimination protections on the basis of sexual orientation since 1990, and on the basis of gender identity since 1997.<sup>140</sup>
- In 2018, a former nursing assistant filed suit against a nursing facility in Easton, alleging

<sup>132</sup> *The American Values Atlas*, PRRI, <http://ava.prri.org/#discrimination/2016/States/trnsdis/m/US-PA> (last visited Sept. 29, 2021).

<sup>133</sup> Teo Armus, *Pennsylvania Governor Blasts 'Vile Acts' Against Transgender Official Leading Pandemic Response*, WASH. POST (July 24, 2020), <https://www.washingtonpost.com/nation/2020/07/24/pa-covid-trans-secretary-health/>.

<sup>134</sup> *Id.*

<sup>135</sup> *See id.*

<sup>136</sup> Rick Dandes et al., *Incidents Prompt Outrage Among Rural Central Pa's LGBTQ Community*, *Advocates*, MORNING CALL (July 26, 2020) <https://www.mcall.com/news/pennsylvania/mc-nws-pa-incidents-lgbtq-20200726-hnqhp3lire4ne3ioe3soswbqe-story.html>.

<sup>137</sup> *A Conservative PAC is Sending Harmful and Misleading Texts About Transgender Children to Voters*, PENNSYLVANIA CAPITAL-STAR (Oct. 27, 2020), <https://www.penncapital-star.com/civil-rights-social-justice/a-conservative-pac-is-sending-harmful-and-misleading-texts-about-transgender-children-to-voters>.

<sup>138</sup> Michaela Winberg, *No One Charged With Hate Crime In Philly Trans Women Murders Because Harrisburg Won't Pass LGBTQ Protections*, BILLYPENN (Oct. 01, 2020), <https://billypenn.com/2020/10/01/mia-green-trans-woman-murder-philadelphia-hate-crime-lgbtq-pennsylvania-farnese-krasner>.

<sup>139</sup> Ashley Murray, *Pittsburgh LGBT Workplace Protections Exceeded Federal Standards For Years*, PITTSBURGH POST-GAZETTE, <https://www.post-gazette.com/local/city/2020/06/16/Pittsburgh-employment-protections-LGBT-gender-identity-sexual-discrimination/stories/202006160120>.

<sup>140</sup> *Id.*



discrimination and retaliation based on her transgender status, including noting references from co-workers that she would go to hell for being transgender; repeatedly being incorrectly referred to as a male and having her former male name listed on assignment sheets; and being terminated after complaining about these issues.<sup>141</sup>

- Among Pennsylvania respondents to the 2015 USTS, 16% reported losing a job in their lifetime because of their gender identity or expression and 23% of those who held or applied for a job in the past year reported being fired, being denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.<sup>142</sup> Among respondents who had a job in the past year, 14% reported being verbally harassed, 1% being physically attacked, and 1% being sexually assaulted (1%) at work because of their gender identity or expression; 18% reported other forms of mistreatment based on their gender identity or expression during that year.<sup>143</sup> Further, 21% of transgender respondents in the state 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, and 10% reported that they experienced homelessness in the past year because of being transgender.<sup>144</sup> In addition, of those respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 31% experienced at least one type of mistreatment in the past year because of being (or being perceived to be) transgender.<sup>145</sup>
- In 2014, a woman was convicted of several misdemeanors and sentenced to jail time for being part of a group of 15 friends who encountered and attacked a gay couple in Philadelphia's Center City.<sup>146</sup> The victims were allegedly punched multiple times, with one being knocked to the ground and the other left bleeding and semiconscious as the group left for a bar following the attack.<sup>147</sup> At the time, both the state and city did not maintain hate crimes laws inclusive of these acts; such city-level protections have since been enacted.<sup>148</sup>
- In 2011, the State College Area School District settled with an employee that filed suit after her same-sex partner was denied benefits under their employee health insurance plan, while heterosexual employees and their partners received coverage.<sup>149</sup> A similar suit was filed in 2013 by a gay math teacher working for the Allegheny Intermediate Unit.<sup>150</sup>

<sup>141</sup> Rudy Miller, *Nursing Assistant Claims She Was Fired Because She's Transgender*, LEHIGH VALLEY LIVE (Jan. 02, 2019), [https://www.lehighvalleylive.com/easton/2018/09/nursing\\_assistant\\_claims\\_she\\_w.html](https://www.lehighvalleylive.com/easton/2018/09/nursing_assistant_claims_she_w.html).

<sup>142</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: PENNSYLVANIA STATE REPORT 1 (2017) [https://transequality.org/sites/default/files/docs/usts/USTSPAStateReport\(1017\).pdf](https://transequality.org/sites/default/files/docs/usts/USTSPAStateReport(1017).pdf).

<sup>143</sup> *Id.* These included being forced to use a restroom that did not correspond with their gender identity; being told to present in the wrong gender in order to keep their job; and having a boss or coworker disclose information about their transgender status without that individual having given consent. *Id.*

<sup>144</sup> *Id.* at 2.

<sup>145</sup> *Id.*

<sup>146</sup> Julie Shaw, *Woman Ordered to Jail in Center City Gay Attack*, PHILADELPHIA INQUIRER (Feb. 9, 2016), [https://www.inquirer.com/philly/news/20160209\\_Bucks\\_woman\\_to\\_be\\_sentenced\\_in\\_Center\\_City\\_attack\\_on\\_gays.html](https://www.inquirer.com/philly/news/20160209_Bucks_woman_to_be_sentenced_in_Center_City_attack_on_gays.html).

<sup>147</sup> *Id.*

<sup>148</sup> Michael Boren, *Pa. Expands Protections For LGBT People, But Hate-Crime Law Still Doesn't Include Them*, PHILADELPHIA INQUIRER (Aug. 17, 2018), <https://www.inquirer.com/philly/news/pennsylvania/lgbt-hate-crimes-pennsylvania-human-relations-commission-20180817.html>.

<sup>149</sup> *Wiessmann V. State College Area School District*, ACLU, <https://www.aclupa.org/en/cases/wiessmann-v-state-college-area-school-district> (last visited Sept. 29, 2021).

<sup>150</sup> *Ankney V. Allegheny Intermediate Unit*, ACLU, <https://www.aclupa.org/en/cases/ankney-v-allegheny-intermediate-unit>

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

### Bullying and Harassment

Analyses of data collected nationwide through the 2019 YRBS indicate that 39.5% of LGB students, compared with 22.2% of heterosexual students, report being bullied on school property.<sup>151</sup> Additionally, 11.9% of LGB students, compared with 6.3% of heterosexual students, report being threatened or injured with a weapon on school property.<sup>152</sup> These data are consistent with past studies showing that LGB<sup>153</sup> and transgender<sup>154</sup> high school students were more likely than their non-LGBT peers to report a number of negative outcomes related to violent victimization.

LGBT youth and young adults in Pennsylvania consistently report facing harassment, bullying, and exclusion between kindergarten and the twelfth grade (K–12) and in higher education through surveys. For example, 2019 YRBS data indicate that, when compared to heterosexual students, LGB students in Pennsylvania were almost twice as likely to report being bullied both at school (32.9% vs. 17.2%)<sup>155</sup> and electronically (26.8% vs. 12.3%)<sup>156</sup> in the year prior to the survey. Similarly, LGB students in the state were more likely than heterosexual students to report being in a physical fight in the year prior to the survey (26.2% vs. 20.5%),<sup>157</sup> and to report being threatened or injured with a weapon on school property (10.9% vs. 6.8%).<sup>158</sup>

In response to the 2015 USTS, 77% of Pennsylvania respondents who were out or perceived as transgender at some point between kindergarten and 12th grade reported experiencing some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought that they were transgender.<sup>159</sup> Furthermore, 12% of Pennsylvania respondents said that the harassment they experienced was so severe that they had to leave a K-12 school.<sup>160</sup>

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(last visited Sept. 29, 2021).

<sup>151</sup> Kathleen C. Basile et al., U.S. Ctrs. for Disease Control & Prevention, *Interpersonal Violence Victimization Among High School Students – Youth Risk Behavior Survey, United States, 2019*, 69 MORBIDITY & MORTALITY WKLY. REP. 28, 33 (2020), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2019/su6901-H.pdf>. These results were noted as being statistically significant. *Id.*

<sup>152</sup> Michelle M. Johns et al., U.S. Ctrs. for Disease Control & Prevention, *Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students – Youth Risk Behavior Survey, United States, 2015–2019*, 69 MORBIDITY & MORTALITY WKLY. REP. 19, 23 (2020), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2019/su6901-H.pdf>.

<sup>153</sup> Laura Kann et al., U.S. Ctrs. for Disease Control & Prevention, *Youth Risk Behavior Surveillance – United States, 2017*, 67 MORBIDITY & MORTALITY WKLY. REP. 1 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.

<sup>154</sup> U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, 2017 YOUTH RISK BEHAVIOR SURVEY RESULTS: SELECT U.S. STATES HIGH SCHOOL SURVEYS RISK BEHAVIORS AND TRANSGENDER REPORT (2019), [https://www.cdc.gov/healthyyouth/disparities/pdf/states\\_transgender\\_report.pdf](https://www.cdc.gov/healthyyouth/disparities/pdf/states_transgender_report.pdf).

<sup>155</sup> U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 153, at tbl.30.

<sup>156</sup> *Id.* at tbl.28.

<sup>157</sup> *Id.* at tbl.24.

<sup>158</sup> *Id.* at tbl.22.

