



The Impact of Stigma and Discrimination Against LGBT People in Texas

Christy Mallory, Taylor N.T. Brown, Stephen Russell & Brad Sears

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AUTHORS

This report was primarily researched and authored by:

Christy Mallory, JD, State & Local Policy Director and Anna M. Curren Fellow at the Williams Institute;

Taylor N.T. Brown, MPP, Policy Analyst at the Williams Institute;

Stephen T. Russell, PhD, Priscilla Pond Flawn Regents Professor in Child Development and Chair of the Department of Human Development and Family Sciences at the University of Texas at Austin; and

Brad Sears, JD, Associate Dean at UCLA School of Law and Executive Director and Roberta A. Conroy Scholar of Law and Policy at the Williams Institute.

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Andrew R. Flores, Assistant Professor at Mills College, researched and authored the section on public opinion.

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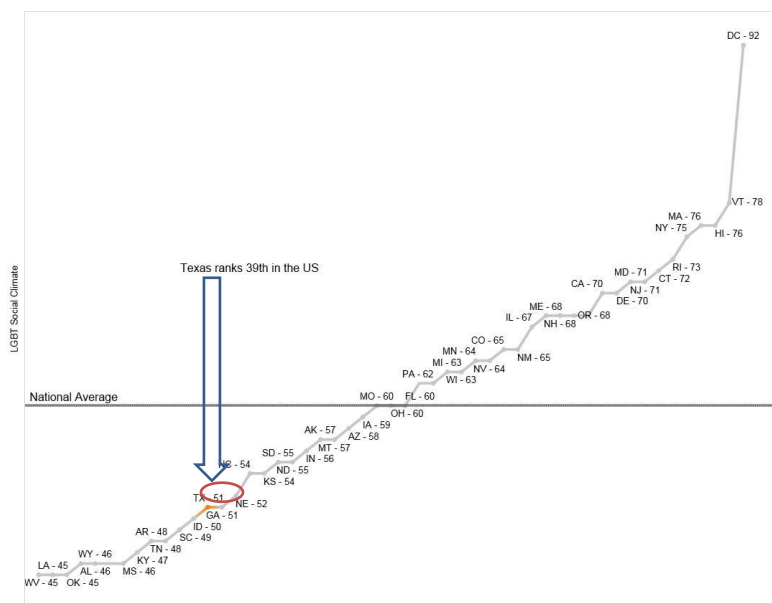
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EXECUTIVE SUMMARY

Texas is home to over 770,000 LGBT adults and 158,500 LGBT youth.

LGBT people in Texas lack important legal protections and face a less supportive social climate than LGBT people in many other states. For example, statewide laws in Texas offer no protections from discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. Texas also has an anti-LGB curriculum law, requiring that teachers provide anti-LGB instruction during sex education lessons, and state law

State Ranking on LGBT Social Climate Scores



fails to adequately protect LGBT students from bullying. In terms of social climate, Texas ranks 39th in the nation on public support for LGBT rights and acceptance of LGBT people. However, a growing number of businesses in Texas have adopted LGBT-inclusive non-discrimination policies, and social attitudes toward LGBT people are becoming more positive over time.

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

In this study, we provide data and research documenting the prevalence of several forms of stigma and discrimination against LGBT adults and youth in Texas, including discrimination and harassment in employment, housing, and public accommodations; bullying and harassment in schools; and family rejection of LGBT youth. We discuss the implications of such stigma and discrimination on LGBT individuals, in terms of health and economic security; on employers, in terms of employee productivity, recruitment, and retention; and on the economy, in terms of health care costs and reduced productivity.

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

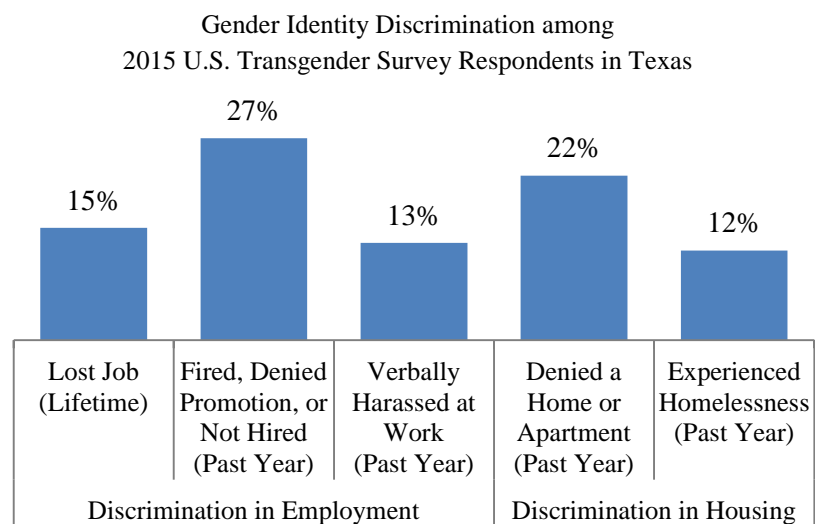
KEY FINDINGS INCLUDE:

Prevalence of Stigma and Discrimination against LGBT People in Texas

LGBT People in Texas Experience Discrimination in Employment, Housing, and Public Accommodations

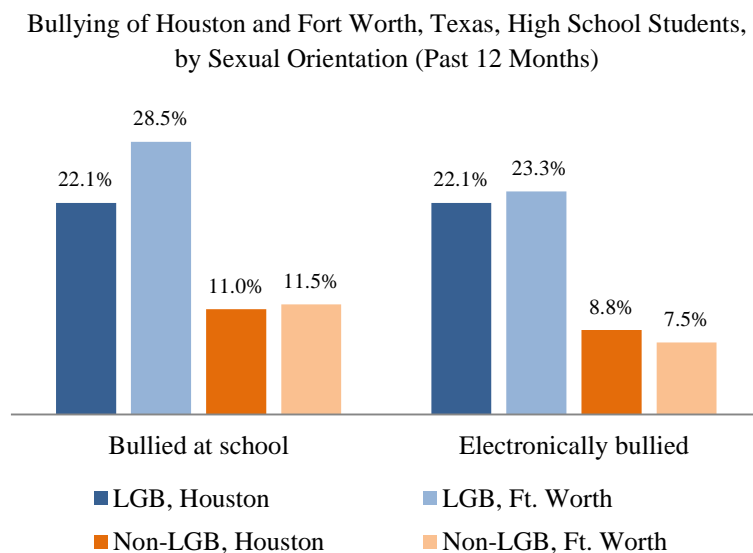
- The 2015 U.S. Transgender Survey report, based on the largest survey of transgender and gender non-conforming people in the U.S. to date, found of respondents from Texas, 27% reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 13% reported being verbally harassed at work in the year prior to the survey because of their gender identity. In addition, 22% of transgender respondents from Texas reported that they had experienced housing discrimination because of their gender identity within the past year, and 12% reported that they had experienced homelessness because of their gender identity within the past year.
- Public opinion polling indicates that 79% of Texas residents, non-LGBT and LGBT, believe that LGBT people experience discrimination in the state.
- Discrimination against LGBT people in Texas has also been documented in a number of court cases and the media. Instances of employment discrimination documented in these sources involve

private and public sector workers in a range of occupations, including, for example, teachers, a police detective, a bank employee, and a hospital architect. Examples of discrimination in housing and public accommodations have also been documented in these sources.



LGBT Youth in Texas Experience Bullying and Harassment at School

- The 2015 Youth Risk Behavior Survey from Houston and Fort Worth, Texas, found that LGB students were more likely to report being bullied at school (Houston: 22.1% v. 11.0%; Fort Worth: 28.5% v. 11.5%) and electronically bullied (Houston: 22.1% v. 8.8%; Fort Worth: 23.3% v. 7.5%) in the 12 months prior to the survey than non-LGB students.
- In addition, LGB students in Houston and Fort Worth were more likely than non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (Houston: 17.7% v. 8.3%; Fort Worth: 16.4% v. 6.0%).
- The 2015 U.S. Transgender Discrimination Survey report found that 73% of respondents who were perceived to be transgender while in grades K-12 experienced verbal, physical, or sexual harassment at school.
- A 2012 campus climate report based on a survey of graduate students at Texas A&M University found that 14% of all students reported observing inappropriate behaviors (such as hostile comments and discriminatory treatment) based on sexual orientation and 10% of all students reported observing inappropriate behaviors based on gender identity or expression.
- The University of Texas at Austin received 63 complaints of sexual orientation bias, 51 complaints of gender expression bias, and 47 complaints of gender identity bias¹ over a three-year period from 2012 to 2015.



Impact of Stigma and Discrimination on LGBT Individuals

LGBT People in Texas 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 2012-2014 indicate that 30% percent of Texas LGBT adults and 26% of non-LGBT adults reported having a household income below \$24,000.
- Gallup data also indicate that about one-quarter of LGBT adults (26%) in Texas reported that they do not have enough money for food compared about one-fifth of non-LGBT

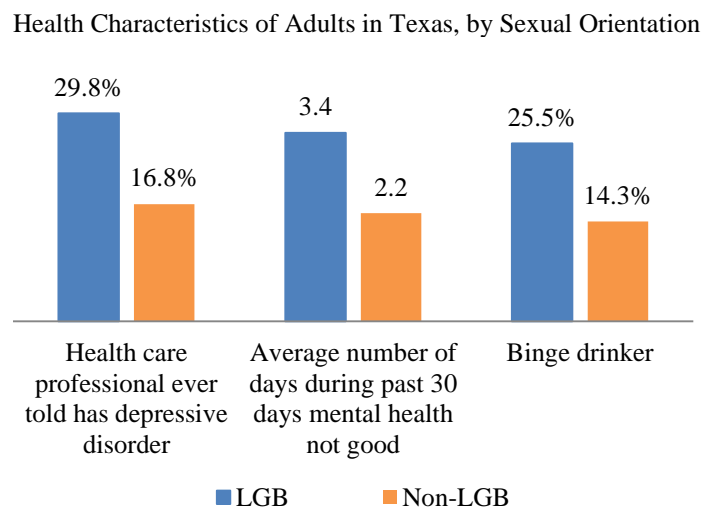
¹ Complainants can report multiple forms of bias in one complaint, so there may be overlap among reports of gender expression, gender identity, and sexual orientation bias.

adults (19%). Similar proportions of LGBT and non-LGBT people reported that they do not have enough money to meet their health care needs.

- The 2015 U.S. Transgender Survey report found that 17% of respondents in Texas were unemployed, and 34% were living in poverty.

LGBT Adults and Youth in Texas Experience Health Disparities

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT people such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased likelihood of school dropout, suicide, and substance use among LGBT youth.
- LGBT adults in Texas who completed the 2015 Behavioral Risk Factor Surveillance System (BRFSS) survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGB adults who completed the survey (29.8% v. 16.8%). In addition, LGBT adults were significantly more likely to report binge drinking than non-LGBT adults (25.5% v. 14.3%).
- The 2015 Youth Risk Behavior Survey from Houston and Fort Worth found that LGB students were much more likely to have seriously considered suicide in the year prior to the survey compared to non-LGB students (Houston: 34.5% v. 11.6%; Fort Worth: 40.7% v. 11.3%).
- LGB students in Houston and Fort Worth were also more likely than non-LGB students to report smoking cigarettes (Houston: 30.5% v. 14.7%; Fort Worth: 20.0% v. 12.5%), drinking (Houston: 36.7% v. 24.9%; Fort Worth: 38.3% v. 28.2%), and using marijuana (Houston: 26.6% v. 18.0%; Fort Worth: 35.2% v. 18.3%) in the month prior to the survey.



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, and private businesses in the state. Given that over 520,000 workers in Texas identify as LGBT, the loss in productivity from a discriminatory environment could be significant.

- **Retention.** LGBT employees in less supportive work environments feel less loyal to their employers, and are more likely to plan to leave their jobs. Given the average replacement costs of an employee, public and private employers risk losing \$9,300, on average, for each employee that leaves the state or changes jobs because of an unsupportive policy or social environment in Texas.
- **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 Texas 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.
- **Public Benefits Expenditures.** Discrimination in employment and housing can lead to hardships for individuals including lower earnings, underemployment or unemployment, and loss of housing, which in turn can lead to increased reliance on public benefits. As an illustration of how the state is impacted by the economic instability of LGBT residents, we estimate that discrimination in the workplace and in housing against transgender people annually costs Texas approximately \$1,253,000 in state Medicaid expenditures and \$372,000 in homeless shelter expenditures.

Bullying and Family Rejection of LGBT Youth Negatively Impact the Economy

- Bullying and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or unemployed or underemployed.
- In response to the 2015 U.S. Transgender Survey report, of those respondents from Texas who said they had been harassed in school, 14% reported that the harassment was so severe that they had to drop out.
- School drop-out and homelessness that arise due to bullying and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Jim Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging out cohort.

Health Disparities for LGBT People Negatively Impact the Economy

- A more supportive legal landscape and social climate for LGBT people in Texas 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 Texas by 25% to 33.3% could benefit the state's economy by \$289.9 million to \$385.3 million, and reducing the disparity in binge drinking by the same proportion could benefit the state's economy by \$118.3 million to \$157.2 million in increased productivity and reduced health care costs each year. To the extent that a more supportive legal landscape and social climate would reduce other health disparities, the state's economy would benefit even more.

Reduction in Costs Associated with Major Depressive Disorder and Binge Drinking in Texas
if LGBT Disparity Were Reduced

Health Characteristic	Reduction in disparity between LGBT and Non-LGBT Texans	LGBT individuals impacted	Annual reduction in costs (millions)
Major Depressive Disorder	25%-33.3%	19,100 - 25,400	\$289.9 - 385.3
Binge Drinking	25%-33.3%	21,600 - 28,700	\$118.3 - 157.2

SECTION I. LGBT POPULATION, LEGAL LANDSCAPE, AND SOCIAL CLIMATE IN TEXAS

Texas is home to over 770,000 LGBT adults and approximately 158,500 LGBT youth who reflect the diversity of the state's overall population. There are few legal protections for LGBT people in Texas. Additionally, the state is ranked 39th in the nation on LGBT social climate (as measured by public support for LGBT rights and acceptance of LGBT people). However, despite this standing, public opinion polls also show that a majority of Texans support extending discrimination protections to LGBT people.²

A. *LGBT People in Texas*

1. LGBT Adults in Texas

Texas is home to over 770,000 LGBT adults (3.8% of adults self-identify as LGBT),³ including an estimated 125,350 (0.66%) transgender adults in Texas.⁴ 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 2012-2014 Gallup Daily Tracking Surveys indicate that LGBT adults in Texas, like LGBT adults elsewhere in the South and across the United States, are younger than non-LGBT adults.⁵ As shown in Table 1.a. below, over half of LGBT adults in Texas are under the age of 40.
- Approximately half of both LGBT and non-LGBT adults are female.
- Over half of LGBT adults in Texas are people of color, including 12% African American/black, 34% Latino/a, 1% Asian-Pacific Islander, 1% American Indian or Alaska Native, and 7% identified as another or other race.

² Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, _ RESEARCH & POLITICS 1 (Oct. – Dec. 2015).

³ LGBT Data & Demographics: Texas, Williams Inst., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=13#density> (last visited Feb. 16, 2017) (percentage of adults in Texas identifying as LGBT). Total adult population in the state is 20,257,343. For total adult population: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 16, 2017) (select advanced search, enter "Population by Single Year of Age and Sex" under topic or table name and "Texas" under state, county or place, select "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2015" 2015 estimates).

⁴ ANDREW R. FLORES, JODY L. HERMAN, GARY J. GATES & TAYLOR N.T. BROWN, WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

⁵ LGBT Data & Demographics: Texas, Williams Inst., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=48#demographic> (last visited Feb. 15, 2017) (percentage of adults in Texas identifying as LGBT).

Table I.a. Weighted Characteristics of Texas Adult Participants in the 2012-2014 Gallup Daily Tracking Surveys by LGBT and non-LGBT Status (N=24,683)⁶

	LGBT (n=778)	Non-LGBT (n=23,865)
	%	%
Age		
18-24	35	15
25-39	26	27
40-64	31	43
65+	7	16
Sex		
Female	50	51
Male	50	49
Race-ethnicity		
White	45	54
African-American/black	12	11
Latino/a or Hispanic	34	26
Asian-Pacific Islander	1	2
American Indian or Alaska Native	1	<1
Other	7	7
Children under 18 in Household	31	43

- Many LGBT adults in Texas have children in their households, in the context of same- and opposite-sex relationships, married and unmarried, and as single parents. Approximately 31% of LGBT adults in Texas (238,700 individuals)⁷ and one in five same-sex couples are raising children.⁸ As of 2015, there were approximately 83,000 same-sex couples living in Texas.⁹ While different-sex married couples are more likely to be raising children than same-sex couples, same-sex couples in the state are more likely to be raising adopted children (18% of couples raising children) than different-sex married couples (3% of couples raising children).¹⁰

⁶ *Id.*

⁷ *Id.*

⁸ Unpublished analyses conducted by The Williams Institute of data from the combined 2015 American Community Survey 1-Year estimates restricted to cohabiting couples indicate that 48.9% of different-sex couples and 20.6% of same-sex couples have a child under the age of 18 in the household.

⁹ Unpublished analyses conducted by The Williams Institute. According to the 2015 American Community Survey, 7.7% of same-sex couples in the United States are in Texas. Multiplying 7.7% by the number of same-sex couples in the United States (1,080,000) indicates that there are 83,000 same-sex couples in Texas.

¹⁰ AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS, AND GARY J. GATES, WILLIAMS INSTITUTE., THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES 30, 31 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

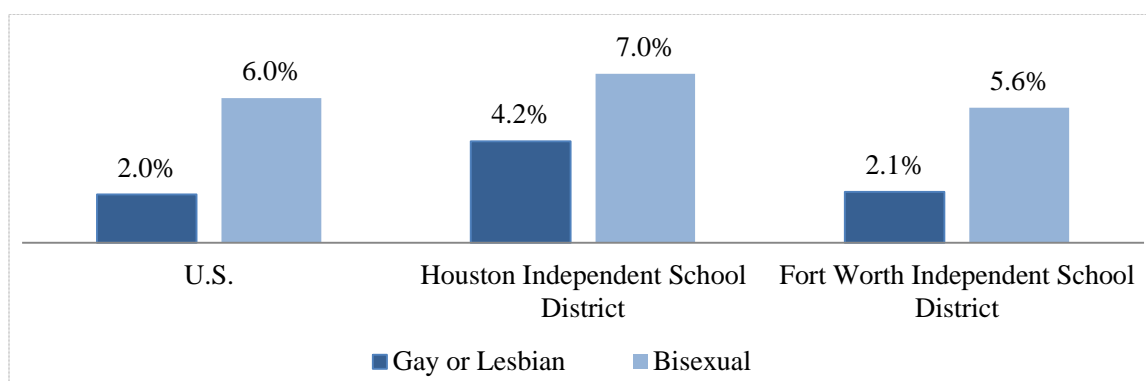
2. LGBT Youth in Texas

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants that is managed by the Centers for Disease Control and Prevention (CDC). The YRBS is one of the few sources of data about LGB youth in grades 9 through 12. In 2016, the CDC released a report about the health and well-being of these youth from states and large urban school districts that included measures of sexuality from their 2015 YRBS survey.¹¹ Questions that would make transgender youth participants identifiable on the YRBS were not included in the 2015 survey.

Weighted estimates from the national YRBS indicate that 8.0% of youth in grades 9-12 identify as gay or lesbian (2.0%) or bisexual (6.0%) (see Figure 1.a.).¹² While data were unavailable from the state of Texas, data from the Houston and Fort Worth Independent School Districts indicate that a large minority of students in these cities identify as LGB. An estimated 11.2% of youth in grades 9-12 in the Houston Independent School District identify as gay or lesbian (4.2%) or bisexual (7.0%) (see Figure 1.a.).¹³ In the Fort Worth Independent School District, there are an estimated 7.7% of youth in grades 9-12 who identify as LGB, including 2.1% who identify as gay or lesbian and 5.6% who identify as bisexual (see figure 1.a.).¹⁴ In Houston, 83.7% of youth in grades 9-12 identify as heterosexual (straight) and 5.1% said they were not sure of their sexual orientation. In Fort Worth, 88.2% of youth in grades 9-12 identify as heterosexual and 4.1% said they were not sure of their sexual orientation.

Figure 1.a. Percentage of Students Who Identify as Gay or Lesbian or Bisexual in the U.S. and Two Texas School Districts (2015)

Source: 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*



¹¹ See *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12—United States and Selected Sites, 2015*, <http://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>

¹² See *id.* at 8.5

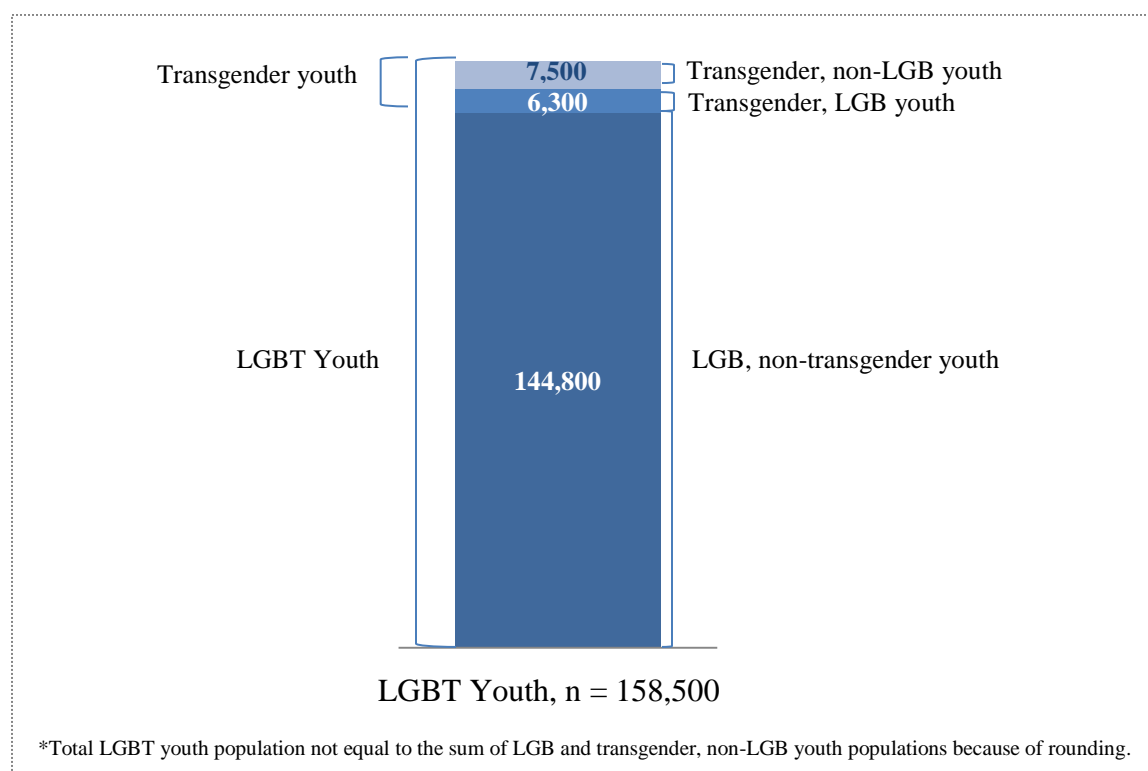
¹³ *Id.*

¹⁴ *Id.*

We estimate that there are approximately 158,500 LGBT youth in the state of Texas: almost 151,100 LGB youth (8%^{15,16} of 1,888,537 youth ages 13 to 17 in Texas),¹⁷ including LGB transgender youth, plus approximately 7,500 transgender youth who are straight/heterosexual (i.e., are not LGB). Of the total 158,000 LGBT youth in Texas, an estimated 13,800 youth are transgender.¹⁸ We estimate that 54% of these transgender youth identify as straight/heterosexual.¹⁹

Figure I.b. Estimates of the LGBT Youth Population of Texas ages 13-17

Sources: National YRBS, 2015; American Community Survey, 2015



LGB youth are more likely to be female than male. Among national YRBS participants, male and female students were equally as likely to identify as gay or lesbian (2.0%). However, a larger percentage of female students identified as bisexual than male students (9.8% versus 2.4%, respectively).

¹⁵ See Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9-12—United States and Selected Sites, 2015, <http://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>

¹⁶ 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.

¹⁷ Population data (aged 13-17) derive from the 2011-2013 American Community Survey 3-Year estimates.

¹⁸ ANDREW R. FLORES ET AL., WILLIAMS INST., AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES 4 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

¹⁹ Unpublished analyses conducted by The Williams Institute of data from the combined 2014-2015 Behavioral Risk Factor Surveillance System (BRFSS) restricted to transgender-identified participants ages 18-24 indicate that 54% identify as straight.

B. Legal Landscape for LGBT People in Texas

Texas’s legal landscape reflects a history of state laws and policies that have sought to limit protections for LGBT people or to discriminate against them. Although same-sex couples are now able to marry in the state following the U.S. Supreme Court’s decision in *Obergefell v. Hodges*,²⁰ the state and most localities continue to lack protections from sexual orientation and gender identity discrimination in the workplace, housing, public accommodations, and other areas.

1. Historical Legal Landscape

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

Sodomy Law. Enforcement of Texas’s sodomy law indicates a decades-long history of discrimination against LGB people in the state. The modern version of Texas’s sodomy law, known as the “homosexual conduct” law, was enacted in 1973.²¹ The law was used not only to criminalize adults who engaged in private, consensual sexual activity,²² but was also used by the state to justify discrimination against LGB people. For example, in 1990, the Texas Attorney General issued an opinion that conviction of “homosexual conduct” was an acceptable basis to automatically bar an applicant or dismiss an employee from working for the Texas State Department of Health.²³ Texas law also allowed the state to revoke professional licenses from physicians, nurses, and school bus drivers who were convicted under the state’s sodomy law.²⁴ In 2002, the “homosexual conduct” law was used to justify opposition to the candidacy of an openly gay justice of the peace.²⁵ As one member of the candidate’s own party argued, “Whether you like it or not, there is a state law that prohibits sodomy in the state of Texas, and having a judge who professes to have a lifestyle that violates state law...is wrong.”²⁶ Decades earlier, in the 1940s, at least ten faculty members and fifteen students of University of Texas had been forced to leave the university because they were suspected of being LGB.²⁷

²⁰ 576 U.S. ___ (2015); *Innis v. Aderhold*, No. 1: 14-cv-1180-WSD (N.D. Ga. Oct. 7, 2015).

²¹ TEX. PENAL CODE § 21.06 (2016).

²² George Painter, *Sodomy Laws: Texas*, Aug. 10, 2004, <https://www.glapn.org/sodomylaws/sensibilities/texas.htm>.

²³ Tex. Op. Atty Gen. JM-1237 (1990).

²⁴ See Amicus Brief of Constitutional Law Professors at 16-17, *Lawrence v. Texas*, 539 U.S. 558 (2003) (No. 02-102).

²⁵ Amicus Brief of the Am. Bar Assoc. at 12-13, *Lawrence v. Texas*, 539 U.S. 558 (2003) (No. 02-102) (citing REPORT OF THE DISTRICT OF COLUMBIA BAR TASK FORCE ON SEXUAL ORIENTATION AND THE LEGAL WORKPLACE App. C, at 39 cmt. 166 (1999)).

²⁶ *Id.*

²⁷ *Education: In the Lone Star State*, TIME, Nov. 27, 1944; *University Row Laid Partly to Homosexuality*, LA TIMES, Nov. 18, 1944, at 4.

Texas's "homosexual conduct" law was struck down by the United States Supreme Court in the landmark case *Lawrence v. Texas*,²⁸ overturning its earlier decision in *Bowers v. Hardwick*.²⁹ The Court held that laws banning private, consensual sexual conducting between adults violated the Due Process Clause of the U.S. Constitution.³⁰ In *Lawrence*, both the majority and concurring opinions noted the link between sodomy laws and discrimination against LGB people, stating that "the criminal conviction carries with it other collateral consequences... such as notations on job application forms, to mention but one example"³¹ and that a conviction under the law "would disqualify [individuals] from or restrict their ability to engage in a variety of professions, including medicine, athletic training, and interior design."³²

Although Texas's sodomy law is no longer enforceable after *Lawrence*, the law remains on the books³³ and continues to have lingering negative effects on LGBT people in the state. For example, in 2009, six years after *Lawrence*, a group of five gay men in El Paso were threatened with arrest for "homosexual conduct" after two of them kissed in a restaurant.³⁴ The men brought a lawsuit against the City of El Paso, which was eventually settled out of court.³⁵ As part of the settlement, the City of El Paso agreed to conduct annual sexual orientation and gender identity discrimination trainings for police officers.³⁶ Legislative attempts to repeal the sodomy law have been unsuccessful.³⁷

Marriage Equality. Years before any state extended marriage to same-sex couples, the Texas Legislature passed several statutes restricting relationship recognition for same-sex couples. In 1973, the legislature enacted a statute stating that only "a man and a woman" could obtain a marriage license in Texas.³⁸ In 1997, the legislature further amended the law to expressly prohibit the issuing of marriage licenses "to persons of the same sex."³⁹ In 2003, the legislature passed a more sweeping ban, prohibiting the state from recognizing both marriage and civil unions for same-sex couples.⁴⁰ In 2005, Texas voters approved a referendum that amended the

²⁸ 539 U.S. 558 (2003).

²⁹ 478 U.S. 186 (1986).

³⁰ *Lawrence*, 539 U.S. at 558.

³¹ *Id.* at 576.

³² *Id.* at 581 (O'Connor, J., concurring).

³³ TEX. PENAL CODE § 21.06.

³⁴ *De Leon v. City of El Paso*, 353 S.W.3d 285 (Tex. App. 2011).

³⁵ Matthew Smith, *Plaintiffs in Gay Kiss Case Against City of El Paso Chicos Tacos Announce Settlement*, KVIA (May 14, 2012), <http://www.kvia.com/news/plaintiffs-in-gay-kiss-case-against-city-of-el-paso-chicos-tacos-announce-settlement/53243783>.

³⁶ *Id.*

³⁷ John Wright, *Seven Anti-LGBT Laws that Remain on Texas' Books*, TEXAS OBSERVER (Dec. 13, 2016), <https://www.texasobserver.org/seven-anti-lgbt-laws-that-remain-on-texas-books>.

³⁸ H.B. 103, 63rd Leg., Reg. Sess. (Tex. 1973).

³⁹ TEX. FAM. CODE § 1.001 (2016).

⁴⁰ ID. § 6.204.

state constitution to also prohibit recognition of marriage and civil unions for same-sex couples.⁴¹ The referendum passed with 76% support.⁴²

Texas's marriage ban was struck down by a federal district court in 2014,⁴³ but remained in effect due to appeals until the U.S. Supreme Court ruled in 2015 that state-level bans on marriage for same-sex couples violate the U.S. Constitution.⁴⁴ Weeks before the ruling, the Texas Legislature passed the Pastor Protection Act, allowing clergy members to refuse to conduct same-sex marriages.⁴⁵ Two days after the U.S. Supreme Court's ruling, Texas Attorney General Ken Paxton issued an opinion stating that county clerks, justices, and judges may refuse to issue same-sex marriage licenses or conduct same-sex marriage ceremonies, but that they may face litigation as a result.⁴⁶

In 2017, the Texas Supreme Court will hear a case brought by Texas taxpayers seeking to stop the City of Houston from providing benefits to employees' same-sex spouses on the same terms that they are provided to different-sex spouses.⁴⁷ The Texas Supreme Court previously declined to hear an appeal of a lower court's decision upholding the provision of benefits to same-sex spouses,⁴⁸ but it has since agreed to a rehearing.⁴⁹

2. Current Legal Landscape

Discrimination Protections. Texas does not have any state-level non-discrimination laws that include sexual orientation or gender identity as protected characteristics.⁵⁰ Texas law does prohibit discrimination based on other personal characteristics, including race, religion, sex, and national origin, in employment and housing.

The Texas Labor Code prohibits workplace discrimination based on race, disability, religion, sex, national origin, and age by any employer with 15 or more employees.⁵¹ The Texas Fair

⁴¹ TEX. CONST. art., I § 32.

⁴² Emma Margolin & Zachary Roth, *Texas Gay Marriage Ban Struck Down*, MSNBC.COM, Feb. 26, 2014, <http://www.msnbc.com/msnbc/texas-gay-marriage-ban-struck-down>.

⁴³ *De Leon v. Perry*, No. SA-13-CA-00982-OLG (W.D. Tex. Feb 26, 2014).

⁴⁴ *Obergefell v. Hodges*, 576 U.S. ___ (2015); *Inniss v. Aderhold*, No. 1: 14-cv-1180-WSD (N.D. Ga. Oct. 7, 2015).

⁴⁵ S.B. 2065, 84th Leg., Reg. Sess. (Tex. 2015).

⁴⁶ Letter from Hon. Ken Paxton, Tex. Att'y Gen., to Hon. Dan Patrick, Lt. Gov., Op. No. KP-0025 (June 28, 2015), <https://www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0025.pdf>.

⁴⁷ *Pidgeon v. Parker*, No. 2013-75301 (Harris Cty. Dist. Ct. Dec. 17, 2013).

⁴⁸ *Pidgeon v. Parker*, No. 2013-75301 (Harris Cty. Dist. Ct. Dec. 17, 2013), review denied *Pidgeon v. Turner*, No. 15-0688 (Tex. Sept. 2, 2016).

⁴⁹ Jess Krochtengel, *Texas Justices to Review Houston Same Sex Benefits Policy*, Law360.com, Jan. 20, 2017, <https://www.law360.com/articles/883136/texas-justices-to-review-houston-same-sex-benefits-policy>.

⁵⁰ Some federal laws that prohibit discrimination based on sex, including Title VII, have been interpreted by some courts and federal agencies to also prohibit discrimination based on gender identity and sexual orientation. These laws would apply to workers and residents of Texas, though they are not discussed here because they are outside the scope of this memo. See Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, U.S. EEOC, https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm (last visited Jan. 3, 2017).

⁵¹ TEX. LAB. CODE §§ 21-001 *et seq.* (2016).

Housing Act prohibits discrimination based on race, religion, sex, familial status, and national origin in the sale or rental of housing and in residential real estate transactions.⁵² Texas does not have a statute prohibiting discrimination in public accommodations based on personal characteristics such as race, sex, religion, and national origin.⁵³

Several localities in Texas have enacted local ordinances or personnel policies that prohibit discrimination based on sexual orientation and gender identity, creating a patchwork of legal protections for LGBT people in the state. Five localities, Austin,⁵⁴ Dallas,⁵⁵ Fort Worth,⁵⁶ San Antonio,⁵⁷ and Plano,⁵⁸ have enacted broad local ordinances prohibiting discrimination based on sexual orientation and gender identity in employment,⁵⁹ housing, and public accommodations.

Additionally, several localities in Texas have more limited policies that prohibit employment discrimination against city employees and/or employees of city contractors based on sexual orientation and gender identity. Among Texas's largest cities – cities with over 100,000 residents – seven have adopted such policies (along with the four large cities that have broader non-discrimination ordinances): Houston,⁶⁰ El Paso,⁶¹ Arlington,⁶² Corpus Christi,⁶³ Brownsville,⁶⁴ Mesquite,⁶⁵ and Waco.⁶⁶

The broad non-discrimination ordinances in Austin,⁶⁷ Dallas,⁶⁸ Fort Worth,⁶⁹ San Antonio,⁷⁰ and Plano⁷¹ provide for administrative enforcement, in most instances, through city agencies or

⁵² TEX. PROP. CODE §§ 301.001 *et seq.*

⁵³ Nat'l Conf. State Leg., State Public Accommodations Laws, July 13, 2016, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>.