<sup>159</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 142.

<sup>160</sup> *Id.*

Similarly, the 2019 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that, in the year prior to the survey, 71% of respondents from Pennsylvania said they had experienced verbal harassment at school based on their sexual orientation, and 56% said they had experienced verbal harassment at school based on their gender expression.<sup>161</sup> Many students also reported experiencing physical harassment at school based on their sexual orientation (24%) or gender expression (20%) in the year prior to the survey.<sup>162</sup> In addition, 10% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and another 10% because of their gender expression, in the year prior to the survey.<sup>163</sup>

Further, 24% of transgender student respondents to the 2019 GLSEN survey in Pennsylvania reported that they were unable to use the bathroom at school that aligns with their gender identity, 23% were similarly unable to use the locker room that aligns with their gender identity, and 22% were prevented from using their chosen name or pronouns in school.<sup>164</sup> Some students in Pennsylvania (12%) reported being prevented from forming or promoting a Gay-Straight Alliance or similar club in school.<sup>165</sup> Among LGBTQ students who were bullied or harassed at Pennsylvania schools, only 51% reported the incident to school staff.<sup>166</sup> And, only 22% of those who reported bullying or harassment to staff said that it resulted in effective intervention.<sup>167</sup>

Almost a quarter of respondents (22%) to the 2020 Penn State Community Survey reported hearing insensitive or disparaging remarks on the basis of sexual orientation sometimes while on campus; 7% heard such remarks often, and 3% very often.<sup>168</sup> Respondents were more likely to report hearing insensitive or disparaging remarks on the basis of non-binary or gender nonconforming identity, with 33% hearing those remarks sometimes, 21% often, and 16% very often.<sup>169</sup> Non-binary and gender nonconforming respondents were similarly more likely to report being discriminated against or harassed based on their gender identity or expression, when compared to LGB respondents and their experiences with sexual orientation discrimination or harassment.<sup>170</sup>

Recent instances of discrimination, bullying, and harassment against LGBT students in Pennsylvania have also been documented in court cases, administrative complaints, and through the media:

- In 2021, students at Bucknell University reported being harassed by the former residents of their campus housing, which was set aside “for LGBTQ+ individuals and allies” after

<sup>161</sup> GLSEN, SCHOOL CLIMATE FOR LGBTQ STUDENTS IN PENNSYLVANIA 1 (2019), <https://www.glsen.org/sites/default/files/2021-01/Pennsylvania-Snapshot-2019.pdf>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

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

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Penn State Community Survey, PENNSYLVANIA STATE UNIVERSITY, <https://opair.psu.edu/community-survey/dashboards/total/> (navigate to “Experiences with Stereotyping, Microaggressions, and Harassment” and select questions regarding instances of discrimination on the basis of sexual orientation or gender identity).

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* More specifically, reporting such experiences as occurring sometimes (34% vs. 8%), often (28% vs. 3%), and very often (23% vs. 1%). *Id.*

being taken from a fraternity recently removed from the campus.<sup>171</sup> The group of nearly 20 “assailants banged on windows and doors, swung a metal bar at a flag pole that displays a pride flag and urinated on the front porch.”<sup>172</sup> Reportedly, police at the scene did not speak with residents to confirm if they were alright, instead “bond[ing] with [the] offenders, reminiscing their college days and calling them handsome young men.”<sup>173</sup>

- In 2020, the Shippensburg Borough Council voted to advertise its non-discrimination ordinance after it was reported that a Shippensburg University student was denied the opportunity to rent an apartment in town because of his sexual orientation.<sup>174</sup>
- Pennsylvania students interviewed by Human Rights Watch in 2016 consistently reported that anti-LGBTQ slurs were “ubiquitous” in their schools, even in those seen as LGBT-friendly, and that slurs would frequently be used to “belittle or taunt peers, whether or not the targets identified as LGBT.”<sup>175</sup> Interviews with both students and teachers suggest that, for many Pennsylvania school employees, the choice to not intervene is deliberate.<sup>176</sup> For example, a lesbian student recalled that she has had to “scrape ‘tr\*\*\*y’ and ‘f\*\*\*\*t’ off the bathroom stall walls. [She] went to our center and told the secretary and she was like, ‘Oh, okay,’ but that was it.”<sup>177</sup>
- In 2015, a high school in Claysville came under scrutiny after a group of students organized an “Anti-Gay Day” as a response to their peers’ observance of the national Day of Silence, which recognizes anti-LGBT bullying and harassment in schools.<sup>178</sup> Participants were encouraged to write “anti-gay” on their hands, and to post Bible verses on the lockers of LGBT students.<sup>179</sup> Allegedly, a “lynch list” was circulated around the school by these participating students.<sup>180</sup>
- In 2013, the principal of a public high school in the state reportedly used the female birth name of a transgender student who was running for prom king, placing him in the column for prom queen despite “repeated requests” to be listed correctly.<sup>181</sup> The principal also threatened the bar the student and his girlfriend from attending the prom altogether after his girlfriend

<sup>171</sup> Artemis Moshtaghian & Christina Maxouris, *Bucknell University Condemns ‘Horrific Incident’ Against LGBTQ Student Community And Orders Investigation*, CNN (May 18, 2021), <https://www.cnn.com/2021/05/17/us/bucknell-university-pennsylvania-lgbtq-student-community-incident/index.html>.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Denise Bonura, *Council Votes to Advertise Non-Discrimination Ordinance to Protect Members of the LGBTQ+ Community*, SHIPNC.COM (July 30, 2020), [https://www.shipnc.com/free\\_announcements/article\\_723f40c4-d1e5-11ea-86bb-3b077015d81e.html](https://www.shipnc.com/free_announcements/article_723f40c4-d1e5-11ea-86bb-3b077015d81e.html).

<sup>175</sup> “Like Walking Through a Hailstorm” *Discrimination Against LGBT Youth in US Schools*, HUMAN RIGHTS WATCH (2016), <https://www.hrw.org/report/2016/12/08/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools#>.

<sup>176</sup> *See id.*

<sup>177</sup> *Id.*

<sup>178</sup> Curtis M. Wong, *Students at Pennsylvania’s McGuffey High School Organize ‘Anti-Gay Day’ And Allegedly Target LGBT Classmates*, HUFFINGTON POST (Apr. 20, 2015), [https://www.huffpost.com/entry/mcguffey-school-anti-gay-day-\\_n\\_7101046](https://www.huffpost.com/entry/mcguffey-school-anti-gay-day-_n_7101046).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *ACLU Warns High School Principal Who Removed Transgender Pennsylvania Student From Prom King Ballot*, ACLU (Apr. 26, 2013), <https://www.aclu.org/press-releases/aclu-warns-high-school-principal-who-removed-transgender-pennsylvania-student-prom>.

posted statements and a petition in support of the student online.<sup>182</sup>

- In 2012, the Milton Hershey School for children of low-income families agreed to a \$715,000 settlement with the U.S. Department of Justice and the AIDS Law Project of Pennsylvania after denying admission to a teenager because he was living with HIV.<sup>183</sup>
- Various school districts throughout Pennsylvania have reportedly maintained policies denying transgender students access to restrooms consistent with their gender identity. Several of these policies have since been litigated, with courts frequently rejecting efforts to dismiss related equal protection claims advanced by both elementary<sup>184</sup> and high school students in the state.<sup>185</sup>

## Family Rejection

For many youth, the challenges that they face at school are compounded by having 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>186</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>187</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>188</sup>

<sup>182</sup> *Id.*

<sup>183</sup> Bob Fernandez, 'License To Discriminate'? Hershey Charitable School Seeks To Exempt Itself From Pa. Oversight., PHILADELPHIA INQUIRER (Dec. 17, 2019), <https://www.inquirer.com/news/milton-hershey-discrimination-sealed-court-chocolate-pennsylvania-kids-20191217.html>.

<sup>184</sup> *A.H. v. Minersville Area Sch. Dist.*, 408 F. Supp. 3d 536 (M.D. Pa. 2019).

<sup>185</sup> *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017); *see also Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019) (finding that cisgender high school students were *not* likely to succeed on merits of their claim that school district's inclusive policy of allowing transgender students to access restrooms and locker rooms consistent with their gender identity violated their own due process rights).

<sup>186</sup> *E.g.*, Darrel Higa et al., *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 *YOUTH & Soc'y* 663, 669 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 *NEV. L.J.* 774, 788 (2006); Anthony R. D'Augelli et al., *Parents' Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 *J. MARRIAGE & FAM.* 474 (2005); Les B. Whitbeck et al., *Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 *J. SEX RES.* 329 (2004); Bryan N. Cochran et al., *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 et al., *Responses of Parents to Learning that their Child is Homosexual and Concern Over AIDS: A National Study*, 1 *J. HOMOSEXUALITY* 59, 67 (1989); *see also* 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>187</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>188</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 compared to heterosexual men and cisgender people, respectively, as well as an association between lower earnings and a 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 Pennsylvania's BRFSS indicate that LGBT adults in the state are more likely than their non-LGBT counterparts to experience several of these negative health outcomes.

## 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 based on multiple intersecting identities, the combined impacts are even more severe.

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% compared to heterosexual men.<sup>189</sup> Klawitter also 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 government sector jobs where wages are more highly regulated.<sup>190</sup> For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium in comparison to heterosexual women, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.<sup>191</sup> However, the pattern of an earnings premium for lesbians working in the private and non-profit sectors did not persist in the public sector; in other words, lesbians have no earning premium in government employment.<sup>192</sup>

Klawitter concluded that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians.”<sup>193</sup> However, despite this premium, most lesbians

<sup>189</sup> Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUSTR. REL. 4, 13 (2014). The study also found a range of -30% to 0% for gay men. *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* (finding an average wage gap of +9% for lesbians, with a range of -25% to +43%).