⁵⁴ AUSTIN, TEX. CODE §§ 5-1-1 to -4-1 (2016).

⁵⁵ DALLAS, TEX. CODE §§ 46-6 to -8 (2016).

⁵⁶ FORT WORTH, TEX. CODE §§ 17-48, -67, -86 (2016).

⁵⁷ SAN ANTONIO, TEX. CODE §§ 2-554, -592, -621 (2016).

⁵⁸ PLANO, TEX. CODE § 2-11 (2016).

⁵⁹ San Antonio's ordinance prohibits discrimination in city government employment only. Ordinances in the other four localities prohibit discrimination in government and private sector employment within the city. *See* notes 60-66, *infra*.

⁶⁰ HOUSTON, TEX. CHARTER §§ 2-451, -452 (2016).

⁶¹ EL PASO, TEX. CHARTER § 6.1.11 (2016).

⁶² Arlington, Tex., Diversity, <http://www.arlington-tx.gov/employment/diversity/> (last visited Feb. 10, 2017).

⁶³ HUMAN RESOURCES MANUAL, CORPUS CHRISTI, TEX. 35 (2015), *available at* <http://www.cctexas.com/Assets/Departments/Human-Resources/Files/employmentpolicies/HRpolicyManual.pdf>.

⁶⁴ Alexa Ura, Edgar Walters & Jolie McCullough, *Comparing Nondiscrimination Protections in Texas*, TEXASTRIBUNE.COM, June 9, 2016, <https://www.texastribune.org/2016/06/09/comparing-nondiscrimination-ordinances-texas/>.

⁶⁵ Mesquite, Tex., Human Resources, <https://www.cityofmesquite.com/453/Human-Resources> (last visited Feb. 10, 2016).

⁶⁶ Waco, Tex., Human Resources Dep't, <http://www.waco-texas.com/jobs> (last visited Feb. 10, 2017).

⁶⁷ AUSTIN, TEX. CODE §§ 5-1-71, -2-5, -3-6, -4-3 (remedies available through administrative enforcement for employment and public accommodations discrimination are unclear; in cases of housing discrimination, complainants may recover compensatory damages, attorney's fees, and court costs through administrative enforcement).

administrative bodies. In addition, ordinances in Austin,⁷² Dallas,⁷³ and Fort Worth⁷⁴ provide a private right action for housing discrimination, allowing individuals who have experienced discrimination to file a lawsuit in court. Generally, the ordinances provide for more robust remedies (including monetary damages, attorney's fees and court costs) in cases of housing discrimination than are available in cases of employment or public accommodations discrimination.⁷⁵ The non-discrimination ordinances and policies that apply only to local government employees do not provide similar enforcement mechanisms.⁷⁶

Over 520,000 workers in Texas, aged 16 and older, identify as LGBT (3.9% of the state's workforce). An estimated 15% of the state's workforce is protected from employment discrimination based on sexual orientation or gender identity under local ordinances and personnel policies.⁷⁷ An estimated 18% of Texas's total adult population is also protected from discrimination in other areas, such as housing and public accommodations, under the broader non-discrimination ordinances in Austin, Dallas, Fort Worth, San Antonio, and Plano.⁷⁸

Parenting Rights. Same-sex couples face legal barriers to securing parental rights in Texas. The Texas Department of State Health Services has issued guidance explaining the circumstances in which same-sex couples are to be recognized as parents on birth certificates.⁷⁹ The guidance states that both parents will automatically be listed on a child's birth certificate when one parent is the child's birth mother, and the birth mother is married to her female partner at the time of the child's birth.⁸⁰ The guidance does not address whether an unmarried female

⁶⁸ DALLAS, TEX. CODE §§ 17-49, -69, 90 (remedies available through administrative enforcement for employment and public accommodations discrimination are unclear; in cases of housing discrimination, complainants may recover monetary damages and attorney's fees through administrative enforcement).

⁶⁹ FORT WORTH, TEX. CODE §§ 17-49, -69, -90 (remedies available through administrative enforcement for employment and public accommodations discrimination are unclear; in cases of housing discrimination, complainants may recover monetary damages and attorney's fees through administrative enforcement).

⁷⁰ SAN ANTONIO, TEX. CODE §§ 2-558, -639 (administrative enforcement for employment and housing discrimination only; remedies available are unclear).

⁷¹ PLANO, TEX. CODE § 2-11(l), (m) (remedies available through administrative enforcement are unclear).

⁷² AUSTIN, TEX. CODE § 5-1-101 (a court may award damages including compensatory and punitive damages, attorney's fees, and court costs).

⁷³ DALLAS, TEX. CODE § 17-99 (a court may award damages including actual and punitive damages, attorney's fees, and court costs).

⁷⁴ FORT WORTH, TEX. CODE § 17-99 (a court may award damages including actual and punitive damages, reasonable attorney's fees, and court costs).

⁷⁵ See notes 67-69, 72-74, *supra*.

⁷⁶ See notes 60-66, *supra*.

⁷⁷ For workforce data: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 16, 2017) (enter Texas or locality name and select go, click on income tab, choose Selected Economic Characteristics for the 2015 American Community Survey).

⁷⁸ For population data, search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Oct. 18, 2016) (enter Texas or locality name and select go, search for "age by sex", choose Age by Sex for the 2015 American Community Survey).

⁷⁹ Tex. Dep't of State Health Svcs, Revised Policies and Procedures: Vital Records from Married Same-Sex Couples, Aug. 24, 2015, <https://www.dshs.texas.gov/vs/RevisedPolicies-VitalRecords-Same-Sex-Couples.doc>.

⁸⁰ Id. at 1.

partner of the birth mother will be recognized as a parent.⁸¹ As a result, it is likely more difficult for unmarried female couples to be recognized as parents on birth certificates than for unmarried heterosexual couples. Under Texas law, an unmarried man who is not biologically related to a child will automatically be considered the father of a child born to his female partner if he consented to the use of a donor's sperm to conceive the child.⁸²

The guidance also addresses birth certificates for children born out of gestational agreements. Gestational agreements streamline the legal process for adopting a child born to a surrogate.⁸³ The guidance states that same-sex parents will both be recognized on birth certificates of children born out of gestational agreements so long as the parents “are a same-sex couple...legally authorized to be the intended parents of the child as provided by Texas Family Code, ch. 160, subchapter 1.”⁸⁴ Although this language indicates that same-sex parents will be treated like different-sex parents for children born out of gestational agreements, the statute appears to effectively preclude male same-sex couples from using gestational agreements. The statute allows a court to validate the agreement only if a doctor certifies that “the intended mother is unable to carry a pregnancy to term” due to unreasonable health risks.⁸⁵ If male same-sex couples are unable to rely on gestational agreements in Texas, they must go through legal proceedings for termination of the surrogate's parental rights and adoption after the child's birth.⁸⁶

The guidance further provides that birth certificates listing both same-sex parents will be issued for adopted children so long as the parents have a court order or formal certificate of adoption showing that they are the adoptive parents.⁸⁷

Non-biological parents in Texas may choose to formalize legal rights to their children through adoption since a birth certificate alone does not establish parentage.⁸⁸ A “second parent adoption” allows the non-biological/non-adoptive parent to adopt a child without affecting the biological/adoptive parent's rights.⁸⁹ Many counties in Texas have allowed second parent adoptions for same-sex couples.⁹⁰

Safe Schools. Texas has an anti-LGB curriculum law, requiring that teachers provide anti-LGB instruction during sex education lessons. Specifically, the law requires teachers to instruct

⁸¹ *See id.*

⁸² TEX. FAM. CODE § 160.7031 (2016).

⁸³ TEX. FAM. CODE § 160.754 (2016).

⁸⁴ Tex. Dep't of State Health Svcs, Revised Policies and Procedures: Vital Records from Married Same-Sex Couples, *supra* note 79 at 1-2.

⁸⁵ *Id.* § 160.756(b)(2).

⁸⁶ *See* TRADITIONAL SURROGACY, MOOREANDHUNT.COM, <http://www.mooreandhunt.com/Surrogacy-Assisted-Reproduction/Traditional-Surrogacy.shtml> (last visited Feb. 14, 2017).

⁸⁷ Tex. Dep't of State Health Svcs, Revised Policies and Procedures: Vital Records from Married Same-Sex Couples, *supra* note 79 at 1.

⁸⁸ *Legal Recognition of Lesbian, Gay, Bisexual, and Transgender (LGBT) Parents in Texas* at 4, NAT'L CTR. FOR LESBIAN RIGHTS (2009), http://www.nclrights.org/wp-content/uploads/2013/07/TX_custody_pub_FINAL.pdf.

⁸⁹ *Id.* at 7.

⁹⁰ *Id.*

students that “homosexuality is not a lifestyle acceptable to the general public and homosexual conduct is a criminal offense.”⁹¹ Further, Texas’s anti-bullying law does not affirmatively protect LGBT students. Texas’s anti-bullying statute prohibits bullying (including cyber-bullying) and harassment at school.⁹² Unlike many state anti-bullying laws, Texas’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.⁹³

Despite the lack of statutory protections, the Texas Education Agency and numerous school districts have adopted protections for LGBT students. In 2010, the Texas Education Agency amended its Code of Ethics to prohibit educators from discriminating against students based on sexual orientation.⁹⁴ In addition, more than 900 Texas school districts have defined prohibited gender-based harassment in their policies to include harassment based on sexual orientation or gender identity.⁹⁵ The school districts amended their anti-harassment policies to include sexual orientation and gender identity in response to recommendations issued by the Texas Association of School Boards.⁹⁶

Gender Marker and Name Changes. Texas allows individuals to change their gender marker and name on identification documents, however Texas is one of nineteen states that does not address gender marker changes by statute.⁹⁷ Statutory guidelines in other states set clear, statewide rules governing the availability and procedure for obtaining gender marker changes.

In Texas, a legal name change can be obtained by submitting a petition to the court.⁹⁸ All applicants must submit documentation regarding any criminal records and be fingerprinted.⁹⁹ Birth certificates can be amended with a written request and a court order.¹⁰⁰

To amend a gender marker or name on a birth certificate, individuals in Texas must provide certification from a medical professional or an affidavit in support of the change signed by a

⁹¹ TEX. HEALTH & SAFETY CODE § 163.002 (2016).

⁹² TEX. EDUC. CODE § 37.001-.313.

⁹³ 18 states and the District of Columbia have enumerated anti-bullying laws that include sexual orientation and gender identity along with other personal characteristics. State Maps, GLSEN.ORG, <http://www.glsen.org/article/state-maps> (last visited Oct. 19, 2016).

⁹⁴ 19 TEX. ADMIN. CODE §247.2(2)(E)(2016).

⁹⁵ John Wright, *Over 900 Texas School Districts Quietly Ban Anti-LGBT Bullying*, TEXASOBSERVER.ORG, Sept. 28, 2015, <https://www.texasobserver.org/texas-school-districts-add-comprehensive-lgbt-protections/>.

⁹⁶ *Id.*

⁹⁷ Swathi Narayanan, *Correcting Gender on IDs a Painful Hurdle for Transgender Texans*, REPORTING TEXAS (May 3, 2016), <http://reportingtexas.com/for-transgender-texans-correcting-the-gender-on-id-documents-can-be-a-painful-hurdle>.

⁹⁸ TEX. FAM. CODE §§ 45.101 to 45.103.

⁹⁹ TEX. FAM. CODE §§ 45.102 to 45.106; TEX. DEP’T OF PUB. SAFETY, CHANGE INFORMATION ON YOUR DRIVER LICENSE OR ID CARD, <http://www.dps.texas.gov/DriverLicense/changes.htm>.

¹⁰⁰ NAT’L CTR. FOR TRANSGENDER EQUALITY, ID Documents Center: Texas, <http://www.transequality.org/documents/state/texas>.

physician or older relative, as well as additional documentation such as a court order granting the change or a Social Security record indicating the change.¹⁰¹

To change a name on a driver's license, individuals must provide a document verifying the name change to any driver's license office in the state.¹⁰² To change a gender marker on a driver's license, individuals must present to a driver's license office either a certified court order granting the gender change or an amended birth certificate reflecting the correct gender.¹⁰³

Despite policies that make it possible for transgender people to modify gender markers on their identification documents, individuals may face obstacles to doing so because the state does not have statutes that address gender changes. For example, in August 2016, a Texas appeals court upheld a lower court's refusal to issue a gender marker change for a transgender man.¹⁰⁴ The court held that although Texas law "appears to contemplate the possibility of orders relating to gender designation, it does not itself authorize or provide any procedures or rules for Texas courts to issue such orders."¹⁰⁵

Other protections. Texas includes "sexual preference" in its hate crimes law, providing for enhanced penalties for crimes committed because of the victim's sexual orientation.¹⁰⁶ In addition, the Texas Department of Public Safety collects and analyzes data on hate crimes committed in the state, including crimes motivated by the victims' sexual orientation or gender identity.¹⁰⁷

Texas lacks several other legal protections for LGBT people that have been enacted in other states, including a law that prohibits health insurance providers from discriminating based on sexual orientation or gender identity,¹⁰⁸ a law that requires such providers to offer coverage for transition-specific medical care,¹⁰⁹ and a ban on professional therapists engaging in efforts to change people's sexual orientation or gender identity.¹¹⁰

¹⁰¹ Vital Stats. Unit, Tex. Dep't of State Health Svcs, VS170 Application to Amend Certificate of Birth, *available at* <https://www.dshs.texas.gov/vs/reqproc/faq/amendment.shtm> (click on "VS170 Application to Amend Certificate of Birth") (last visited Feb. 13, 2017).

¹⁰² Tex. Dep't of Pub. Safety, Change Information on Your Driver License or ID Card, <http://www.dps.texas.gov/DriverLicense/changes.htm> (last visited Feb. 13, 2017).

¹⁰³ *Id.*

¹⁰⁴ *In re Rocher*, No. 14-15-00462-CV, 2016 WL 4131626 (Tex. App. Aug. 2, 2016); *see also* Erin Rook, *Texas court says transgender man has no right to change gender on ID*, LGBTQ NATION (Aug. 14, 2016), <http://www.lgbtqnation.com/2016/08/texas-court-says-transgender-man-no-right-change-gender-id>.

¹⁰⁵ *In re Rocher*, No. 14-15-00462-CV, 2016 WL 4131626, at *1 (Tex. App. Aug. 2, 2016).

¹⁰⁶ TEX. CRIM. PROC. CODE art. 42.014.

¹⁰⁷ *See* TEX. DEP'T OF PUB. SAFETY, 2015 CRIME IN TEXAS 47 (2016), *available at* <https://www.dps.texas.gov/crimereports/15/citCh6.pdf>.

¹⁰⁸ At least 16 states and the District of Columbia have such laws (research on file with the authors).

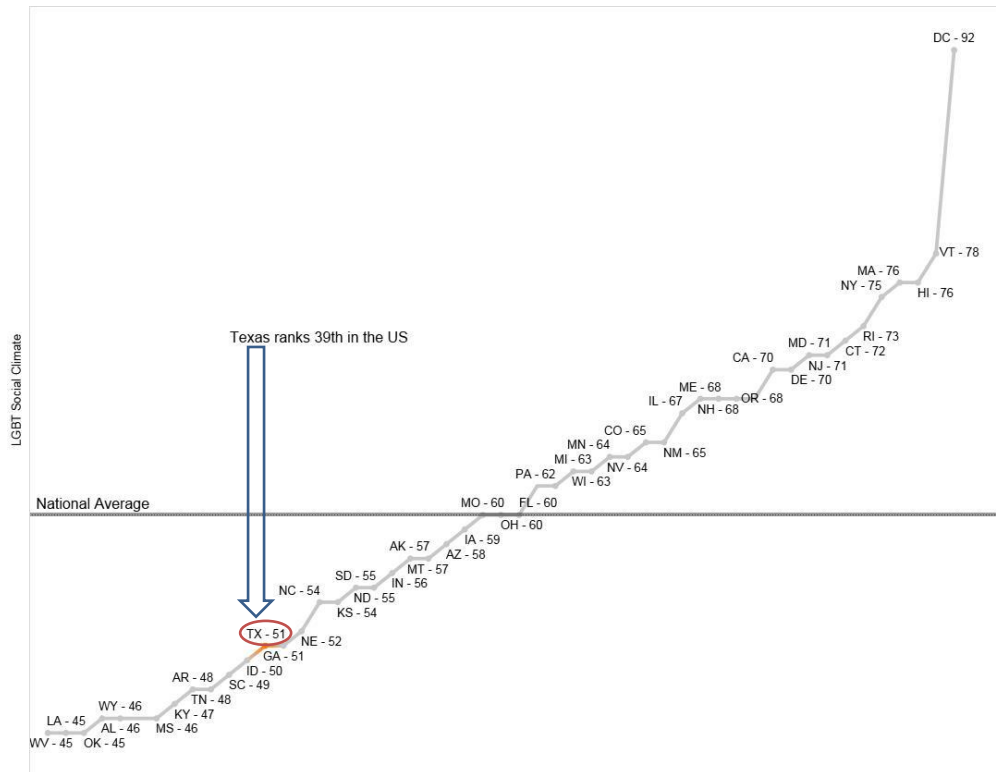
¹⁰⁹ At least 15 states and the District of Columbia have such laws (research on file with the authors).

¹¹⁰ Four states in the U.S. and the District of Columbia have such bans, which generally prohibit therapists and other medical professionals from trying to change a youth's sexual orientation or gender identity (research on file with the authors).