<sup>192</sup> *Id.* at 22.

<sup>193</sup> *Id.* at 21.



still earn less than most gay and heterosexual men because of the gender wage gap.<sup>194</sup> Klawitter posited several reasons to explain why gay men may face more discrimination than lesbians in the workplace, including that straight men in the U.S. have less positive attitudes toward gay men than toward lesbians, and that straight men are more likely to be in wage-determining senior positions than women.<sup>195</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>196</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>197</sup>

In addition, a recent study based on representative data from 35 states' administration of the 2014–2017 BRFSS found "large-scale evidence [that] . . . transgender individuals have significantly lower employment rates, lower household incomes, higher poverty rates, and worse self-rated health compared to otherwise similar men who are not transgender."<sup>198</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 its 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.<sup>199</sup> 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>200</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 same-sex couples had a wage premium (3% and 2% respectively) compared to men and women in different-sex couples, and they earned 0.3% more for each year the policy was in effect.<sup>201</sup> Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings<sup>202</sup> and found that state non-discrimination laws were associated with a greater number of

<sup>194</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBaum, 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>195</sup> Klawitter, *supra* note 189, at 21–22.

<sup>196</sup> *Id.* at 22.

<sup>197</sup> E.g., LOTTA SAMELIUS & ERIK WÄGGER, 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>198</sup> Christopher S. Carpenter et al., *Transgender Status, Gender Identity, and Socioeconomic Outcomes in the United States*, 73 INDUSTR. AND LABOR REL. REV. 573 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/0019793920902776>.

<sup>199</sup> Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUSTR. REL. 59 (2015).

<sup>200</sup> *Id.* at 96.

<sup>201</sup> GARY J. GATES, CAL. CTR. FOR POPULATION RES., THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>202</sup> Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011).

weeks worked for gay men, especially in private-sector jobs.<sup>203</sup> Furthermore, a 2015 study found that the enactment of state-level non-discrimination laws increased wages (by 4.2%) and rates of employment (by 2%) for gay men.<sup>204</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 and that poverty is concentrated in certain groups within the LGBT community, such as bisexual women, people of color, and transgender people. For example, a 2019 study on poverty in the LGBT community found that 21.6% of LGBT adults in the U.S. report experiencing poverty, compared to 15.7% of cisgender straight adults.<sup>205</sup> Bisexual women and transgender people reported especially high rates of poverty, with 29.4% of people in both groups reporting that they were living in poverty.<sup>206</sup> In addition, a 2013 study found that 7.6% of lesbian couples were living in poverty, compared to 5.7% of married different-sex couples, and that over one in five children of same-sex couples were living in poverty, compared to 12.1% of children of married different-sex couples.<sup>207</sup>

Research on the issue of food insecurity in the LGBT community has found that nearly half of LGB adults ages 18–44 who are raising children (46%) participated in SNAP, the federal food stamps program.<sup>208</sup> Similarly, in the year prior to the 2017 Gallup Daily Tracking survey, more than one in four LGBT adults (26.7%) experienced a time when they did not have enough money to feed themselves or their families.<sup>209</sup>

The 2015 USTS found that, nationally, 29% of transgender respondents were living at or near the

<sup>203</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>204</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>205</sup> M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, WILLIAMS INST., *LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS 1* (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

<sup>206</sup> *Id.*

<sup>207</sup> BADGETT & SCHNEEBaum, *supra* note 194, at 1–3.

<sup>208</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](https://williamsinstitute.law.ucla.edu/wp-content/uploads/FOOD-INSECURITY-AND-SNAP-PARTICIPATION-IN-THE-LGBT-COMMUNITY.PDF); see also BIANCA D.M. WILSON, M. V. LEE BADGETT & ALEXANDRA-GRISSSELL H. GOMEZ, WILLIAMS INST., “WE’RE STILL HUNGRY” LIVED EXPERIENCES WITH FOOD INSECURITY AND FOOD PROGRAMS AMONG LGBTQ PEOPLE (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Food-Bank-Jun-2020.pdf>.

<sup>209</sup> BIANCA D.M. WILSON & KERITH J. CONRON, WILLIAMS INST., *NATIONAL ESTIMATES OF FOOD INSECURITY LGBT PEOPLE AND COVID-19 1* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-COVID19-Apr-2020.pdf>.

federal poverty line, which was more than twice the rate of poverty in the U.S. general population (12%).<sup>210</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 transgender respondents reporting that they were living in poverty, compared to 24% of White transgender respondents.<sup>211</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>212</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>213</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>214</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 states with protective laws to \$11,000 in states that lack such laws.<sup>215</sup>

Data from the 2015–2017 Gallup Daily Tracking surveys show similar disadvantages for LGBT people in Pennsylvania, including that:

- 25.9% of LGBT adults in Pennsylvania reported that they do not have enough money for food, compared to 13.1% of non-LGBT adults;
- 26.5% of LGBT adults in Pennsylvania reported having a household income below \$24,000, compared to 18.3% of non-LGBT adults; and
- 10.5% of LGBT adults in Pennsylvania reported that they were unemployed, compared to 5.2% of non-LGBT adults.<sup>216</sup>

<sup>210</sup> JAMES ET AL., *supra* note 129, at 5.

<sup>211</sup> *Id.* at 6.

<sup>212</sup> BADGETT & SCHNEEBaum, *supra* note 194, at 25.

<sup>213</sup> HASENBUSH ET AL., *supra* note 106.

<sup>214</sup> Press Release, Williams Inst., LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014), <https://williamsinstitute.law.ucla.edu/publications/lgbt-divide-mw-mountain-south>. In the words of report author Gary Gates, “[i]t’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.” *Id.*

<sup>215</sup> HASENBUSH ET AL., *supra* note 106.

<sup>216</sup> See discussion *supra* note 44.

Among respondents to the 2014–2017 Pennsylvania BRFSS, LGBT people were more likely to report experiencing poverty than their cisgender, heterosexual peers (18% vs. 12%).<sup>217</sup> Across all sexual orientations, transgender people were more likely to report experiencing poverty (19%) than cisgender men (10%) and cisgender women (14%), though the difference in these rates was not statistically significant.<sup>218</sup> Likewise, the 2015 USTS found that 11% of transgender respondents in Pennsylvania were unemployed and 31% were living in poverty.<sup>219</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>220</sup> and anxiety disorders,<sup>221</sup> attempted suicide,<sup>222</sup> and self-harm<sup>223</sup> are more common among LGB than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender people.<sup>224</sup> In addition, LGB people are more likely to report tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.<sup>225</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 Pennsylvania indicate that LGBT adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

<sup>217</sup> SOON KYU CHOI, M.V. LEE BADGETT & BIANCA D.M. WILSON, WILLIAMS INST., STATE PROFILES OF LGBT POVERTY IN THE UNITED STATES 22 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-LGBT-Poverty-Dec-2019.pdf>.

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

<sup>219</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 142.

<sup>220</sup> Kimberly F. Balsam et al., *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005); 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).

<sup>221</sup> Wendy B. Bostwick et al., *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010); King et al., *supra* note 220.

<sup>222</sup> 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); King et al., *supra* note 220.

<sup>223</sup> Balsam et al., *supra* note 220. 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>224</sup> See INSTITUTE OF MEDICINE, *supra* note 223, at 193–97.

<sup>225</sup> Cochran & Mays, *supra* note 222; 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); 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>.

## Health Disparities for LGBT Adults in Pennsylvania

One source for assessing health disparities between LGBT and non-LGBT people in Pennsylvania is the Pennsylvania BRFSS. The Pennsylvania Department of Health has included questions measuring sexual orientation or gender identity on the state BRFSS since 2014.<sup>226</sup> In the analysis presented here, we utilized data from the 2017 and 2018 Pennsylvania 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, and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking;<sup>227</sup> as well as two other health indicators: the number of days respondents experienced poor mental health during the month prior to the survey, and that they felt limited in their usual activities because of poor health. An analysis of data collected through the 2020 Pennsylvania LGBTQ Health Needs Assessment, an online survey administered to 6,582 LGBTQ people in the state by the Pennsylvania Department of Health, Bradbury-Sullivan LGBT Community Center, and the Research & Evaluation Group at Public Health Management Corporation, found that “[d]epression and other mental health issues are top priorities for respondents, along with alcohol and other substance addiction.”<sup>228</sup>

In our analyses, we included individuals who identified as LGBT and those who did not identify as LGBT (non-LGBT), including those who identified as straight and not transgender.<sup>229</sup> The proportions of LGBT and non-LGBT people in Pennsylvania who reported each health outcome are shown below. We weighted estimations of these proportions to reflect the population of Pennsylvania, as recommended by the CDC when analyzing these data.<sup>230</sup>

<sup>226</sup> Behavioral Risk Factor Surveillance System, State 2014, CDC.gov (Aug. 19, 2015), <https://www.cdc.gov/brfss/questionnaires/modules/state2014.htm>.

<sup>227</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 et al., *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).

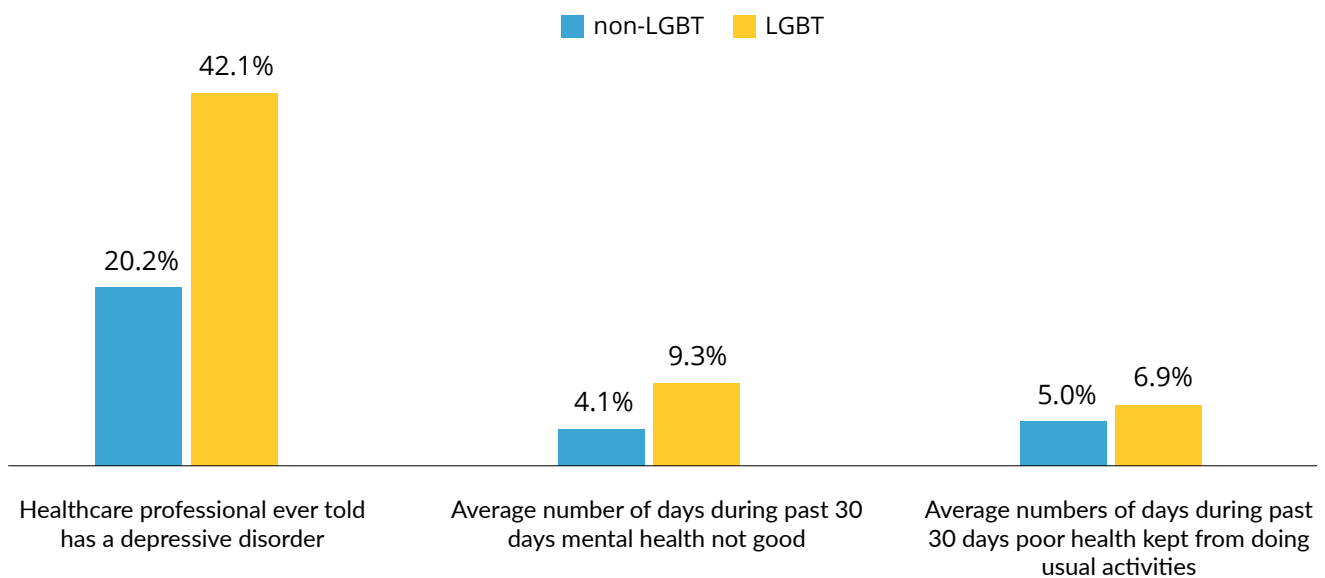
<sup>228</sup> RESEARCH & EVALUATION GROUP AT PUBLIC HEALTH MANAGEMENT CORPORATION AND BRADBURY-SULLIVAN LGBT COMMUNITY CENTER, 2020 PENNSYLVANIA LGBTQ HEALTH NEEDS ASSESSMENT 2 (2020), [https://www.pacancercoalition.org/images/pdf/LGBTQ\\_resources/2020\\_pa\\_lgbtq\\_full\\_report\\_final\\_public\\_distribution.pdf](https://www.pacancercoalition.org/images/pdf/LGBTQ_resources/2020_pa_lgbtq_full_report_final_public_distribution.pdf).

<sup>229</sup> Details on the specific measures used by BRFSS from 2014 through 2019 are available at STATISTICAL BRIEF: USING SEXUAL ORIENTATION, GENDER IDENTITY, SEX, AND SEX-AT-BIRTH VARIABLES IN ANALYSIS, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, [https://www.cdc.gov/brfss/data\\_documentation/pdf/BRFSS-SOGI-Stat-Brief-508.pdf](https://www.cdc.gov/brfss/data_documentation/pdf/BRFSS-SOGI-Stat-Brief-508.pdf). For our analysis in this report, respondents who identified as lesbian, gay, or bisexual were coded as LGBT. Similarly, respondents who identified as transgender and any sexual orientation were coded as LGBT. Respondents who identified as straight in response to the sexual orientation question AND identified as not transgender were coded as non-LGBT. We coded all other respondents as missing.

<sup>230</sup> WEIGHTING THE BRFSS DATA, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, [https://www.cdc.gov/brfss/annual\\_data/2017/pdf/weighting-2017-508.pdf](https://www.cdc.gov/brfss/annual_data/2017/pdf/weighting-2017-508.pdf) (last visited Sept. 29, 2021). LGBT survey respondents in the state were younger than the non-LGBT survey respondents and were more likely to be female than male. In order to make fair comparisons between sexual orientation groups, we used statistical controls to make the two groups comparable on age and sex when testing for significant differences.

**Mental Health.** Estimates of the proportions of LGBT and non-LGBT adults in the 2017–2018 Pennsylvania BRFSS who reported certain health characteristics are presented in Figure 8. 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 compared to non-LGBT adults (42.1% vs. 20.2%).<sup>231</sup> Additionally, 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 (9.3 days vs. 4.1 days).<sup>232</sup> LGBT respondents also reported a greater number of days, on average, that poor health kept them from doing their usual activities when compared to non-LGBT respondents (6.9 days vs. 5.0 days).<sup>233</sup>

**Figure 8. Health characteristics of adults in Pennsylvania, by LGBT identity**



Source: 2017–2018 Pennsylvania BRFSS

**Substance Use.** Estimates of the proportions of LGBT and non-LGBT adults in the 2017–2018 Pennsylvania BRFSS who reported engaging in substance use, specifically smoking and drinking alcohol, are presented in Figure 9. LGBT adults were significantly more likely to be current smokers than non-LGBT adults (31.7% vs. 17.5%).<sup>234</sup> Additionally, greater proportions of LGBT adults than non-LGBT adults were identified as binge drinkers (31.0% vs. 16.6%)<sup>235</sup> and heavy drinkers (10.6% vs. 6.1%).<sup>236</sup>

<sup>231</sup> Adjusted odds ratio (95% CI) = 2.38 (1.83, 3.09).

<sup>232</sup> Adjusted b = 4.24, p < 0.001.

<sup>233</sup> Adjusted b = 2.38, p > 0.01.

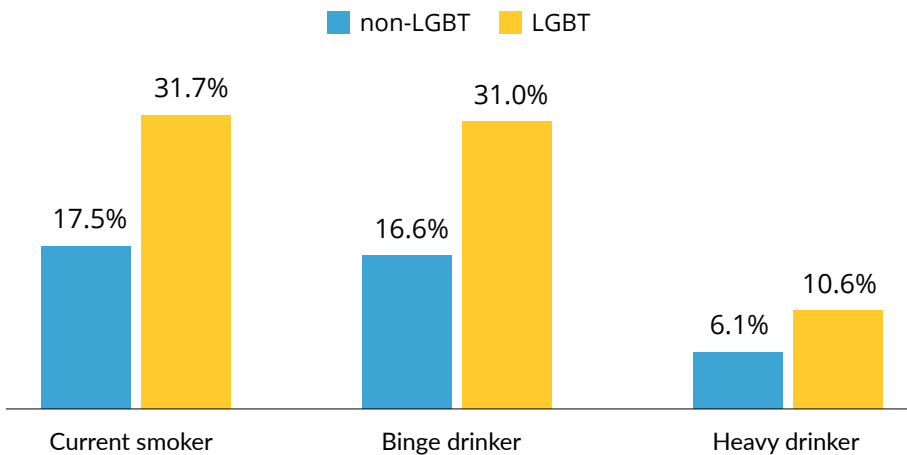
<sup>234</sup> Adjusted odds ratio (95% CI) = 1.98 (1.48, 2.66). Current smokers included respondents who reported having smoked at least 100 cigarettes in their lifetimes and reported now smoking every day or some days.

<sup>235</sup> Adjusted odds ratio (95% CI) = 1.81 (1.33, 2.46). 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>236</sup> Adjusted odds ratio (95% CI) = 1.68 (1.14, 2.49). Heavy drinking is defined in the BRFSS as more than 14 drinks per week among males, and more than seven drinks per week among females.



Figure 9. Substance use among adults in Pennsylvania, by LGBT identity



Source: 2017–2018 Pennsylvania BRFSS

Our findings are consistent with analyses of BRFSS data collected in other states and with analyses of data from the National Health Interview Survey, a national probability survey administered by the federal government.<sup>237</sup> For example, an analysis of BRFSS data collected in 10 states<sup>238</sup> in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts.<sup>239</sup> Similarly, an analysis of data from the 2013 National Health Interview Survey found that LGB adults ages 18–64 in the U.S. were more likely to be current smokers (27.2% lesbian or gay vs. 29.5% bisexual vs. 19.6% non-LGB).<sup>240</sup> Additionally, a 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>241</sup> Two studies analyzing BRFSS data from Massachusetts<sup>242</sup> and Washington state<sup>243</sup> found disparities across a range of health outcomes and behaviors for LGB respondents, including poor physical and mental health, activity limitation, tension or worry, smoking, excessive drinking, and drug use.

<sup>237</sup> *About the National Health Interview Survey*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, [https://www.cdc.gov/nchs/nhis/about\\_nhis.htm](https://www.cdc.gov/nchs/nhis/about_nhis.htm) (last visited Sept. 29, 2021).

<sup>238</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. See 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>239</sup> *Id.* at 340.

<sup>240</sup> Brian W. Ward et al., *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey, 2013*, 77 NAT'L HEALTH STATS. REP. 1, 4 (2015), <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

<sup>241</sup> Timothy J. Cunningham et al., *Prevalence of Five Health-Related Behaviors for Chronic Disease Prevention among Sexual and Gender Minority Adults – 25 U.S. States and Guam, 2016*, 67 MORBIDITY & MORTALITY WORLD REP. 888 (2018).