C. 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.¹¹¹ The Index summarizes four items about acceptance of LGB people and attitudes toward LGB rights: 1) approval of marriage for same-sex couples; 2) approval of adoption rights for same-sex couples; 3) approval of laws that protect lesbians and gay men from employment discrimination; and 4) belief that homosexuality is a sin.¹¹² The Index provides climate scores for each state and the District of Columbia, denoting relative levels of social and political support for LGBT people across the U.S., with higher index scores indicating greater levels of social acceptance of LGB people and lower scores indicating lower acceptance. Out of all states, Texas ranks 39th in its level of support for LGBT people and issues. Of the sixteen states in the South, Texas ranks fifth, behind Kansas, Missouri, North Carolina, and Virginia, and with the same score as Georgia.

Figure I.c. State Rankings on LGBT Social & Political Climate Index Scores (2014)



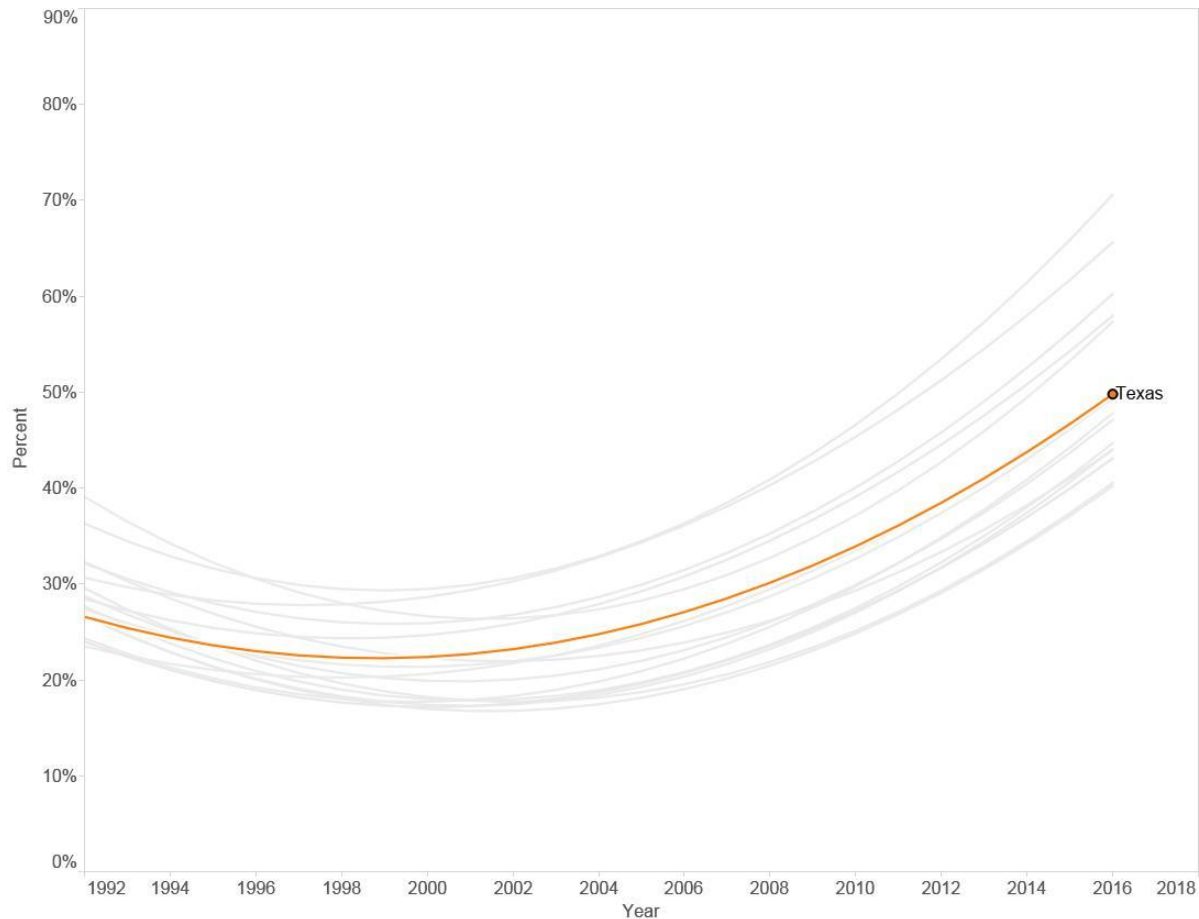
Although Texas ranked below the national average in terms of support for LGBT people in 2014, attitudes toward LGBT people in the state are improving over time. Figure I.d. shows an increase in acceptance of same-sex marriage in Texas, among other southern states, from 1992 to the

¹¹¹ HASENBUSH ET AL., *supra* note 10 at 5.

¹¹² *Id.* at 6.

present day.¹¹³ In 1992, only 27% of Texas residents supported marriage equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise. A separate poll of Texans conducted by the University of Texas in November 2015 showed the state as evenly split between support and opposition of marriage equality at 47%.¹¹⁴ The present day estimate of support is currently at 53%. If this trend continues, then it is projected that 57% of Texans will be supportive of marriage equality in 2018.

Figure I.d. Public Support for Same-Sex Marriage in the South, 1992-2016



In addition, recent public opinion surveys also indicate that a majority of Texans support expanding non-discrimination protections to include LGBT people. The 2015 American Values Survey, a survey of 7,099 Americans across the United States, found that public attitudes in

¹¹³ Longitudinal changes in support for marriage equality are rooted in two cause: generational change and attitude change. ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST., TRENDS IN PUBLIC SUPPORT FOR MARRIAGE SAME-SEX COUPLES BY STATE (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Supportfor-Same-Sex-Marriage-2004-2014.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. Gregory B. Lewis and Charles W. Gossett, *Changing Public Opinion on Same-Sex Marriage: The Case of California*, 36 POLITICS & POLICY 4 (2008).

¹¹⁴ The Texas Politics Project, Univ. Tex. Austin, Opinion on Gay Marriage (November 2015), <https://texaspolitics.utexas.edu/set/opinion-gay-marriage-november-2015>.

Texas have also remained clearly in favor of policies that would protect LGBT people from discrimination with 70% supporting such policies and 25% opposing them.¹¹⁵ A majority (59%) of Texans 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. Estimates based on a 2011 survey of the American public found that 73% of Texans are supportive of Congress passing laws to protect LGBT people from employment discrimination.¹¹⁶

Figure I.e. Support among Texans for LGBT Inclusive Non-Discrimination Policies

Source: American Values Survey, 2015

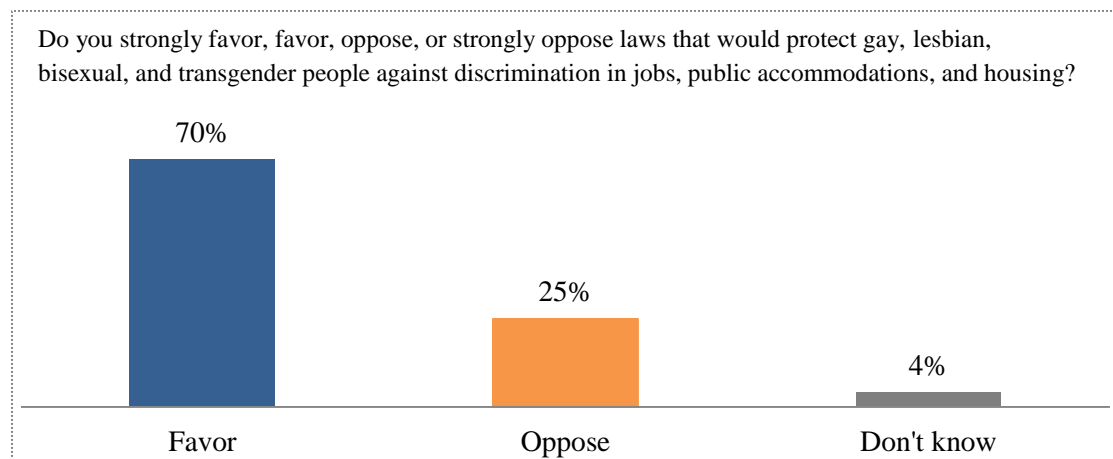
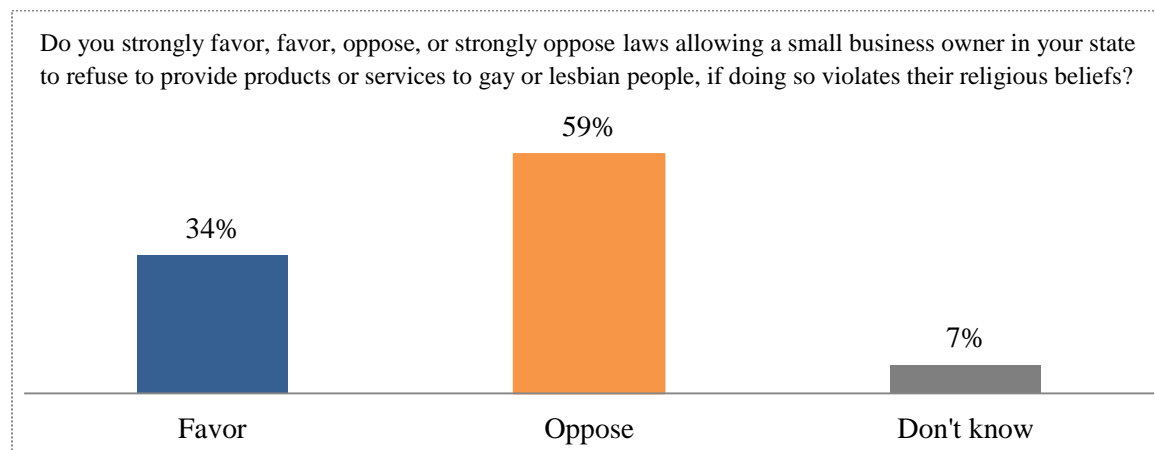


Figure I.f. Support among Texans for Laws Permitting Small Businesses to Refuse Services to Lesbian and Gay People

Source: American Values Survey, 2015



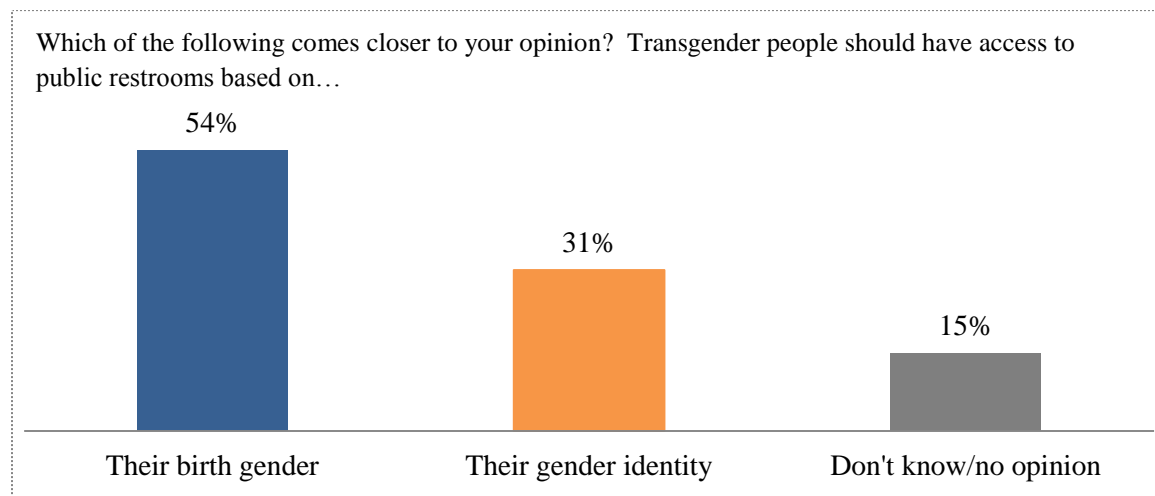
¹¹⁵ Of the survey, 471 respondents were Texas residents. DANIEL COX & JOANNA PIACENZA, WHERE TEXANS STAND ON LGBT NONDISCRIMINATION LAWS (2015), available at <http://www.prii.org/spotlight/where-texans-stand-on-lgbt-nondiscrimination-laws/>.

¹¹⁶ Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, RESEARCH & POLITICS 1 (Oct.-Dec. 2015).

While Texans are supportive of LGBT-inclusive non-discrimination policies, the most recent public opinion survey by the University of Texas, conducted in February 2017, suggests that there remain mixed attitudes about transgender people's access to public restrooms consistent with their gender identity.¹¹⁷ Overall, 31% of respondents to the February 2017 survey said that they believe transgender people should be able to access restrooms consistent with their gender identity, 54% said they believe transgender people should access restrooms according to their biological sex, and 15% said they didn't know or had no opinion on the issue.

Figure I.g. Opinions of Texans on Transgender People and Access to Public Restrooms

Source: The Texas Politics Project, February 2017



A dividing line among Texans is their partisanship as shown in Figure I.h., with 11% of Republicans believing that transgender people should use restrooms based on their gender identity. Fifty-one percent of Texas Democrats think that transgender people should use restrooms based on their gender identity and 35% of Independents think the same (Figure I.h.). Ideology is also a dividing line on this subject with 72% of liberals supportive compared to 10% of conservatives (Figure I.i.). Ideological differences among Texans are more distinctive than partisan differences, though almost equal percentages of Republicans and conservatives are supportive.

¹¹⁷ The Texas Politics Project, University of Texas at Austin, Public Restrooms Access for Transgender People, February 2017, <https://texaspolitics.utexas.edu/set/transgender-access-public-restrooms-february-2017#overall>.

Figure I.h. Opinions of Texans on Transgender People and Access to Public Restrooms, by Partisanship

Source: The Texas Politics Project, February 2017

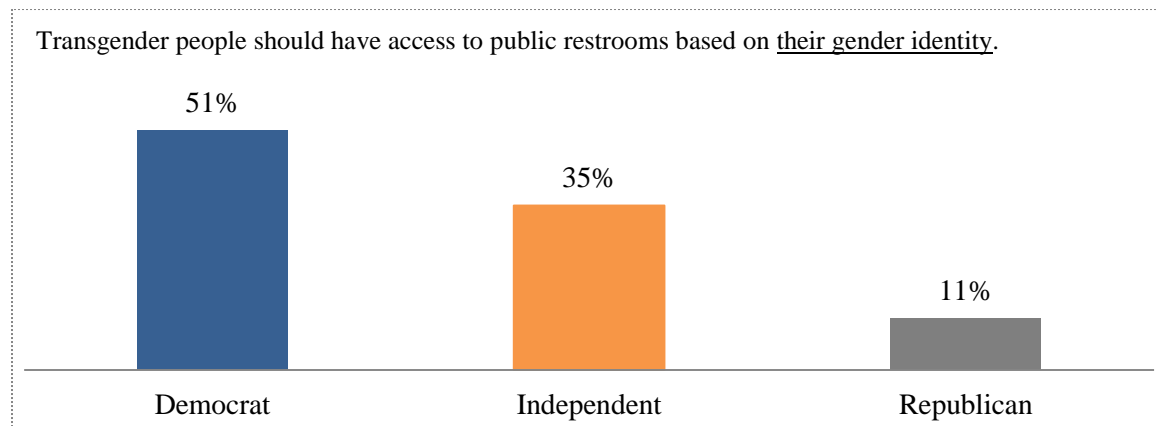
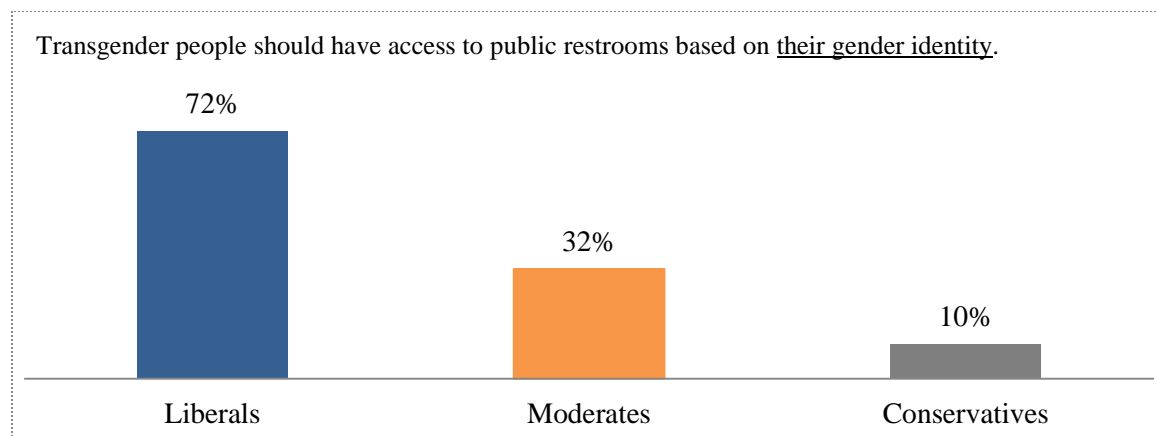


Figure I.i. Opinions on Transgender People and Access to Public Restrooms, by Ideology

Source: The Texas Politics Project, February 2017

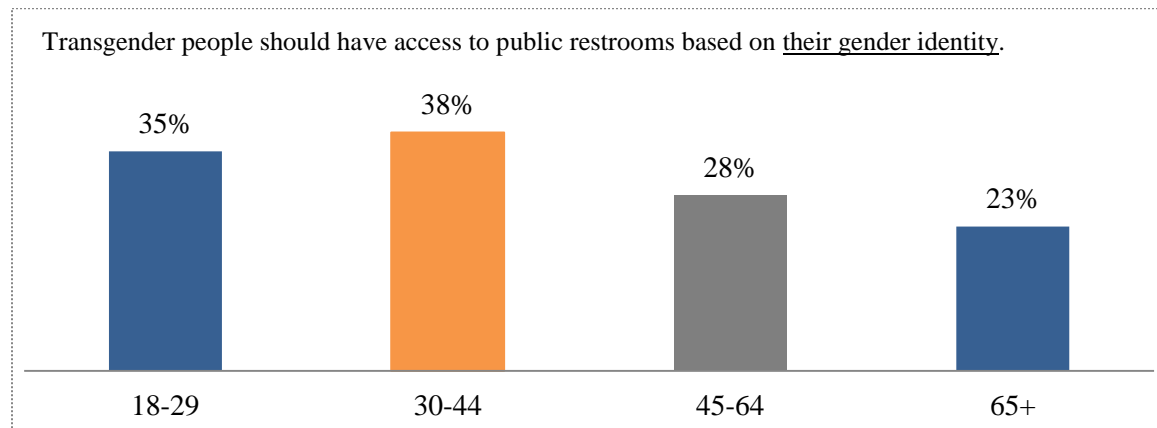


Younger age cohorts generally are more supportive of LGBT issues than older age cohorts.¹¹⁸ Figure I.j. plots beliefs that transgender people should use public restrooms based upon their gender identity by age group. Younger Texans are more supportive than older Texans, with 35% of 18-29 year olds supportive compared to 23% of Texans who are 65 years old or older.