<sup>242</sup> Kerith J. Conron et al., *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUB. HEALTH 1953 (2010).

<sup>243</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. PUB. HEALTH 460 (2010).



## 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<sup>244</sup> and by the Institute of Medicine (now the National Academy of Medicine).<sup>245</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>246</sup> Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.<sup>247</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>248</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>249</sup> such as depression<sup>250</sup> and psychological distress,<sup>251</sup> as well as loneliness, suicidal intention,<sup>252</sup> deliberate self-

<sup>244</sup> See, e.g., *Healthy People 2020*, U.S. DEP'T OF HEALTH & HUM. SERVS., [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 Sept. 29, 2021). Healthy People 2010 identified the gay and lesbian population among groups targeted to reduce health disparities in the U.S. *Id.* 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, "[t]he issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, U.S. DEP'T OF HEALTH & HUM. SERVS., *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

<sup>245</sup> INSTITUTE OF MEDICINE, *supra* note 223, at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

<sup>246</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 223.

<sup>247</sup> AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

<sup>248</sup> See Mark L. Hatzenbuehler et al., *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 *ANN. BEHAV. MED.* 48 (2014).

<sup>249</sup> E.g., Katie A. McLaughlin et al., *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 et al., *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 *SEXUALITY RES. & SOC. POL'Y* 80 (2009).

<sup>250</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. COUNSELING PSYCHOL.* 302 (2006).

<sup>251</sup> E.g., David M. Huebner et al., *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?*, 24 *J. SOC. & CLINICAL PSYCHOL.* 723 (2005); 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); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 *J. HEALTH & SOC. BEHAV.* 38 (1995).

<sup>252</sup> David M. Huebner et al., *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual*

harm,<sup>253</sup> and low self-esteem.<sup>254</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>255</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>256</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% vs. 23%) in the prior 30 days than adults who were non-LGBT.<sup>257</sup> Job stability was a current source of stress for 57% of LGBT adults, compared to 36% of non-LGBT adults.<sup>258</sup> The study also found that many LGBT respondents had experienced discrimination.<sup>259</sup> For example, nearly one-fourth (23%) of LGBT adults reported having ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; nearly one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to

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Men, 94 AM. J. PUB. HEALTH 1200 (2004).

<sup>253</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 BRIT. J. PSYCHIATRY 479 (2004).

<sup>254</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. BEHAV. SCI. 101 (2005).

<sup>255</sup> E.g., Craig Rodriguez-Seijas & Nicholas R. Eaton, *Prevalence of Psychiatric Disorders at the Intersection of Race and Sexual Orientation: Results from the National Epidemiologic Survey of Alcohol and Related Conditions-III*, 87 J. CONSULTING & CLINICAL PSYCH. 321 (2019); Megan E. Slater et al., *Sexual Orientation-Based Discrimination, Excessive Alcohol Use, and Substance Use Disorders Among Sexual Minority Adults*, LGBT Health, doi:10.1089/lgbt.2016.0117 (2016); Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUB. HEALTH 452 (2010); 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 et al., *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUB. HEALTH 1946 (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>256</sup> AM. PSYCH. ASSOC., *supra* note 247.

<sup>257</sup> *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% vs. 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% vs. 20%).

<sup>258</sup> *Id.*

<sup>259</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.” *Id.* 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 (2015), <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx>.

continue their education; and one-third (33%) reported being unfairly not hired for a job.<sup>260</sup>

A 2009 study by Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGBT people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGBT population than found in LGBT populations in states with more supportive laws.<sup>261</sup> A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGBT respondents after their state passed a constitutional ban on marriage for same-sex couples, while rates were unchanged in states that did not pass such 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 LGBT populations.”<sup>262</sup> Drawing on these findings and prior research, Hatzenbuehler later concluded that “the recent [anti-LGBT] laws that have been passed [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>263</sup>

Similarly, researchers who used 2011 North Carolina BRFSS data to study health disparities between LGBT and non-LGBT people in the state noted that the poor legal and social environment for LGBT people in the South may exacerbate these 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-LGBT policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthful social environments for LGBT populations, even as evidence of the health impact of local and state policies on LGBT 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 LGBT and transgender rights.<sup>264</sup>

Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, in turn putting them in danger of verbal and physical harassment. 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>265</sup> Further, 58% of the respondents reported that they “avoided going out in public due to a

<sup>260</sup> AM. PSYCH. ASSOC., *supra* note 247, at 6–7.

<sup>261</sup> Mark L. Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUB. 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>262</sup> Hatzenbuehler et al. (2010), *supra* note 255, at 456. See also Ben Lennox Kail et al., *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUB. HEALTH 1101 (2015).

<sup>263</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>264</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).

<sup>265</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).

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>266</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 their LGBT peers in worse health, which would heighten observed disparities in less accepting places.<sup>267</sup> Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, likely contribute to LGBT health disparities in less supportive states, including Pennsylvania.

## 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’s analysis of 2019 YRBS data reported high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,<sup>268</sup> that disproportionately impact LGB youth.<sup>269</sup> Analyses of YRBS data from prior years also indicated disparities in mental health and health risk behaviors between LGB and non-LGB youth.<sup>270</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>271</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 they attempted suicide in the past year.<sup>272</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>273</sup> High levels of school-based victimization have been associated with higher levels of illicit drug use and risky

<sup>266</sup> *Id.* at 71, 76.

<sup>267</sup> Hatzenbuehler et al. (2010), *supra* note 255, at 452.

<sup>268</sup> *See, e.g.,* sources cited *supra* note 227.

<sup>269</sup> Kann et al., *supra* note 153.

<sup>270</sup> *Id.*; 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 & MORTALITY WORLD REP. 1 (2011).

<sup>271</sup> Michael P. Marshal et al., *Suicide and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

<sup>272</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).

<sup>273</sup> Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896 (2011).

sexual behavior.<sup>274</sup> Research has also linked unsupportive family environments to depression and suicidality,<sup>275</sup> high levels of stress,<sup>276</sup> tobacco use,<sup>277</sup> and illicit drug use<sup>278</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>279</sup>

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<sup>274</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 153, at 11.

<sup>275</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 et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

<sup>276</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>277</sup> Mark L. Hatzenbuehler et al., *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

<sup>278</sup> *Id.*

<sup>279</sup> Larry Nuttbrock et al., *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

## ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION

In 2014, the U.S. Agency for International Development (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 Pennsylvania'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>280</sup> In our analysis, we draw on data specific to Pennsylvania wherever possible, 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 specific to the state, we are able to estimate only a few of the costs related to LGBT stigma and discrimination in Pennsylvania.

### FRAMEWORK FOR ANALYSIS

In the aforementioned 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>281</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; and
5. Health disparities.<sup>282</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 pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy."<sup>283</sup>

<sup>280</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 the effects of such stigma and discrimination against LGBT people in Pennsylvania.

<sup>281</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 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>282</sup> *Id.*

<sup>283</sup> *Id.* at 6.



Turning to the macro-level, the authors found an association between greater protections of legal rights for LGBT people and economic development in emerging economies, measured by per capita GDP.<sup>284</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>285</sup>

While the USAID and Williams Institute study focused on national economies outside of the U.S., similar types of discrimination and stigma confront LGBT people at the state level and are likely to have similar economic effects. Before we turn to our analysis of Pennsylvania data, however, we note five important points:

- First, we map out several economic impacts due to stigma and discrimination against LGBT people in Pennsylvania *in general*. We do not consider how these effects specifically relate to any particular law or policy in the state.
- Second, we illustrate just a few of the economic impacts created by the current legal landscape and social climate for LGBT people in Pennsylvania. 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, research suggests that 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 racial-ethnic wage gaps in the U.S. would both help to eliminate the poverty gap between same- and different-sex couples, as well as lift many non-LGBT people out of poverty.<sup>286</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>287</sup> In particular, the routine inclusion of

<sup>284</sup> *Id.* at 10.

<sup>285</sup> *Id.* at 3.

<sup>286</sup> BADGETT & SCHNEEBAUM, *supra* note 194.

<sup>287</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), <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.



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 BRFSS data specific to LGBT people in Pennsylvania in this report, which was unavailable just a few years ago. 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>288</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; this 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 Pennsylvania’s legal landscape and social climate is unsupportive of LGBT workers, businesses within the state and the state itself (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 living 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 people experience economic instability, they are more likely to rely on government benefits and services, which in turn increases the costs of these programs to the state.

### 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>289</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 their bottom line. According to an analysis by the Human Rights Campaign of data collected in 2020, 96% of Fortune 500 companies have policies prohibiting sexual orientation discrimination, and 94% have policies related to gender identity

<sup>288</sup> BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 281, at 49.

<sup>289</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).

discrimination.<sup>290</sup> Further, 57% of Fortune 500 companies offer domestic partner benefits, and 71% offer transgender-inclusive health care benefits.<sup>291</sup>

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,<sup>292</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>293</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>294</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>295</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>296</sup>

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 10).<sup>297</sup>

<sup>290</sup> HUMAN RIGHTS CAMPAIGN FOUNDATION, CORPORATE EQUALITY INDEX 2021 7 (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/CEI-2021-revised-030121.pdf?mtime=20210304182628&focal=none>.

<sup>291</sup> *Id.*

<sup>292</sup> 135 S. Ct. 2584 (2015).

<sup>293</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), [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).