¹¹⁸ ANDREW R. FLORES, WILLIAMS INST., NATIONAL TRENDS IN PUBLIC OPINION ON LGBT RIGHTS IN THE UNITED STATES (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/POP-natl-trends-nov-2014.pdf>.

Figure I.i. Opinions on Transgender People and Access to Public Restrooms, by Age Group

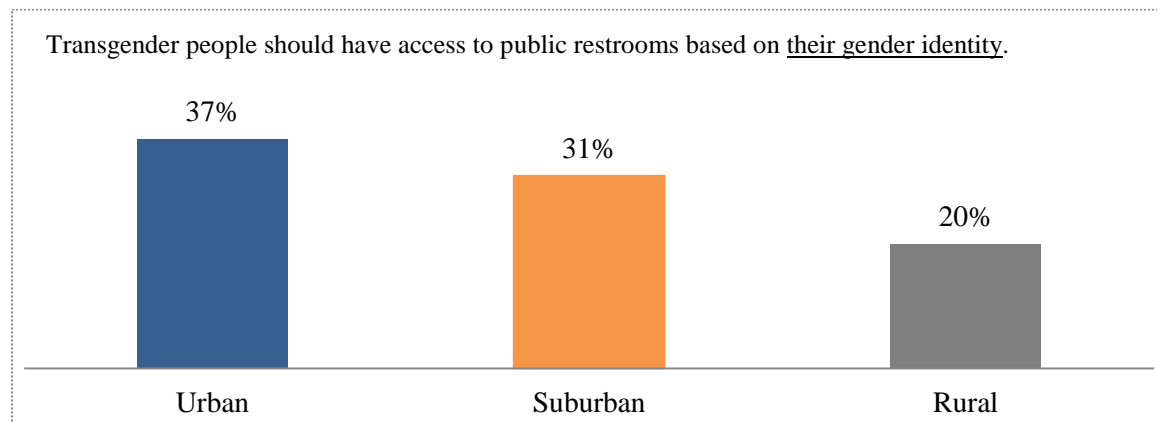
Source: The Texas Politics Project, February 2017



In addition, Texans in urban and suburban areas are more supportive of transgender people using public restrooms based on their gender identity than Texans in rural areas. Figure I.j. plots beliefs that transgender people should use public restrooms based on their gender identity by location. Thirty-seven percent of Texans in urban areas and 31% of Texans in suburban areas were supportive, compared to 20% of survey participants in rural areas.

Figure I.i. Opinions on Transgender People and Access to Public Restrooms, by Location

Source: The Texas Politics Project, February 2017



In summary, Texas as compared to other states, remains on the low end in its level of support for LGBT people. However, residents of Texas have become more supportive of LGBT issues over time.

SECTION II. STIGMA AND DISCRIMINATION AGAINST LGBT ADULTS AND YOUTH IN TEXAS

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

A. *Discrimination and Harassment Documented in Surveys, Court Cases, and Anecdotal Reports*

1. Employment Discrimination and Harassment

Discrimination against LGBT workers in the U.S., as well as in Texas, has been widely documented. For example, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents reported having been treated unfairly by an employer in hiring, pay, or promotions.¹¹⁹ The 2015 U.S. Transgender Survey, the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity.¹²⁰

Surveys of LGBT individuals in Texas find similar levels of reported discrimination and harassment. For example, in response to the 2015 U.S. Transgender Survey, 15% of the transgender respondents from Texas who had ever been employed said that they had lost a job because of their gender identity or expression.¹²¹ In the year prior to the survey, 27% of the transgender respondents from Texas who were employed or applied for a job during the year said that they had experienced employment discrimination (fired, denied a promotion, or not hired)

¹¹⁹ *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

¹²⁰ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

¹²¹ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY: TEXAS STATE REPORT 1 (2017), available at <https://www.equalitytexas.org/wp-content/uploads/2017/01/TX-State-Report-FINAL-1.26.17.pdf>.

because of their gender identity or expression.¹²² In addition, of respondents from Texas who were employed within the year prior to the survey, 13% reported being verbally harassed, 3% reported being sexually harassed, and 1% reported being physically harassed at work because of their gender identity or expression.¹²³ Additionally, analysis of public opinion data indicates that 79% of Texas residents, non-LGBT and LGBT, believe that LGBT people experience discrimination in the state.¹²⁴

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

- In 2017, a police officer with the Humble Independent School District Police Department filed a lawsuit against the department for harassment she experienced at work related to her sex and sexual orientation. According to the officer, she was asked “inappropriate questions about [her] sexual orientation and lifestyle” and was told that she “looked gay.” One supervisor reportedly told her that she “need[ed] to learn how to jump a battery...if [she wanted] to be a man.” A co-worker informed the officer that she was being treated badly because of her sexual orientation. Within a year being hired, the officer was told that she needed to “resign or quit.” The case is ongoing.¹²⁵
- In 2016, a gay corrections officer in Collin County, Texas was fired one month after he filed a lawsuit¹²⁶ alleging that his employer discriminated against him because of his sexual orientation.¹²⁷ He alleged that other officers harassed him and jeopardized his safety by not responding to his radio calls.¹²⁸ The officer voluntarily dismissed the case, but his claim of retaliation is being investigated by the EEOC.¹²⁹
- In 2016, several employees working in the energy sector in Texas reported to the media that they experienced discrimination and harassment based on their sexual orientation at work.¹³⁰ One worker reported being constantly harassed and asked when he was going to quit his job, while another worker hid his sexual orientation because he feared that he

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

¹²⁵ Keri Blakinger, *Former Humble ISD Officer Presses Sexual Discrimination Suit*, CHRON, Feb. 13, 2017, <http://www.chron.com/news/houston-texas/houston/article/Former-Humble-ISD-officer-presses-sexual-10929968.php>.

¹²⁶ *Boyd v. Collin County*, Case 4:16-cv-00361 (E.D.Tex. 2016).

¹²⁷ John Wright, *Gay Corrections Officer Alleges Retaliation for Filing Suit*, TEXAS OBSERVER (Aug. 4, 2016), <https://www.texasobserver.org/gay-corrections-officer-alleges-retaliation-for-filing-suit/>.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Jordan Blum, *In Energy Sector, Coming Out ‘Can Put You at Risk’*, HOUSTON CHRONICLE, Jan. 16, 2016, <http://www.houstonchronicle.com/news/houston-texas/houston/article/In-energy-sector-coming-out-can-put-you-at-risk-6764343.php>.

would be fired if he were open about being gay at work.¹³¹ Others reported a “lavender ceiling” for LGBT workers in the industry.¹³²

- In 2015, a transgender man from San Antonio settled his claim of gender identity discrimination against his employer. The employee reported that he was subjected to derogatory comments about transgender people, including physical threats, and co-workers placed a sign with an anti-gay slur on his chair. The employee requested reassignment, but was fired a week after making the request.¹³³
- In 2014, a transgender woman who had been employed by a department store in Texas filed a lawsuit against the store alleging that she had been discriminated against because of her gender identity.¹³⁴ The employee said that her co-workers harassed her, she was forced to use the men’s restroom, and she was referred to by male pronouns.¹³⁵ In January 2015, the store withdrew a motion to dismiss that it had previously filed in court arguing that gender identity discrimination is not prohibited by Title VII of the Civil Rights Act of 1964.¹³⁶ In March 2015, the store settled the case for an undisclosed amount.¹³⁷
- In 2014, an Austin police detective, who is a lesbian, filed a lawsuit against the department for sexual harassment. The detective alleged that her male colleagues would “show her pornographic images of women, make explicit and inappropriate comments and ask [her] if she would have sex with [female victims or suspects they encountered].”¹³⁸
- In 2013, a gay man reported that he was harassed, passed over for a promotion, and fired by a bank in Texas because of his sexual orientation. The man reported that he endured years of harassment based on his sexual orientation at the bank, including the HR Director telling him he was “messed up in [his] head.” When seeking a promotion, he said he was told by the company that his work performance was great, but that the other candidate, who had a wife and children, was a better fit for the bank’s image. Later, he was fired.¹³⁹

¹³¹ *Id.*

¹³² *Id.*

¹³³ Mitch Kellaway, *Texas Trans Man Settles Hard-Fought AT&T Discrimination Case*, ADVOCATE (April 8, 2015), <http://www.advocate.com/politics/transgender/2015/04/08/texas-trans-man-settles-hard-fought-att-discrimination-case>.

¹³⁴ Katy Steinmetz, *Does Saks Have the Legal Right to Fire a Transgender Employee?*, TIME.COM, Jan. 12, 2015, <http://time.com/3664705/saks-transgender-lawsuit/>.

¹³⁵ *Id.*

¹³⁶ Chris Geidner, *As Justice Department Weighs in, Saks Backs down on Claim in Trans Discrimination Case*, BUZZFEED.COM, Jan. 26, 2015, <http://www.buzzfeed.com/chrisgeidner/saks-withdraws-motion-asserting-no-existing-federal-legal-pr#cpqbYZLZOG>.

¹³⁷ Jonathan Randles, *Saks Settles High-Profile Trans Discrimination Suit*, 360LAW.COM, Mar. 4, 2015, <https://www.law360.com/articles/627725/saks-settles-high-profile-trans-discrimination-suit>.

¹³⁸ Ciara O’Rourke, *Austin Officer’s Suit Alleges Retaliation*, AUSTIN AMERICAN-STATESMAN, Dec. 30, 2014, at B1.

¹³⁹ David Taffet, *Granbury Bank Employee’s Firing Shows Need for ENDA*, DALLASVOICE.COM, Jan. 4, 2013, <http://www.dallasvoice.com/granbury-bank-employees-firing-shows-enda-10135804.html>.

- In 2012, a transgender employee of a truck driving school filed a lawsuit alleging that he¹⁴⁰ had been discriminated against by the school because of his gender identity.¹⁴¹ The employee reported that a regional manager who visited the site one day asked a supervisor, referring to the employee, “What is that and who hired that?” and stated that the company “did not hire ‘cross genders.’”¹⁴² The regional manager also suggested that there would be consequences for the supervisor who had hired the employee, telling her, “‘We will deal with you for hiring that.’”¹⁴³ In 2014, a federal court in Texas granted summary judgment in favor of the employer after determining that the evidence presented by the employee was “related to the [employee’s] status as a transgender person...not [his] conformance with gender stereotypes.”¹⁴⁴ As such, the court held that the employee was not protected by Title VII.¹⁴⁵
- An academic study published in 2011 found evidence of hiring discrimination against gay men in Texas. In the controlled study, the researcher sent matched resumes, one with a signal of gay identity and the other without, in response to 1,769 job postings in seven states. In Texas, employers were significantly less likely to follow up on the resume that signaled that the applicant was gay than to follow up on the resume without the signal. The difference in callback rates in Texas was the second largest of all states tested.¹⁴⁶
- In a 2009 court case, an architect who worked for the Harris County Hospital District alleged that his supervisors made derogatory comments about his sexual orientation and LGBT people. According to the architect, his supervisors told him that his “‘type’ was a ‘weak link’ and that ‘hiring his type was the biggest mistake [they] had ever made,’” and made inappropriate comments about a gay football player’s suicide. The court found in favor of the employer, in part because discrimination based on sexual orientation was not prohibited by federal or state law.¹⁴⁷
- In 2009, a lesbian public school teacher in Texas reported to the ACLU that she was subjected to a hostile work environment because of her sexual orientation.¹⁴⁸
- In 2009, a public school teacher in Texas reported to the ACLU that he was censored for expressing pro-LGBT viewpoints.¹⁴⁹

¹⁴⁰ The court used female pronouns for the plaintiff, who was assigned birth at female but identified as a male at the time of the suit. The pronouns have been changed in this summary to reflect the plaintiff’s gender identity.

¹⁴¹ *Eure v. Sage Corp.*, 61 F. Supp. 3d 651 (W.D. Tex. 2014).

¹⁴² *Id.* at 656.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 662.

¹⁴⁵ *Id.*

¹⁴⁶ Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586 (2011).

¹⁴⁷ *Lee v. Harris County Hosp. Dist.*, No. 01-12-00311-CV, 2013 Tex. App. LEXIS 12778 (Ct. App. Tex. Oct. 15, 2013).

¹⁴⁸ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

¹⁴⁹ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

- In 2009, a lesbian public school guidance counselor from Texas reported to the ACLU that she had been subjected to a hostile work environment because of her sexual orientation and was censored for expressing pro-LGBT viewpoints.¹⁵⁰
- In 2009, a teacher at a privately run learning center in Texas reported to the ACLU that he had been experiencing harassment based on his sexual orientation at his workplace for years. Approximately one year after he began teaching at the center in 2006, a student asked him if he was gay. He truthfully answered “yes.” The assistant principal, having heard about the conversation between the teacher and the student, implored the teacher to keep his sexual orientation a secret because his job would be in danger if he were “out” at work and he might also be in physical danger. In response, the teacher wrote a letter stating that he felt it would be disingenuous and would work a disservice to the students if he acted like there was something shameful about being gay. Thereafter, three students were allowed to transfer out of his class and his request to conduct a diversity training was denied. The teacher reported that the discrimination made him feel isolated at work and unable to interact with his colleagues.¹⁵¹
- In 2008, a federal court in Texas held that a transgender job applicant could proceed with her claim of sex discrimination under Title VII of the Civil Rights Act of 1964.¹⁵² According to the complaint, the plaintiff had applied for a job using her preferred (female) name, and received an offer which she accepted.¹⁵³ Soon after, the employer rescinded the job offer stating that it “had concluded that [the applicant] had ‘misrepresented’ herself during the interview process.”¹⁵⁴ The employer further explained in a letter to the applicant, “You presented yourself as female and we later learned you are male.”¹⁵⁵ Following the district court’s ruling, the parties agreed to mediation.¹⁵⁶

2. Discrimination in Housing and Public Accommodations

Discrimination against LGBT people in Texas has also been observed in housing and public accommodations. In response to the 2015 U.S. Transgender Survey, 22% of transgender respondents in Texas reported that they had experienced housing discrimination (being evicted or denied housing) because of their gender identity or expression, and 12% experienced homelessness in the last year because they were transgender.¹⁵⁷ Of those respondents who had

¹⁵⁰ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

¹⁵¹ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

¹⁵² *Lopez v. Rover Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008).

¹⁵³ *Id.* at 656.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 668.

¹⁵⁷ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY: TEXAS STATE REPORT, *supra* note 121 at 2.

been homeless at some point in the past year, nearly one third (30%) said they avoided staying in a shelter because they were afraid of being mistreated because they were transgender.¹⁵⁸ In addition, of respondents who visited a place of public accommodation where staff or employees knew or suspected they were transgender, 24% experienced at least one form of discrimination or harassment because of their gender identity or expression within the year prior to the survey.¹⁵⁹ Twelve percent of respondents reported that they were denied equal treatment or service, 16% reported that they were verbally harassed, and 1% reported that they had been physically attacked.¹⁶⁰

Instances of housing and public accommodations discrimination against LGBT people in Texas have also been documented in court cases, administrative complaints, and the media.

Documented examples include:

- In 2016, a same-sex couple reported to the media that a bakery in Longview, Texas, refused to bake them a cake for their wedding because it was “not in line with their values.”¹⁶¹
- In 2016, a gay man was denied a room for rent by a homeowner who told him, “No LGBT people please.... I do not support people who are against humanity...sorry.”¹⁶²
- In 2015, a gay couple reported to the media that they were told to leave an overnight rental home in Galveston, Texas, because of their sexual orientation. According to the man who had booked the room, the owner asked him where his wife was, and when he explained that the other man was his partner, the owner “told them to get out.” The owner told the media that she was ““completely of my legal realms and morals.””¹⁶³
- In 2015, a gay couple was asked to leave a public pool by an attendant who saw them kiss. The men reported that heterosexual couples were also displaying affection at the pool, but were not reprimanded or asked to leave. Following the incident, one man’s mother posted about it on social media, including a video that her son captured, and received threats of violence in response.¹⁶⁴
- In 2014, a transgender woman was turned away from a women’s shelter in Dallas because she had not undergone gender reassignment surgery. The woman filed a

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* Percentages reporting each type of discrimination do not add up to 24% because some respondents reported experiencing more than one type of discrimination.

¹⁶¹ Glen Evans, *Same-Sex Couple Denied Cake by Longview Bakery*, LONGVIEW NEWS-JOURNAL, Feb. 24, 2016, <https://www.news-journal.com/news/2016/feb/24/same-sex-couple-cake-refusal-dehumanized-us/>.

¹⁶² Josh Chapin, *Houston Man Rejected by Airbnb Lister for Being Gay*, KHOU, July 6, 2016, <http://www.khou.com/news/local/houston-man-rejected-by-airbnb-for-being-gay/265778192>.

¹⁶³ *Gay Couple Claim They Were Evicted from Texas Rental Home Due to Sexuality*, ABC ACTION NEWS, Apr. 30, 2015, <http://6abc.com/news/gay-couple-we-were-evicted-from-rental-home-due-to-sexuality/688750/>.

¹⁶⁴ Jeff Paul, *Backlash After Gay Couple Called Out For PDA At Pool*, CBS DFW, Aug. 6, 2015, <http://dfw.cbslocal.com/2015/08/06/backlash-after-gay-couple-called-out-for-pda-at-pool/>.

complaint with the Fair Housing Office under the city's housing non-discrimination ordinance.¹⁶⁵ No further details about the case were available.

- In 2014, a gay couple reported to the media that they were asked to never return to a restaurant in Pittsburg, Texas, while they were paying for their meal. According to the men as well as the restaurant's owner, the waitress told them, "We like men to act like men and for ladies to act like ladies," and, "We just don't like fags." When a reporter asked the owner, and the waitress's father, what a man or a woman should act like, he responded, a man is "not supposed to act like a woman. He's not supposed to come in here in a dress."¹⁶⁶
- In 2013, the U.S. Department of Housing and Urban Development found a Texas trailer park in violation of the sex non-discrimination requirements of the Fair Housing Act.¹⁶⁷ The management had not permitted a transgender woman to wear women's clothing in common areas, and then gave her notice that her RV site agreement would not be renewed. After the HUD determination, the U.S. Department of Justice brought an action against the park management, which was settled in 2014 through mediation. The park agreed to amend and post its rules "to prohibit management from refusing entrance or applying different terms and conditions based on 'sex' or 'familial status.'"¹⁶⁸

B. Bullying and Family Rejection of LGBT Youth

1. Bullying and Harassment of LGBT Youth Documented in Surveys

a. Middle School and High School

Data indicate that LGBT youth in Texas face harassment, bullying, and exclusion in secondary and post-secondary schools.

The Centers for Disease Risk Control and Prevention (CDC) recently published an analysis of 2015 Youth Risk Behavior Survey (YRBS) data on LGB youth from multiple states and certain large urban school districts, including Houston, TX and Fort Worth, TX, which included a

¹⁶⁵ Anna Waugh, *Jodielynn Wiley Says She was Turned Away for a 2-year Housing Program at the Shelter Because She Hasn't Had Gender Reassignment Surgery*, DALLASVOICE.COM, May 2, 2014, <http://www.dallasvoice.com/transgender-woman-files-discrimination-complaint-dallas-salvation-army-10172167.html>.

¹⁶⁶ *Couple Says They Were Asked Not to Come Back to East Texas Restaurant Because They Are Gay*, KTLV, May 27, 2014, <http://www.kltv.com/story/25624630/couple-says-they-were-asked-not-to-come-back-to-east-texas-restaurant-because-they-are-gay>.

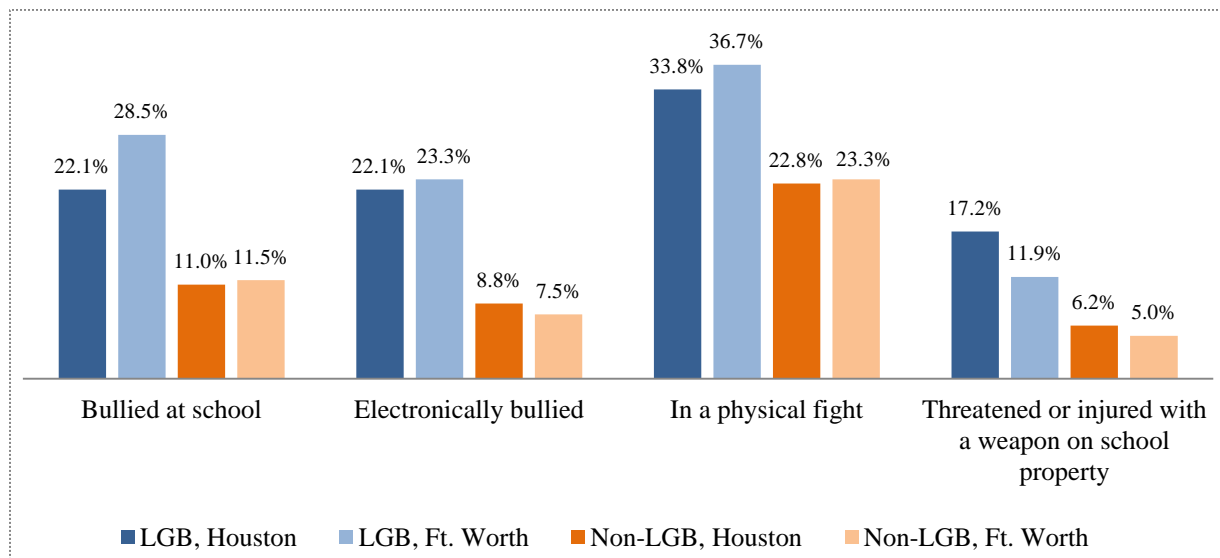
¹⁶⁷ HUD v. George Toone and In Toone Services LLC, FHEO Nos. 06-12-1130-8; 06-12-1363-8 (Aug. 15, 2013), <https://portal.hud.gov/hudportal/documents/huddoc?id=13HUDVTOONE.PDF>.

¹⁶⁸ USA v. Toone, Mediated Settlement Order, Case 6:13-cv-00744-KNM (E.D.Tex. July 7, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/07/21/toonesettle.pdf>

measure of sexual orientation on their surveys.¹⁶⁹ This analysis compared LGB to non-LGB 9th through 12th graders on a variety of indicators of health and wellbeing.¹⁷⁰ The 2015 Houston YRBS data indicate that LGB youth in the city experience higher rates of being bullied and threatened with violence than non-LGB youth.

Figure II.a. 12-month Teasing & Bullying of High School Students in Houston and Fort Worth Independent School Districts, Texas, by Sexual Orientation

Source: 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, 2016*



LGB students in Houston and Fort Worth were more likely to report being bullied at school (Houston: 22.1% v. 11.0%; Fort Worth: 28.5% v. 11.5%)¹⁷¹ and electronically bullied (Houston: 22.1% v. 8.8%; Fort Worth: 23.3% v. 7.5%)¹⁷² in the 12 months prior to the survey than non-LGB students. In addition, LGB students in both cities were more likely to report being in a fight in the 12 months prior to the survey (Houston: 33.8% v. 22.8%; Fort Worth: 36.7% v. 23.3%)¹⁷³ and were more likely to report being threatened or injured with a weapon on school property (Houston: 17.2% v. 6.2%; Fort Worth: 11.9% v. 5.0%).¹⁷⁴ LGB students in both cities were also more likely than non-LGB students to report missing school because they felt unsafe at

¹⁶⁹ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83 (2016).

¹⁷⁰ The study also compared students who said they were “not sure” of their sexual orientation to LGB and non-LGB students. We have not included the “not sure” students in our analysis; and focus only on students who identified as LGB or non-LGB.

¹⁷¹ *Id.* at 103.

¹⁷² *Id.* at 104.

¹⁷³ *Id.* at 99.

¹⁷⁴ *Id.* at 98.

least once in the month prior to the survey (Houston: 17.7% v. 8.3%; Fort Worth: 16.4% v. 6.0%).¹⁷⁵

Findings from the 2015 Houston and Fort Worth YRBS are consistent with YRBS findings from 25 states and 18 other large urban school districts.¹⁷⁶ In addition, a 2011 CDC meta-analysis of YRBS data collected from 2001 through 2009 also found that, nationally, LGB students were more likely to experience bullying and violence at school than non-LGB students, suggesting that bullying is a chronic problem.¹⁷⁷

Bullying and harassment of LGBT youth has also been documented in Texas, beyond Houston and Fort Worth. For instance, the 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 78% of respondents from Texas said they had experienced verbal harassment based on their sexual orientation at school, and 58% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.¹⁷⁸ Many students also reported experiencing physical harassment based on their sexual orientation (35%) or gender identity (26%) at school in the year prior to the survey.¹⁷⁹ In addition, 18% of respondents reported that they had experienced physical assault at school because of their sexual orientation and 12% of respondents said they had experienced physical assault because of their gender identity at school in the year prior to the survey.¹⁸⁰

Further, 65% of transgender student respondents from Texas reported that they were unable to use the bathroom or locker room at school that aligns with their gender identity, and 64% were prevented from using their preferred name or pronouns in school.¹⁸¹ Only 1 in 3 students reported having access to a Gay-Straight Alliance or similar club in school.¹⁸²

Of students who were bullied or harassed at school, only 60% of students reported the incident to school staff.¹⁸³ Less than one third (30%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.¹⁸⁴

Additionally, in response to the U.S. Transgender Discrimination Survey, 73% of survey respondents from Texas who were perceived to be transgender while in grades K-12 experienced

¹⁷⁵ *Id.* at 102.

¹⁷⁶ *Id.*

¹⁷⁷ *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*, *supra* note 376 at 11.

¹⁷⁸ GLSEN, SCHOOL CLIMATE IN TEXAS 1 (2017),

<https://www.glsen.org/sites/default/files/Texas%20State%20Snapshot%20-%20NSCS.pdf>. The survey included 714 respondents from Texas.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 2.

¹⁸³ *Id.* at 1.

¹⁸⁴ *Id.*

verbal, physical, or sexual harassment at school, and 14% said the harassment was so severe that they had to leave school.¹⁸⁵

Recent instances of discrimination against LGBT students in Texas have also been documented in the media. For example, in 2015, a public middle school in Texas banned students from wearing LGBT-supportive t-shirts to school. More than a dozen students wore t-shirts that said “Gay O.K.” to school in order to raise awareness of LGBT bullying and harassment. According to the students, a classmate was persistently harassed after coming out as bisexual, and the administration failed to intervene. The students who wore the shirts were forced to change or go home.¹⁸⁶ In separate incidents, two private high schools in Texas forced LGBT students to hide their identities. One school banned students from vocalizing support for same-sex marriage and prohibited student athletes from dating other students of the same sex.¹⁸⁷ The other school reportedly told a student that he had go “back into the closet” or he would not be allowed to participate in extracurricular activities.¹⁸⁸

b. Higher Education

Several universities in Texas have measured LGBT inclusion on their campuses using surveys or other methods. These studies show that LGBT students experience stigma and discrimination on college campuses in the state. For example, in 2012, Texas A&M University conducted a campus climate survey of graduate students.¹⁸⁹ The survey found that 14% of all students reported observing inappropriate behaviors (such as hostile comments and discriminatory treatment) based on sexual orientation and 10% of all students reported observing inappropriate behaviors based on gender identity or expression.¹⁹⁰ Of those who reported observing such behavior, 31% said they observed inappropriate behavior based on sexual orientation daily or weekly, and 24% said they observed inappropriate behavior based on gender identity or expression daily or weekly.¹⁹¹ In addition, 4% of all students reported experiencing inappropriate behavior based on sexual orientation and 3% of all students reported experiencing inappropriate behavior based on gender identity.¹⁹² Of those who reported experiencing such behavior, 29% said they experienced inappropriate behavior based on sexual orientation daily or

¹⁸⁵ SANDY JAMES ET AL., *supra* note 228.

¹⁸⁶ Dominic Holden, *Students Should Not Have Been Punished For “Gay O.K.” Shirts, District Said*, BUZZFEED, June 8, 2015, https://www.buzzfeed.com/dominicholden/students-improperly-punished-for-wearing-gay-ok-shirts-distr?utm_term=.tdOpgOPNZ#.apXBQEGJ5.

¹⁸⁷ Cyd Zeigler, *Texas College Bans Gay Athletes from Dating or Supporting Same-Sex Marriage*, OUT SPORTS, May 19, 2015, <http://www.outsports.com/2015/5/18/8620517/letourneau-gay-athletes-ban-ncaa>.

¹⁸⁸ Hannah Smothers, *A Gay Student Left His Private School to Avoid Discrimination*, TEXAS MONTHLY, Feb. 6, 2015, <http://www.texasmonthly.com/the-daily-post/a-gay-student-left-his-private-school-to-avoid-discrimination/>.

¹⁸⁹ GRAD. & PROF. STUDIES, TEX. A&M UNIV., EXECUTIVE SUMMARY: GRADUATE CAMPUS CLIMATE SURVEY SPRING 2012 3 <http://ogaps.tamu.edu/OGAPS/media/media-library/documents/Campus%20Climate%20Survey/Executive-Summary9-41.pdf> (last visited Feb. 15, 2017).

¹⁹⁰ *Id.* at 3, 15.

¹⁹¹ *Id.* at 15.

¹⁹² *Id.* at 3, 16.

weekly, and 10% said they experienced inappropriate behavior based on gender identity or expression daily or weekly.¹⁹³

In addition, since 2012, the University of Texas at Austin has tracked bias complaints filed with the Campus Climate Response Team (CCRT).¹⁹⁴ Over the period from 2012-2015, CCRT received 868 bias complaints.¹⁹⁵ Of the total number, 63 complaints reported incidents of sexual orientation bias, 51 complaints reported incidents of gender expression bias, and 47 complaints reported incidents of gender identity bias.¹⁹⁶ Complainants can report multiple forms of bias in one complaint, so there may be overlap among reports of sexual orientation, gender expression, and gender identity bias.

2. Family Rejection

For many youth, the challenges that they face at school are compounded by unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.¹⁹⁷ 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

¹⁹³ *Id.* at 16.

¹⁹⁴ Univ. of Tex. Austin, Campus Climate Response Team, <http://diversity.utexas.edu/ccrt/> (last visited Feb. 15, 2017).

¹⁹⁵ UNIV. OF TEX. AUSTIN, 2014-2015 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/y428bn4y2jibxda5l27ngcrpx8l72upd> (last visited Feb. 15, 2017); UNIV. OF TEX. AUSTIN, 2013-2014 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/88ccrqlayd41b1nzcqios7z3izkrepol3>, (last visited Feb. 15, 2017); UNIV. OF TEX. AUSTIN, 2012-2013 CAMPUS CLIMATE TREND REPORT 1, available at <https://utexas.app.box.com/s/tos93jxvybi0dfw6v87wrdsnjl1t6yh3t0> (last visited Feb. 15, 2017).

¹⁹⁶ UNIV. OF TEX. AUSTIN, 2014-2015 CAMPUS CLIMATE TREND REPORT, *supra* note 196 at 14; UNIV. OF TEX. AUSTIN, 2013-2014 CAMPUS CLIMATE TREND REPORT, *supra* note 196 at 14, 21 26; UNIV. OF TEX. AUSTIN, 2012-2013 CAMPUS CLIMATE TREND REPORT, *supra* note 196 at 10.

¹⁹⁷ *E.g.*, Darrel Higa, Marilyn J. Hoppe, Taryn Lindhorst, Shawn Mincer, Blair Beadnell, Diane M. Morrison, Elizabeth A. Wells, Avry Todd & Sarah Mountz, *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 YOUTH SOC'Y 1, 8 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 788 (2006); Anthony R. D'Augelli, Arnold H. Grossman & Michael T. Starks, , *Parents Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 J. MARRIAGE & FAMILY 474 (2005); Les Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RESEARCH 329 (2004); Brian N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 733 (2002); Bryan E. Robinson, Lynda Henley Walters & Patsy Skeen , *Responses of Parents to Learning that their Child is Homosexual and Concern over AIDS: A National Survey*, 1 J. HOMOSEXUALITY 59, 67 (1989); CHRISTY MALLORY, BRAD SEARS, AMIRA HASENBUSH & ALEXANDRA SUSMAN, WILLIAMS INST., ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

being LGBT (18%).¹⁹⁸ 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.¹⁹⁹

¹⁹⁸ 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.

¹⁹⁹ *Id.*

SECTION III. IMPACT OF STIGMA AND DISCRIMINATION ON LGBT INDIVIDUALS

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

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

A. *Economic Instability*

1. Wage Gaps for LGBT People

Wage gap analysis has been a traditional method used by economists to measure employment discrimination against women, people of color, and LGBT people. 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%.²⁰⁰ For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.²⁰¹ Klawitter concluded that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men but not for lesbians.”²⁰² A simple comparison²⁰³ of median incomes in Texas suggests that men in same-sex couples also may face a wage gap. The median income of men in same-sex couples in the state is 9% lower than the median income of men in different-sex marriages.²⁰⁴

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

²⁰⁰ Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUST. REL. 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

²⁰¹ *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

²⁰² *Id.* at 21.

²⁰³ Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

²⁰⁴ The median income of women in same-sex couples in Texas is higher than that of women in different-sex marriages, but lower than the median income of men with either same-sex or different-sex partners. ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: TEXAS 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TexasCensus2000Snapshot.pdf>.

than lesbians, and that straight men are more likely to be in wage-determining senior positions than women.²⁰⁵ Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.²⁰⁶ 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.²⁰⁷ Finally, it is important to keep in mind that most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.²⁰⁸

In addition, a forthcoming study based on representative data from 27 states, finds “clear evidence that self-identified transgender individuals have significantly lower employment rates and household incomes and significantly higher poverty rates than non-transgender individuals.”²⁰⁹ The study concludes that transgender adults experience a “household income penalty” equivalent to 12% of annual household income.²¹⁰

A growing body of research supports that for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2015 study found that the overall wage gap for men of color in same-sex couples was greater than what the sum of the race and sexual orientation wage gaps would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers.”²¹¹

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with a sexual orientation non-discrimination law, men and women in same-sex couples had a wage premium (3% and 2% respectively) and they earned approximately 0.3% more for each year the policy was in effect.²¹² Similarly, two 2011 studies

²⁰⁵ Klawitter, *supra* note 200 at 21-22. Klawitter also notes that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in more highly regulated government sector jobs, but this pattern is not observed for lesbians—who have significant earnings premiums in the private and non-profit sectors, but none in government employment.