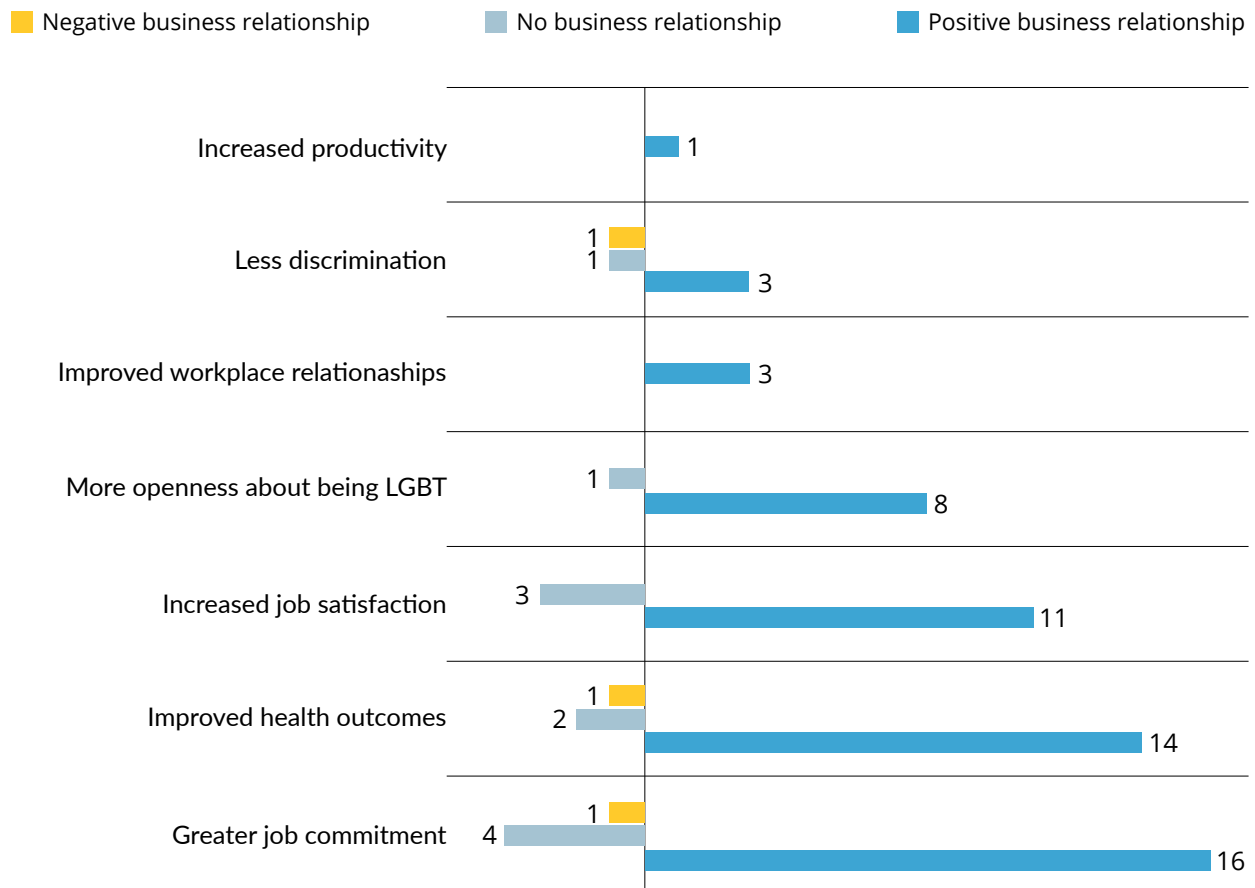
<sup>294</sup> BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

<sup>295</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>296</sup> *Id.*; SEARS & MALLORY, *supra* note 294.

<sup>297</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>.

**Figure 10. 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 satisfaction.<sup>298</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>299</sup>

<sup>298</sup> Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA — Soc. & BEHAV. Sci.* 1203, 1208–10 (2014).

<sup>299</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 ET AL., *THE POWER OF “OUT” 2.0: LGBT IN THE WORKPLACE* 29 (2013).

- LGBT employees prefer to work in states with more supportive laws and social environments.<sup>300</sup>
- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.<sup>301</sup>
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,<sup>302</sup> particularly younger and more highly educated workers.<sup>303</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, and increased productivity and job satisfaction.<sup>304</sup> Given that an estimated 307,000 workers ages 16 and over in Pennsylvania identify as LGBT,<sup>305</sup> the loss in productivity from a discriminatory environment could be significant.
- 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>306</sup>
- Negative outcomes related to unsupportive policies and environments could lead to economic losses for state and local governments as employers, and for private businesses in Pennsylvania. Since the state government employs 190,247 people,<sup>307</sup> its own loss in productivity from a discriminatory workplace environment could be significant.

## Retention

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.<sup>308</sup>

<sup>300</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>301</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>302</sup> SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); Harris Interactive, *supra* note 299.

<sup>303</sup> Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact*, 3 POLS., GROUPS, & IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994).

<sup>304</sup> BADGETT ET AL., *supra* note 297; HEWLETT & YOSHINO, *supra* note 302; Yuan-Hui Tsai et al., *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 REV. MANAG. SCI. 197 (2015).

<sup>305</sup> CONRON & GOLDBERG, *supra* note 42.

<sup>306</sup> Benjamin A. Everly et al., *Don't Ask, Don't Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 J. EXPERIMENTAL SOC. PSYCH. 407, 409 (2012); HEWLETT & YOSHINO, *supra* note 302, at 22, 63 (2016).

<sup>307</sup> *Class of Worker by Sex For the Civilian Employed Population 16 Years and Over*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=&t=Class%20of%20Worker&g=0400000US42&tid=ACST1Y2019.S2408> (last visited Sept. 29, 2021).

<sup>308</sup> HEWLETT & YOSHINO, *supra* note 302, at 20.

- LGBT employees in unsupportive environments feel less committed to their jobs.<sup>309</sup>
- A recent survey found that 11% of LGBT employees who live in Pennsylvania have left a job because of how they were treated by an employer based on their sexual orientation or gender identity at some point in their lives, and 38% have looked for other jobs because of how they were personally treated by their employer or because the workplace environment was uncomfortable for LGBT people in general.<sup>310</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>311</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>312</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 one's annual salary.<sup>313</sup> Based on the average annual mean wage in Pennsylvania,<sup>314</sup> public and private employers are at risk of losing \$10,790, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people in the state.<sup>315</sup>

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>316</sup>

<sup>309</sup> Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); DEENA FIDAS ET AL., HUM. 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); 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); Belle R. Ragins et al., *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Janell L. Blazovich et al., *Do Gay-Friendly Corporate Policies Enhance Firm Performance?* 4 (Apr. 2013) (unpublished manuscript, available online).

<sup>310</sup> Analysis of data from the Employment Experiences Survey, *supra* note 117.

<sup>311</sup> HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees>.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> According to the most recently available data, the annual mean wage in Pennsylvania is \$53,950. See *May 2020 State Occupational Employment and Wage Estimates Pennsylvania*, U.S. BUREAU OF LABOR STATS., [https://www.bls.gov/oes/current/oes\\_pa.htm](https://www.bls.gov/oes/current/oes_pa.htm) (last visited Sept. 29, 2021).

<sup>315</sup> Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Pennsylvania as of May 2020. *Id.*; BOUSHEY & GLYNN, *supra* note 311.

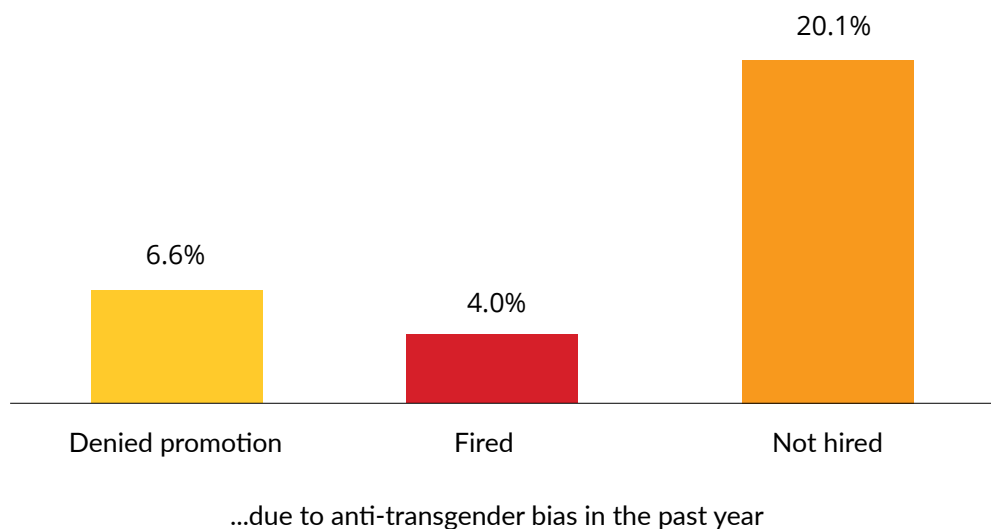
<sup>316</sup> CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, 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 et al., *supra* note 309, at 35–36 (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 297, at 23 (“A . . . study found that the more robust a company's

This body of research suggests that if Pennsylvania 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 outside of Pennsylvania and retain current employees, and would in turn 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. Data collected through the 2015 USTS indicate that among Pennsylvania respondents who had a job or applied for a job in the past year, 6.6% reported having been denied a promotion, 4.0% reported having been fired from a job, and 20.1% reported having not been hired because of anti-transgender bias.<sup>317</sup>

**Figure 11. Employment discrimination due to anti-transgender bias among Pennsylvania USTS respondents who had or applied for a job in the past year (n = 794)**



Source: 2015 USTS

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>317</sup> These findings are based on data generated through the 2015 USTS, which was conducted by the National Center for Transgender Equality. To find out more about the USTS, visit <http://www.ustranssurvey.org>. The 2015 USTS was based on a national convenience sample of 27,715 transgender and gender non-conforming people. JAMES ET AL., *supra* note 129. Additional calculations for this report were conducted by the authors.