²⁰⁶ *Id.* at 22.

²⁰⁷ LOTTA SAMELIUS & ERIK WÅGBERG, 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.

²⁰⁸ M. V. LEE BADGETT & ALYSSA SCHNEEBBAUM, THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

²⁰⁹ Carpenter et al., *Transgender Status, Employment, and Income* (forthcoming 2017), at 9 (on file with authors).

²¹⁰ *Id.*

²¹¹ Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUSTR. REL. 59, 96 (2015).

²¹² Gary J. Gates, Cal. Center for Pop. Research, *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>.

reported a significant impact of state non-discrimination laws on annual earnings²¹³ and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men -- especially in private-sector jobs.²¹⁴ Furthermore, a 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and employment by 2% for gay men.²¹⁵

2. Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have higher household incomes, those averages can mask that LGBT people are also disproportionately poor²¹⁶ and that poverty is concentrated in certain groups within the LGBT community such as female couples, people of color, transgender people, youth, and the elderly. For example, key findings from a 2013 study on poverty in the LGBT community include:

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

Similarly, research looking at the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have enough money to feed themselves or their family, and nearly one half of LGB adults aged 18-44 who are raising children (46%) received food stamps.²¹⁷

²¹³ Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 Soc. Forces 1005 (2011).

²¹⁴ 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).

²¹⁵ 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, statute of limitations, and attorney's fees increase the positive impact on gay men's wages. *Id.*

²¹⁶ M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBBAUM, WILLIAMS INST., *NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

²¹⁷ Taylor N.T. Brown, Adam P. Romero & Gary J. Gates, WILLIAMS INST., *FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

The U.S. Transgender Discrimination Survey found that, nationally, one-third of respondents were living at or near the federal poverty line, twice the rate of poverty in the general population (29% v. 14%).²¹⁸ Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of white respondents.²¹⁹

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.”²²⁰

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.²²¹ 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 South, with a poorer social climate and fewer legal protections.²²² For example, while same-sex couples with children in all states face an income disadvantage when compared to their different-sex married counterparts, that income gap widens from \$4,300 in the states with protective laws states to \$11,000 in states like Texas that lack such laws.²²³

The report, *The LGBT Divide*, shows similar disadvantages for LGBT people in Texas, including:

- Thirty percent of LGBT adults and 26% of non-LGBT adults in Texas report having a household income below \$24,000.²²⁴

²¹⁸ JAMES ET AL., *supra* note 120 at 144.

²¹⁹ *Id.*

²²⁰ BADGETT, DURSO & SCHNEEBAUM, *supra* note 216 at 25.

²²¹ 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* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

²²² Press Release, Williams Inst., *LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States* (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: “It’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.”

²²³ HASENBUSH ET AL., *supra* note 221.

²²⁴ *Id.* at 37.

- Over one-quarter of LGBT adults (26%) in Texas report that they do not have enough money for food compared to less than one-fifth of non-LGBT adults (19%).²²⁵
- Similarly, 26% of LGBT adults in Texas report not having enough money to meet their health care needs compared to 20% of non-LGBT adults.²²⁶
- The median household income of same-sex couples with children under age 18 in the home is \$9,200 lower than the median annual household income of married different-sex couples with children (\$77,800 v. \$87,000).²²⁷

The 2015 U.S. Transgender Survey report found that 17% of respondents in Texas were unemployed, and 34% were living in poverty.²²⁸ In addition, 30% of respondents in Texas reported having become homeless at some point in their lives.²²⁹

B. Health Disparities for LGBT People

1. Health Disparities for LGBT Adults

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climates, 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 mood²³⁰ and anxiety disorders,²³¹ attempted suicide,²³² and self-harm²³³ are more common among sexual minorities (LGBs) than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender people.²³⁴ In addition, LGB people are more likely to report tobacco use, drug use, and alcohol

²²⁵ *Id.* at 40.

²²⁶ *Id.* at 41.

²²⁷ Brief of Scholars who Study Same-Sex Couples and Their Families, as Amici Curiae Supporting Respondents, *Pidgeon v. Turner*, No. 15-06988 (Tex. filed Sept. 10, 2015).

²²⁸ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY: TEXAS STATE REPORT 1 (2017), available at <https://www.equalitytexas.org/wp-content/uploads/2017/01/TX-State-Report-FINAL-1.26.17.pdf>.

²²⁹ *Id.*

²³⁰ Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay*, 114 J. ABNORMAL PSYCH. 471 (2005).

²³¹ King et al., *supra* note 230; Wendy B. Bostwick, Carol J. Boyd, Tonda L. Hughes & Sean Esteban McCabe, *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010).

²³² King et al., *supra* note 230; 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).

²³³ Balsam et al., *supra* note 230. 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).

²³⁴ See INSTITUTE OF MEDICINE, *supra* note 233 at 193-97.

disorders than their non-LGB counterparts.²³⁵ As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in Texas indicate that LGBT²³⁶ adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

a. Health Disparities for LGBT Adults in Texas in Texas

One source for assessing health disparities between LGBT and non-LGBT people in Texas is the Texas Behavioral Risk Factor Surveillance System (TX BRFSS).²³⁷ In 2015, Texas included the CDC-recommended sexual orientation and gender identity measures on its BRFSS.²³⁸ We present our analysis of data from Texas 2015 BRFSS below, 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 responses²³⁹ and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking; as well as two other population health indicators (the number of days respondents experienced poor mental health during the month prior to the survey and respondents' experiences of feeling limited in their usual activities because of poor health). In our analyses we include individuals who identified as lesbian, gay, bisexual, or transgender (LGBT) and those who identified as heterosexual/straight and not transgender (non-LGBT).

The proportion of LGBT (n=301) and non-LGBT (n=11,205) people in Texas that reported each health outcome are shown in Figure III.a. below. The proportions are weighted to reflect the population of Texas, as is recommended by the Centers for Disease Control and Prevention when analyzing these data.²⁴⁰

²³⁵ Cochran & Mays, *supra* note 232; AMERICAN LUNG ASSOC., *SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY* (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012).

²³⁶ We are deliberate when using LGBT and LGB in this section. If we are using just LGB, it is because the underlying survey only had a measure of sexual orientation, and did not ask about gender identity.

²³⁷ About BRFSS, U.S. Centers for Disease Control & Prevention, <https://www.cdc.gov/brfss/about/index.htm> (last visited Feb. 2, 2017); Behavioral Risk Factor Surveillance System, Texas Dep't of State Health Services, <https://www.dshs.texas.gov/chs/brfss/> (last visited Feb. 2, 2017). Administered jointly by the CDC and Texas Department of State Health Services, the Texas BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices.

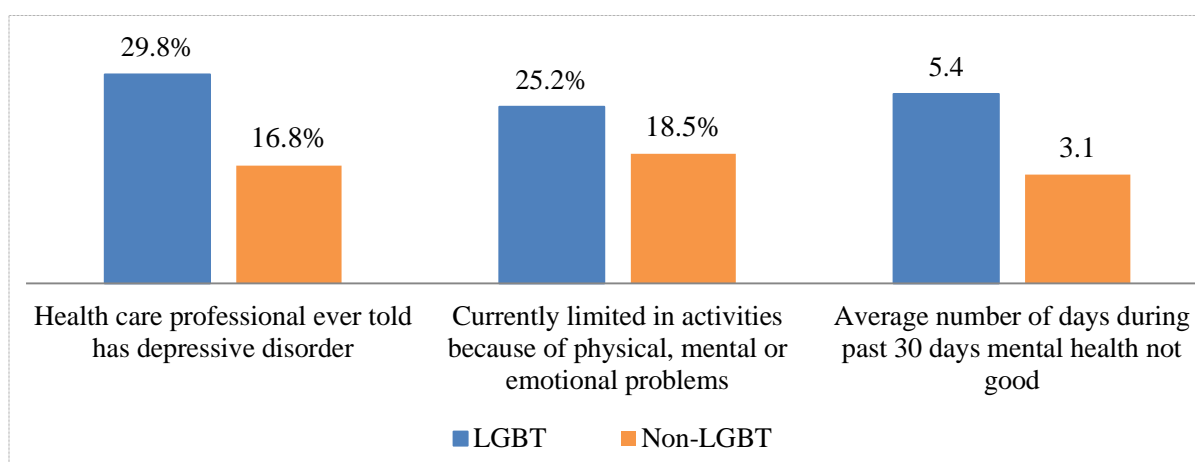
²³⁸ Sexual orientation identity was assessed with the following item: "Do you consider yourself to be (1) straight, (2) lesbian or gay, (3) bisexual." U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, 2015 QUESTIONNAIRE 69 (2014), available at <http://www.cdc.gov/brfss/questionnaires/pdf-ques/2015-brfss-questionnaire-12-29-14.pdf>.

²³⁹ See, e.g., Liu & Alloy, *supra* note 279; Kassel et al., *supra* note 279; Brady & Sonne, *supra* note 279.

²⁴⁰ Behavioral Risk Factor Surveillance System Weighting BRFSS Data: BRFSS 2015, U.S. Centers for Disease Control and Prevention, http://www.cdc.gov/brfss/annual_data/2015/pdf/weighting_the_data_webpage_content.pdf (last visited Dec. 12, 2015). LGB survey respondents in Texas were younger than the heterosexual/straight survey respondents. In order to make "fair" comparisons between sexual orientation groups, we use statistical controls to make the two groups comparable on age and sex.

Mental Health. LGBT adults in the 2015 BRFSS 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 in Texas (29.8% v. 16.8%).²⁴¹ They reported more days of being in poor mental health in the month prior to the survey than non-LGBT respondents (5.4 days v. 3.1 days).²⁴² Also, more LGBT than non-LGBT respondents reported being limited in their activities because of mental, physical, or emotional problems (25.2% v. 18.5%).²⁴³ LGBT respondents, on average, also reported that poor physical or mental health kept them from doing their usual activities for one day more in the prior month than non-LGBT respondents (3.4 days v. 2.2 days).²⁴⁴

Figure III.a. Health Characteristics of Adults in Texas, by Sexual Orientation and Gender Identity
Source: Texas BRFSS, 2015



Smoking. LGBT adults in Texas were more likely to smoke than non-LGBT adults. One in five LGBT adults in Texas (19.9%) were current smokers, compared to 14.9% of non-LGBT adults.²⁴⁵ The difference in smoking rates for LGBT adults and non-LGBT adults was not statistically significant.

Drinking. LGBT adults in Texas were significantly more likely than non-LGBT adults to be binge drinkers (25.5% v. 14.3%).²⁴⁶ Binge drinking is defined as five or more drinks on at least one occasion in the past month for men and four or more drinks for women. LGBT adults also reported being heavy drinkers at a significantly higher rate than non-LGBT adults (14.5% v. 5.5%),²⁴⁷ defined as having more than 14 drinks per week for men and more than seven drinks per week for women.

²⁴¹ AOR (95% CI) = 2.26 (1.43, 3.57).

²⁴² Adjusted b = 2.15, p < 0.05.

²⁴³ AOR (95% CI) = 1.88 (1.22, 2.89).

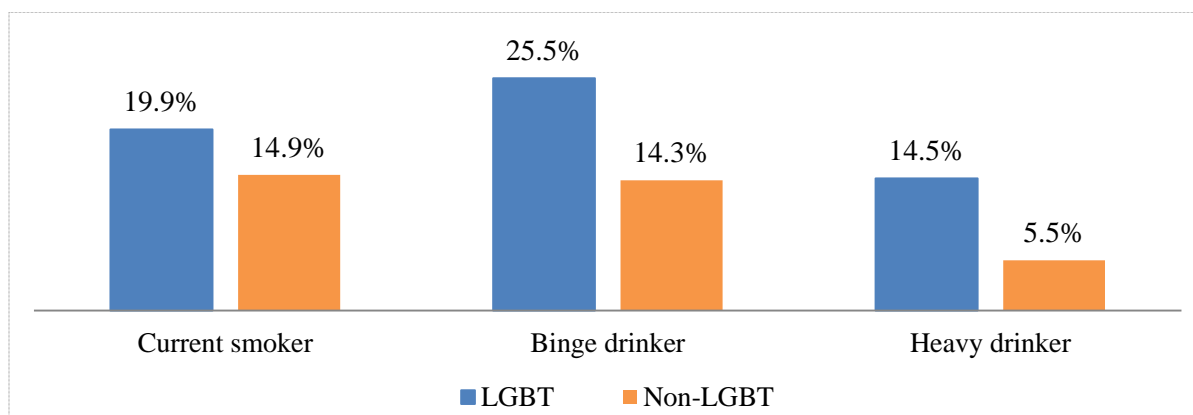
²⁴⁴ Adjusted b = 1.42, p < 0.05.

²⁴⁵ AOR (95% CI) = 1.44 (0.84, 2.45).

²⁴⁶ AOR (95% CI) = 1.74 (1.05, 2.89).

²⁴⁷ AOR (95% CI) = 2.79 (1.61, 4.86).

Figure III.b. Substance Abuse among Adults in Texas, by Sexual Orientation and Gender Identity
Source: Texas BRFSS, 2015



Our findings are generally consistent with analyses of BRFSS data collected in other states and with analyses of National Health Interview Survey data. For example, an analysis of BRFSS data collected in 10 states²⁴⁸ in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts, and gay and bisexual men had higher rates of mental distress and life dissatisfaction than heterosexual men.²⁴⁹ Two studies analyzing BRFSS data from Massachusetts²⁵⁰ and Washington State²⁵¹ similarly 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. An analysis of data from the 2013 National Health Interview Survey found that LGB adults aged 18-64 in the U.S. were more likely to be current smokers (27.2 LG v. 29.5% bisexual v. 19.6% non-LGB). They were also more likely to binge drink than their non-LGB counterparts.²⁵² In addition, bisexual respondents were significantly more likely to report experiencing severe psychological distress in the 30 days prior to the survey than respondents who identified as straight (11.0% v. 3.9%).²⁵³

²⁴⁸ 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 two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the study was based on data collected in the remaining 10 states. John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 AM. J. PREV. MED. 337, 338 (2014).

²⁴⁹ *Id.* at 340.

²⁵⁰ Kerith J. Conron, Matthew J. Mimiaga, Stewart J. Landers, *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUBLIC HEALTH 1953 (2010).

²⁵¹ Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUBLIC HEALTH 460 (2010).

²⁵² Brian W. Ward et al., *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey, 2013*,

⁷⁷ NATIONAL HEALTH STATS. REPORT 1, 4 (2015), available at <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

²⁵³ *Id.*

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

Empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to anti-LGBT policies and unsupportive social climates. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*²⁵⁴ and the Institute of Medicine of the National Academies.²⁵⁵ 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 sexual minorities and transgender individuals compared with heterosexuals.²⁵⁶ Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.²⁵⁷ 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.²⁵⁸

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,²⁵⁹

²⁵⁴ *Healthy People 2020*, DEP'T OF HEALTH AND HUMAN SERV., https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf (last visited Jan. 3, 2016). *Healthy People 2010* identified the gay and lesbian population among groups targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." DEPT. OF HEALTH AND HUMAN SVCS, OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

²⁵⁵ INSTITUTE OF MEDICINE, *supra* note 233 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

²⁵⁶ Ian 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 233.

²⁵⁷ *Id.*; AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

²⁵⁸ See Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

²⁵⁹ E.g., Katie A. McLaughlin, Mark L. Hatzenbuehler & Katherine M. Keyes, *Responses to Discrimination and Psychiatric Disorders among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals*, 100 AM. J. PUBLIC HEALTH 1477 (2010); Ellen D.B. Riggle, Sharon S. Rostosky & Sharon G. Horne, *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 SEXUALITY RESEARCH & SOCIAL POLICY 80 (2009).

including depression²⁶⁰ and psychological distress,²⁶¹ as well as loneliness, suicidal intention,²⁶² deliberate self-harm,²⁶³ and low self-esteem.²⁶⁴ 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.²⁶⁵

For example, a 2016 study by the American Psychological Association linked experiences of discrimination to increased stress and poorer health for LGBT people.²⁶⁶ The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% v. 23%) in the prior 30 days than adults who were non-LGBT.²⁶⁷ Job stability was a current source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults.²⁶⁸ The study also found that many LGBT respondents had experienced discrimination.²⁶⁹ Nearly one-fourth (23%) of the LGBT adults

²⁶⁰ E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. OF COUNSELING PSYCHOL. 302 (2006).

²⁶¹ E.g., Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001).; David M. Huebner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?* 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. OF HEALTH & SOC. BEHAV. 38 (1995).

²⁶² David M. Huebner, Gregory M. Rebchook & Susan M. Kegeles, *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men*, 94 AM. J. OF PUB. HEALTH 1200 (2004).

²⁶³ James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRITISH J. OF PSYCHIATRY 479 (2004).

²⁶⁴ E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being among HIV-positive Latino Gay Men*, 27 HISP. J. OF BEHAV. SCI. 101 (2005).

²⁶⁵ E.g., Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, Wendy B. Bostwick, Tonda L. Hughes, Brady T. West & Carol J. Boyd, *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUBLIC HEALTH 1946 (2010); Mark L. Hatzenbuehler, Katie A. McLaughlin, Katherine M. Keyes & Deborah S. Hasin, *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUBLIC HEALTH 452 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

²⁶⁶ AM. PSYCH. ASSOC., *supra* note 257.

²⁶⁷ *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% v. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% v. 20%).