We used available data<sup>318</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 Pennsylvania.

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 find that as of April 2021, approximately 3.3 million people were enrolled in Medicaid or the Children's Health Insurance Program (CHIP) in Pennsylvania.<sup>319</sup>

Based on findings from the 2015 USTS, we estimate that 21% of transgender adults in Pennsylvania who have ever lost a job due to anti-transgender bias are currently enrolled only in Medicaid. An estimated 7.4% of transgender adults in the state who have never experienced such discrimination are enrolled only in Medicaid. We attribute the difference in Medicaid enrollment between these two groups (13.6%) 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 Pennsylvania who have ever held a job and then lost a job because of transgender bias, we estimate that 200 transgender people in Pennsylvania have enrolled in Medicaid because of employment discrimination based on gender identity.

In 2014, Pennsylvania's average spending per Medicaid enrollee was approximately \$4,081.<sup>320</sup> Adjusting for inflation, average spending per Medicaid enrollee in Pennsylvania was \$4,564 in January 2021.<sup>321</sup> Therefore, we estimate that employment discrimination experienced by transgender adults

<sup>318</sup> We use prevalence findings from the 2015 USTS, JAMES ET AL., *supra* note 129, coupled with estimates of the size of the transgender population in Pennsylvania, see *supra* note 43 and accompanying text, to estimate the number of transgender adults in the state who have experienced anti-transgender bias in employment.

<sup>319</sup> *Medicaid & CHIP in Pennsylvania*, MEDICAID.GOV, <https://www.medicaid.gov/state-overviews/stateprofile.html?state=pennsylvania> (last visited Sept. 29, 2021). Analyses of data suggest that current rates may be inflated due to the COVID-19 pandemic, with a 13.7% increase in enrollment reported between January 2020 and 2021—exceeding similar growth seen in 15 of the past 16 years. Ed Mahon, *A Huge Spike In Medicaid Enrollment In Pa. Shows How Devastating The Coronavirus Has Been*, SPOTLIGHT PA (Mar. 22, 2021), <https://www.spotlightpa.org/news/2021/03/pa-coronavirus-medicaid-enrollment-increase-map>. That year exhibiting similar growth as seen during the pandemic was the year following the state's adoption of Medicaid expansion under the Patient Protection and Affordable Care Act. *Id.*

<sup>320</sup> The combined state and federal spending per enrollee figure (\$8,780) is available at <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22pennsylvania%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>. Further calculations to determine the state's proportion of these expenditures, based off the 2014 Federal Medical Assistance Percentage or FMAP (53.52%), were conducted by the authors. See <https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=8&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>. It is unclear how changes in the state since 2014 have impacted Pennsylvania's per-enrollee state expenditure for Medicaid; in particular, we note that Pennsylvania adopted Medicaid expansion in December 2014, after the collection of these data and prior to data collection for the 2015 USTS.

<sup>321</sup> To adjust for inflation throughout this report, we used the inflation calculator provided by the U.S. Bureau of Labor Statistics at *CPI Inflation Calculator*, U.S. BUREAU OF LABOR STATS., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Sept. 29, 2021). We assume that the costs reflected in the data would remain the same in 2021 (adjusted for inflation), though it is unclear if and how changes in the state may have impacted these costs since the data were collected. As it is unclear in



on the basis of gender identity costs Pennsylvania \$912,800 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>322</sup> For these reasons, poor health, in general, imposes costs on employers and governments.<sup>323</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 state’s economy will benefit.<sup>324</sup>

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

1. Determining prevalence for health outcomes for LGB and non-LGB populations;
2. Subtracting the prevalence for non-LGB populations from that for LGB populations;
3. 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; and
4. 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, smoking, and binge drinking—among LGBT adults in Pennsylvania. To the extent possible, we used data on these health outcomes and related costs specific to Pennsylvania. Where we could not find reliable cost data for these health outcomes at the state level, we used national-level data as a proxy.

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of Pennsylvania 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 LGB people related to mood and alcohol use disorders were lower in states with more supportive laws, but were ultimately still present.<sup>325</sup>

Specifically, we assume that 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

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which months these data were collected, we assume for the purposes of our calculations that all data were collected in January of their stated year, and similarly adjust to reflect dollars as of January 2021.

<sup>322</sup> BADGETT ET AL., *supra* note 281.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> Hatzenbuehler et al. (2009), *supra* note 261, at 2277.

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, for example, 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 Among LGBT People

In order to best estimate the annual costs associated with Major Depressive Disorder (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 MDD in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.<sup>326</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>327</sup>

Applying the percentage of excess prevalence of MDD among LGB people in Pennsylvania (9.9%) to the state's adult LGBT population (an estimated 416,000 adults)<sup>328</sup> indicates that there are 41,184 more LGBT adults who have MDD in the state than would be expected in the general population. As shown in Table 2 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 10,300 to 13,700 fewer LGBT people living with MDD in Pennsylvania.

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>329</sup> The

<sup>326</sup> *Id.* at 2279. For an explanation of how MDD is determined on the NESARC, see NAT'L INSTITUTES OF HEALTH, 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>327</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>328</sup> WILLIAMS INST. (2019), *supra* note 42.

<sup>329</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. Their cost estimates are largely based on medical claims filed by those who had been diagnosed with MDD (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.

study found that the annual total cost of MDD, nationwide, was \$210.5 billion in 2010. 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>330</sup> Next, we adjusted the cost per person with MDD in 2010 for inflation.<sup>331</sup> In inflation-adjusted dollars, the 2021 cost per person with MDD is \$16,454.64.<sup>332</sup>

For the reasons described above, we estimate that Pennsylvania 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 Pennsylvania of approximately \$169.5 to \$225.4 million.

**Table 2. Reduction in costs associated with MDD in Pennsylvania if LGBT disparity was reduced**

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN PENNSYLVANIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	10,300	\$169.5
33.3%	13,700	\$225.4

### Excess Costs Associated with Smoking Among LGBT People

Our analysis of Pennsylvania's 2017–2018 BRFSS data found that 31.7% of LGBT respondents were current smokers, compared to 17.5% of non-LGBT respondents. Applying the percentage of excess prevalence of smoking among LGBT people in Pennsylvania (14.2%) to the state's adult LGBT population<sup>333</sup> indicates that there are 59,072 more LGBT people who currently smoke in Pennsylvania than would be expected in the general population.

A 2010 study estimated the annual costs per current smoker in Pennsylvania to be \$6,283.83.<sup>334</sup> The total included costs from workplace productivity losses (\$1,391.65),<sup>335</sup> medical care costs (\$2,510.83),<sup>336</sup> and premature death (\$2,381.35).<sup>337</sup> We adjusted for inflation<sup>338</sup> to estimate that the 2021 cost per current smoker in Pennsylvania is \$7,585.77.<sup>339</sup>

<sup>330</sup> The study found that, in 2010, 15,446,771 adults in the U.S. suffered from MDD. *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>331</sup> See methods discussed *supra* note 321.

<sup>332</sup> We assume that the costs associated with MDD would be the same in 2021 as they were in 2010 (adjusted for inflation), and similarly that the rates of MDD reported by the NESARC in 2004–2005 remain the same in 2021.

<sup>333</sup> WILLIAMS INST. (2019), *supra* note 42.

<sup>334</sup> JILL S. RUMBERGER ET AL., POTENTIAL COSTS AND BENEFITS OF SMOKING CESSATION FOR PENNSYLVANIA (2010), <https://www.lung.org/getmedia/aebd97aa-dc3b-4f62-8791-d6c891603d63/economic-benefits.pdf.pdf?ext=.pdf>.

<sup>335</sup> *Id.* at tbl.2.

<sup>336</sup> *Id.* at tbl.3.

<sup>337</sup> *Id.* at tbl.2.

<sup>338</sup> See methods discussed *supra* note 321.

<sup>339</sup> We assume that the costs associated with smoking would be the same in 2021 as they were in 2009 (adjusted for

For the reasons described above, we estimate that Pennsylvania 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 Pennsylvania of approximately \$111.5 to \$148.7 million.

**Table 3. Reduction in costs associated with smoking in Pennsylvania if LGBT disparity was reduced**

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN PENNSYLVANIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	14,700	\$111.5
33.3%	19,600	\$148.7

### Excess Costs Associated with Binge Drinking Among LGBT People

Our analysis of Pennsylvania's 2017–2018 BRFSS data found that 31.0% of LGBT respondents were binge drinkers, compared to 16.6% of non-LGBT respondents. Applying the percentage of excess prevalence of binge drinking among LGBT people in Pennsylvania (14.4%) to the state's adult LGBT population<sup>340</sup> indicates that there are 59,904 more LGBT adults who currently binge drink in Pennsylvania than would be expected in the general population.

We drew from a 2015 study to estimate the annual cost per binge drinker in Pennsylvania.<sup>341</sup> The study found that the annual total cost of binge drinking in Pennsylvania in 2010 was \$7.48 billion.<sup>342</sup> Associated costs included loss in productivity in the workplace, health care costs, and other losses such as costs to the criminal legal system related to binge drinking.<sup>343</sup> We adjusted the cost per binge drinker for inflation<sup>344</sup> for an estimated cost per binge drinker in Pennsylvania in 2021 of \$4,678.49.<sup>345</sup>

For the reasons described above, we estimate that Pennsylvania may be able to reduce the disparity in

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inflation), and that smoking rates among LGBT people in Pennsylvania in 2009 and 2021 are consistent with those reported in the 2017–2018 BRFSS.

<sup>340</sup> WILLIAMS INST. (2019), *supra* note 42.

<sup>341</sup> Jeffrey J. Sacks et al., *2010 National and State Costs of Excessive Alcohol Consumption*, 29 AM. J. PUB. HEALTH 73 (2015).

<sup>342</sup> *Id.* at tbl.2.

<sup>343</sup> *Id.* at 75.

<sup>344</sup> See methods discussed *supra* note 321.

<sup>345</sup> In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in Pennsylvania in 2010. According to the 2010 Pennsylvania BRFSS, 15.2% of respondents were binge drinkers. BRFSS *Prevalence & Trends Data: Pennsylvania*, U.S. CTRS. FOR DISEASE & PREVENTION, <https://nccd.cdc.gov/BRFSSPrevalence/rdDownload/rdExport-3cdf85d9-5c04-419f-8381-1c6035bafa57/Export.pdf> (last visited Sept. 29, 2021). Applying this percentage to Pennsylvania's adult population in 2010 (12,709,630) (data from 2010 American Community Survey, see ACS *Demographic and Housing Estimates*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=american%20community%20survey%202010%20pennsylvania&tid=ACSDP1Y2010.DP05> (last visited Sept. 29, 2021)) indicates that 1,931,863 people in Pennsylvania were binge drinkers in 2010. Dividing the total cost (\$7,487,000,000) by that number of binge drinkers indicates that the cost per binge drinker in Pennsylvania was \$3,875.53 in 2010. We assume that the costs associated with binge drinking would be the same in 2021 as they were in 2010 (adjusted for inflation), and that binge drinking rates among LGBT people in Pennsylvania in 2015 and 2021 remain consistent with those reported in the 2017–2018 BRFSS.

binge drinking 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 binge drinking in Pennsylvania of approximately \$69.7 to \$93.1 million.

**Table 4. Reduction in costs associated with binge drinking in Pennsylvania if LGBT disparity was reduced**

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN PENNSYLVANIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	14,900	\$69.7
33.3%	19,900	\$93.1

If Pennsylvania were to extend legal protections to LGBT people, and if social acceptance of LGBT people increased, the state would likely see improvements in the health of LGBT people. Furthermore, consideration of just three health disparities for LGBT people in the state—MDD, smoking, and binge drinking—suggests that Pennsylvania 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.

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

School-based bullying and harassment of LGBT youth is pervasive<sup>346</sup> and associated with an increased likelihood of school dropout,<sup>347</sup> poverty,<sup>348</sup> and suicide.<sup>349</sup> Educational attainment, especially high school completion, is a significant determinant of economic status and health across the life course.<sup>350</sup> As a result, early experiences of harassment may not only shape the economic prospects 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

<sup>346</sup> See, e.g., Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 J. ADOLESCENT HEALTH 366 (2010); Kate L. Collier et al., *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); Kann et al., *supra* note 270; 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), <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), <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

<sup>347</sup> Jorge Sraibstein & Thomas Piazza, *Public Health, Safety and Educational Risks Associated with Bullying Behaviors in American Adolescents*, 20 INT. J. ADOLESCENT MED. HEALTH 223 (2008).

<sup>348</sup> Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 ECON. EDUC. REV. 387 (2008).

<sup>349</sup> Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 INT. J. ADOLESCENT MED. HEALTH 133 (2008).

<sup>350</sup> John Lynch & George Kaplan, *Socioeconomic Factors*, in SOCIAL EPIDEMIOLOGY 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

in higher-skilled jobs that contribute to overall economic productivity.”<sup>351</sup>

Laws in Pennsylvania do not adequately protect LGBT youth from bullying and harassment in schools. 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. For example, a 2014 analysis of pooled YRBS data from 13 sites found that LGB<sup>352</sup> high school students reported significantly higher rates of skipping school because they felt unsafe.<sup>353</sup> And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGB students were almost three times as likely to report not going to school because of safety concerns as their heterosexual counterparts.<sup>354</sup> Among respondents to the 2019 YRBS in Pennsylvania, LGB students were over twice as likely as heterosexual students to report missing school because they felt unsafe on their way to or from school at least once in the month prior to the survey (16.0% vs. 6.4%).<sup>355</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, about 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>356</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>357</sup> In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 15% said the harassment was so severe that they had to leave school as a result.<sup>358</sup> Other studies have

<sup>351</sup> BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 281, at 26.

<sup>352</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 had 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>353</sup> *Id.*

<sup>354</sup> Kann et al., *supra* note 153, at 12.

<sup>355</sup> U.S. Ctrs. for Disease Control & Prevention, *supra* note 153 at tbl.32.

<sup>356</sup> ROBERT KIM, NAT’L 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>357</sup> *Id.*

<sup>358</sup> Jaime M. Grant et al., NAT’L CTR. FOR TRANSGENDER EQUALITY AND NAT’L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 33 (2011), [https://transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf).



found that the bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism for these students.<sup>359</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 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>360</sup>

LGBT youth are overrepresented in the foster care system; for example, 19% of youth in foster care in Los Angeles County are LGBT, two to three times their proportion of the general youth and young adult population.<sup>361</sup> Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.<sup>362</sup> Of those who age out of foster care: more than one in five will experience homelessness after age 18; one in four 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>363</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>364</sup> A 2011 study of youth in

<sup>359</sup> E.g., 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>; 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); Jennifer Pearson et al., *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 *SOC. PROBLEMS* 523 (2007); 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); Stephen T. Russell et al., *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 *J. ADOL.* 111 (2001); MASS. DEP'T OF EDUC., *MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY*, <https://archives.lib.state.ma.us/bitstream/handle/2452/265304/ocn911187611-2009.pdf?sequence=1&isAllowed=y> (last visited Sept. 29, 2021).

<sup>360</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>361</sup> *Id.* at 6.

<sup>362</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>363</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>364</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.



Massachusetts found that 25% of lesbian and gay youth, and 15% of bisexual youth, in public high schools were experiencing homelessness, compared to 3% of heterosexual youth.<sup>365</sup> Similarly, a 2015 survey of youth in Atlanta, Georgia, experiencing homelessness found that 28.2% of the respondents identified as LGBT.<sup>366</sup>

Data from the National Survey of Youth in Custody indicate that 12.2% of youth in custody identify as LGBT.<sup>367</sup> Another study found that LGBT youth made up 15% of detained youth nationally.<sup>368</sup> Research has shown that LGBT youth are more likely to be detained for offenses such as running away, truancy, curfew violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.<sup>369</sup> Other studies have shown that in some instances, LGBT youth have been punished for defending themselves against their harassers,<sup>370</sup> and there is evidence of selective enforcement against LGBT youth.<sup>371</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>372</sup> For example, nationally, the Anne E. 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.<sup>373</sup> The best available data suggest that LGBT youth make up one-fifth, if not more, of each such annual cohort.<sup>374</sup>

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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 360.

<sup>365</sup> Heather L. Corliss et al., *High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample*, 9 AM. J. PUB. HEALTH 1683 (2011).

<sup>366</sup> ERIC R. WRIGHT ET AL., ATLANTA YOUTH COUNT! FINAL REPORT 3 (May 2016), [https://atlantayouthcount.weebly.com/uploads/7/9/0/5/79053356/aycna\\_final\\_report\\_may\\_2016\\_final.pdf](https://atlantayouthcount.weebly.com/uploads/7/9/0/5/79053356/aycna_final_report_may_2016_final.pdf).

<sup>367</sup> ALLEN J. BECK & DAVID CANTOR, U.S. BUREAU OF JUSTICE STATS., U.S. DEP’T OF JUSTICE, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH*, 2012 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

<sup>368</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).

<sup>369</sup> KATAYOON MAJD ET AL., *HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS* 71 (2009), [http://www.nclrights.org/wp-content/uploads/2014/06/hidden\\_injustice.pdf](http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf); SHANNAN WILBER ET AL., *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/bestpracticeslgbtyouth.pdf>.

<sup>370</sup> MAJD ET AL., *supra* note 369, at 77.

<sup>371</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>372</sup> *Id.*

<sup>373</sup> ANNIE E. CASEY FOUND., *COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE* 5 (2013), <https://assets.aecf.org/m/resourcedoc/JCYOI-CostAvoidance-2013.pdf>.

<sup>374</sup> See, e.g., ADAM P. ROMERO, SHOSHANA K. GOLDBERG & LUIS A. VASQUEZ, WILLIAMS INST., *LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS* 14 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

## CONCLUSION

Pennsylvania is home to an estimated 416,000 LGBT adults and 74,000 LGBT youth. LGBT people in Pennsylvania lack important legal protections that have been extended in other states. For example, statewide statutes in Pennsylvania do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Pennsylvania also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Pennsylvania ranks 24<sup>th</sup> in the nation on public support for LGBT rights and acceptance of LGBT people.

Pennsylvania'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 Pennsylvania were to take steps toward a more supportive legal landscape, the state's economy would likely benefit.

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