²⁶⁸ *Id.*

²⁶⁹ The percentage of respondents who were reported as having experienced discrimination said that they had either experienced “at least one of the five day-to-day stressors ‘less than once a year’ or more often; or ever experienced one of nine major forms of discrimination.” The five day-to-day stressors included: 1. You are treated with less courtesy or respect than other people; 2. You receive poorer service than other people at restaurants or stores; 3. People as is 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 relator 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

reported that they had 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 continue their education; and one-third (33%) reporting being unfairly not hired for a job.²⁷⁰

Studies have also linked a lack of legal protections and a poor state social climate to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGB people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws.²⁷¹ A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional ban on marriage for same-sex couples, and rates were unchanged in states that did not pass bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”²⁷² Drawing on these findings and prior research, Hatzenbuehler concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”²⁷³

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

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

unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.). Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology, <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Dec. 5, 2016) (see Measurement with Experience with Discrimination).

²⁷⁰ AM. PSYCH. ASSOC., *supra* note 257 at 6-7.

²⁷¹ Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUBLIC HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. *Id.* at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. *Id.* at 2277.

²⁷² Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 265 at 456. See also, Ben Lennox Kail, Katie L. Acosta & Eric R. Wright, *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUBLIC HEALTH 1101 (2015).

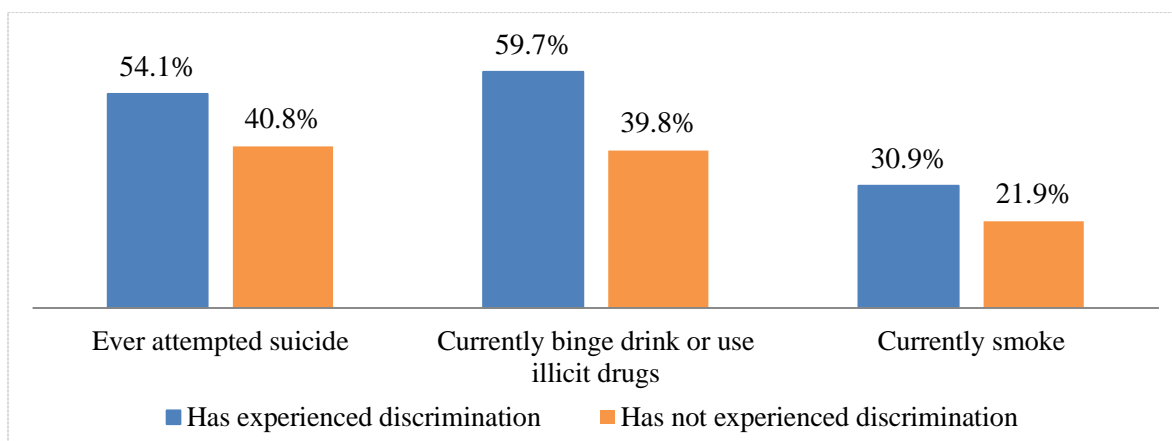
²⁷³ Mark L. Hatzenbuehler, *The Health Consequences of Hate*, COLUMBIA UNIV., Apr. 26, 2016, <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.²⁷⁴

Analysis of data collected from transgender adults in Texas through the 2015 US Transgender Survey found that respondents who had ever held a job and then lost a job due to discrimination were more likely to say that they had ever attempted suicide (54.1% v. 40.8%), currently binge drink or use illicit drugs (59.7% v. 39.8%), and currently smoke (30.9% v. 21.9%) than respondents who did not report such discrimination.²⁷⁵

Figure III.c. Mental Health and Substance Use by Lifetime Employment Discrimination among Transgender Adults in Texas

Source: U.S. Transgender Survey, 2015



Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, and can put them in danger of verbal and physical harassment. For example, a 2008 survey of transgender and gender non-conforming people in Washington, D.C. found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney related problems.²⁷⁶ Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom.²⁷⁷

²⁷⁴ 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).

²⁷⁵ SANDY E. JAMES, JODY L. HERMAN, SUE RANKIN, MARA KEISLING, LISA MOTTET & MA’AYAN ANAFI, NATN’L CENTER FOR TRANSGENDER EQUALITY, *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* (2016), available at <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (last accessed February 27, 2017). The USTS study was based on a national convenience sample of 27,715 transgender and gender non-

conforming people. Additional calculations for this report were completed by the authors at The Williams Institute.

²⁷⁶ 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. 65, 75 (2013).

²⁷⁷ *Id.* at 71, 76.

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health which would heighten observed disparities in less accepting places.²⁷⁸ Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, contribute to LGBT health disparities in Texas.

2. Health Disparities for LGBT Youth

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC analysis of 2015 YRBS data from 25 states and 19 large urban school districts reported disproportionately high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,²⁷⁹ that disfavor LGB youth.²⁸⁰ Analyses of YRBS data from 2001-2009 also indicated sexual orientation disparities in mental health and health risk behaviors, suggesting that intervention efforts to date have been insufficient.²⁸¹ 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.²⁸²

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.²⁸³ 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

²⁷⁸ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 265 at 452.

²⁷⁹ See, e.g., Richard T. Liu & Lauren B. Alloy, *Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study*, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud, Carol A. Paronis, *Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking*, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, *The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse*, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

²⁸⁰ *Id.*

²⁸¹ See, e.g., 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*, *supra* note 376.

²⁸² Michael P. Marshal, Laura J. Dietz, Mark S. Friedman, Ron Stall, Helen Smith, James McGinley, Brian C. Thoma, Pamela J. Murray, Anthony D'Augelli & David A. Brent, *Suicide and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

²⁸³ Julia Raifman et al., *Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, _ JAMA PEDIATRICS _ (2017) [doi: 10.1001/jamapediatrics.2016.4529].

supportive school environments.²⁸⁴ High levels of school-based victimization have been associated with higher levels of illicit drug use and sexual risk behavior.²⁸⁵ Research has also linked unsupportive family environments to depression and suicidality,²⁸⁶ high levels of stress,²⁸⁷ tobacco use,²⁸⁸ and illicit drug use²⁸⁹ 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.²⁹⁰

a. Health Disparities for LGBT Youth in Texas

Data from the 2015 Houston and Fort Worth YRBS suggest that sexual orientation disparities in health observed elsewhere in the U.S. also persist in Houston and Fort Worth, Texas.

As shown in Figure III.d., larger proportions of LGB students in Houston and Fort Worth reported feeling isolated, depressed, and suicidal than non-LGB students. During the 12-months prior to the survey, 47.6% of LGB students in Houston and 64.4% of LGB students in Fort Worth reported feeling so sad or hopeless every day for over two weeks that they stopped doing some of their usual activities.²⁹¹ The rates were much lower for non-LGB students in both

²⁸⁴ Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 27 PEDIATRICS 896 (2011).

²⁸⁵ 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 376 at 11.

²⁸⁶ Another study found that LGBT youth who were rejected by their families in adolescence were 5.9 times more likely to report high levels of depression and 8.4 times more likely to have attempted suicide than LGBT youth who had not been rejected. Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

²⁸⁷ 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).

²⁸⁸ Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

²⁸⁹ Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Sexual Orientation Disparities in Adolescent Drug Use*, 46 ADDICTIVE BEHAVIORS 14 (2015).

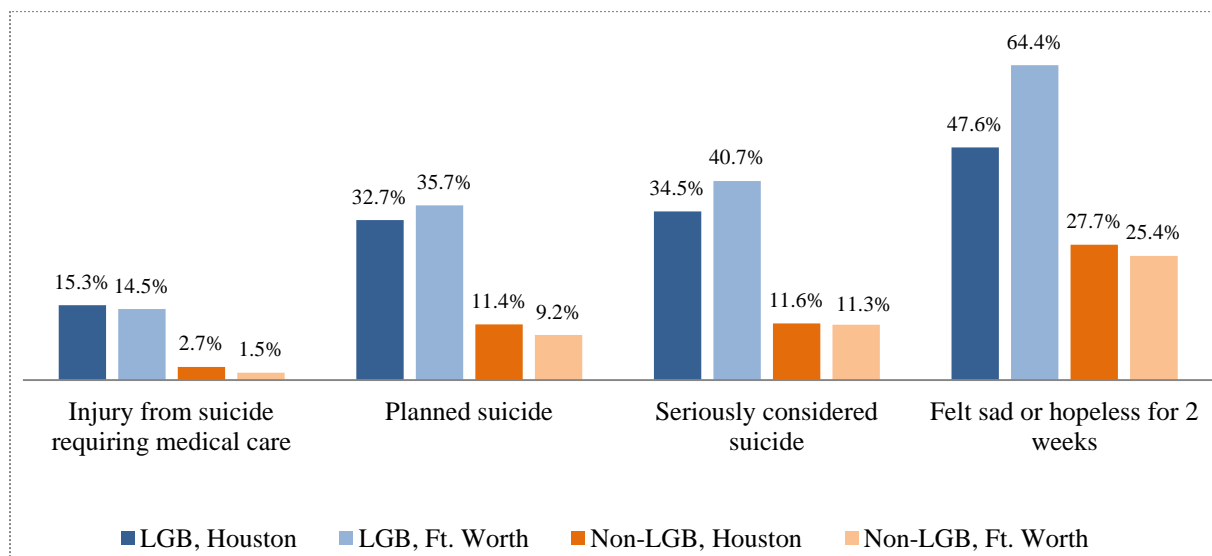
²⁹⁰ Larry Nuttbrock, Sel Hwahng, Walter Bockting, Andrew Rosenblum, Mona Mason, Monica Macri & Jeffrey Becker, *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

²⁹¹ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9 – 12 – United States and Selected Sites, 2015*, *supra* note 169 at 108.

localities (Houston: 27.7%; Fort Worth: 25.4%). An affirmative answer to this question is part of the diagnostic definition of major depressive disorder.²⁹²

Figure III.d. 12-month Depression and Suicidality among Houston and Fort Worth, Texas, High School Students, by Sexual Orientation

Source: 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*



LGB students in Fort Worth were over three as likely to have seriously considered suicide and LGB students in Houston were nearly three times as likely to have seriously considered suicide in the year prior to the survey compared to non-LGB students. More than one-third of LGB students in Houston and Fort Worth reported seriously considering suicide in the 12-months prior the survey (Houston: 34.5%; Fort Worth: 40.7%),²⁹³ and around one-third of LGB students in both cities had made a plan about how to attempt suicide (Houston: 32.7%; Fort Worth: 35.7%).²⁹⁴ About 15% of LGB students in both cities reported being injured from a suicide attempt in a way that had to be treated by a doctor or a nurse (Houston: 15.3%; Fort Worth: 14.5%).²⁹⁵

By comparison, around 11% of non-LGB students in both cities reported seriously considering suicide in the 12-months prior to the survey (Houston: 11.6%; Fort Worth: 11.3%), and similar percentages of non-LGB students in both cities had made a plan about how to do it (Houston:

²⁹² See *Diagnostic Criteria for Major Depressive Disorder and Depressive Episodes*, PSNPALTO.COM, <http://www.psnpalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> (last visited May 4, 2016).

²⁹³ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9 – 12 – United States and Selected Sites, 2015*, *supra* note 169 at 108.

²⁹⁴ *Id.* at 110.

²⁹⁵ *Id.* at 112.

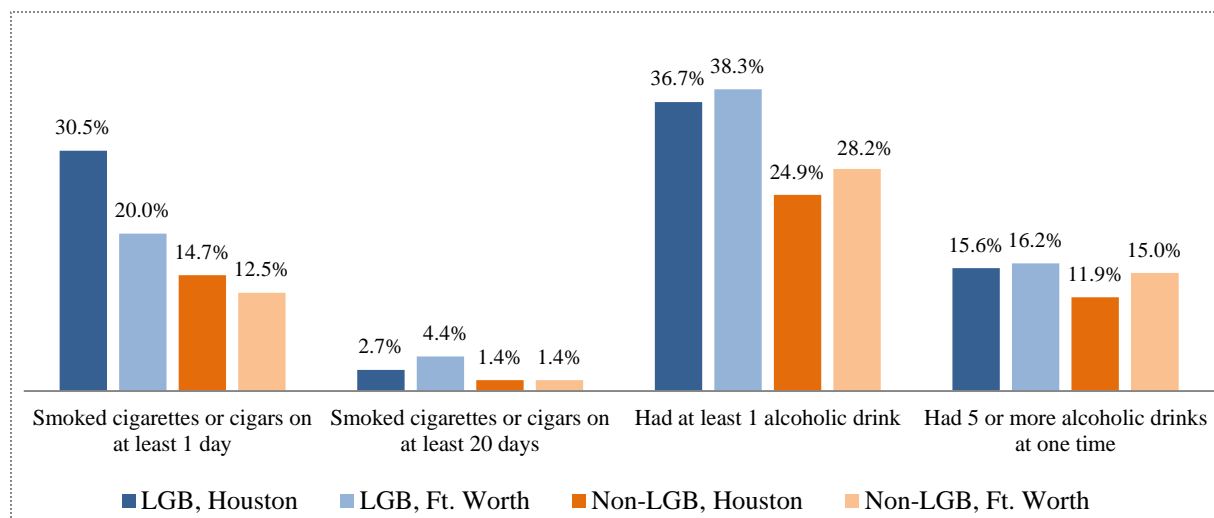
11.4%; Fort Worth: 9.2%).²⁹⁶ Much lower percentages of non-LGB students in both cities also reported being injured from a suicide attempt in a way that had to be treated by a doctor or nurse (Houston: 2.7%; Fort Worth: 1.5%) compared to LGB students.²⁹⁷

LGB students in Houston and Fort Worth were also more likely to report drinking, smoking, and other substance abuse than non-LGB students.

LGB students in both cities were over twice as likely to report having smoked one or more cigarette or cigars in the month prior to the survey (Houston: 30.5% v. 14.7%; Fort Worth: 20.0% v. 12.5%)²⁹⁸ and were also more likely to report that they had smoked cigarettes on 20 or more days in the month prior to the survey (Houston: 2.7% v. 1.4%; Fort Worth: 4.4% v. 1.4%).²⁹⁹ LGB students in both localities were also more likely to have had at least one drink in the month prior to the survey (Houston: 36.7% v. 24.9%; Fort Worth: 38.3% v. 28.2%),³⁰⁰ and were slightly more likely to have had five or more drinks in a row, or within a couple of hours, in the month prior to the survey (Houston: 15.6% v. 11.9%; Fort Worth: 16.2% v. 15.0%).³⁰¹

Figure III.e. 30-Day Smoking and Drinking among Houston and Fort Worth, Texas, High School Students, by Sexual Orientation

Source: 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*



²⁹⁶ *Id.* at 110.

²⁹⁷ *Id.* at 112.

²⁹⁸ *Id.* at 115.

²⁹⁹ *Id.* at 116.

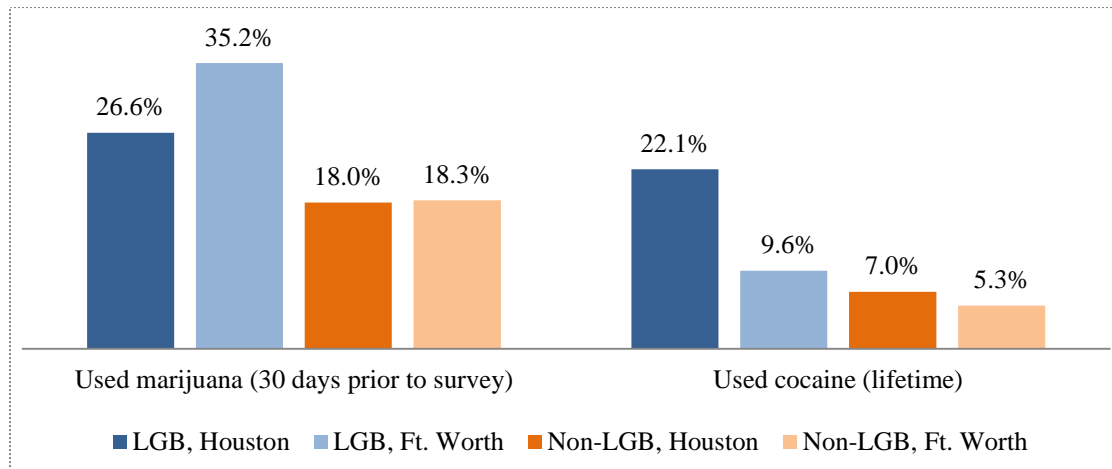
³⁰⁰ *Id.* at 131.

³⁰¹ *Id.* at 133.

LGB students in both cities were also more likely to report having used marijuana (Houston: 26.6% v. 18.0%; Fort Worth: 35.2% v. 18.3%)³⁰² in the month prior to the survey, and to report ever having used cocaine (Houston: 22.1% v. 7.0%; Fort Worth: 9.6% v. 5.3%).³⁰³

Figure III.f. Substance Abuse among Houston and Fort Worth, Texas, High School Students, by Sexual Orientation

Source: 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*



The 2015 Houston and Fort Worth YRBS findings are consistent with the 2015 YRBS data collected in 25 states and 18 other large urban school districts. In terms of mental health, like LGB youth in Houston and Fort Worth, LGB youth in the national YRBS sample were more likely to report that they felt so sad or hopeless that they stopped doing their usual activities for a period of time,³⁰⁴ that they had seriously considered suicide,³⁰⁵ that they had made a suicide plan,³⁰⁶ and that they had made a suicide attempt that resulted in an injury that had to be treated by a doctor or nurse.³⁰⁷ In terms of substance use, LGB youth in the national sample, similarly to LGB youth Houston and Fort Worth, reported higher rates of smoking cigarettes,³⁰⁸ drinking alcohol,³⁰⁹ binge drinking,³¹⁰ marijuana use,³¹¹ and cocaine use.³¹²

³⁰² *Id.* at 137.

³⁰³ *Id.* at 141.

³⁰⁴ *Id.* at 108.

³⁰⁵ *Id.* at 109.

³⁰⁶ *Id.* at 110.

³⁰⁷ *Id.* at 112.

³⁰⁸ *Id.* at 115-16.

³⁰⁹ *Id.* at 131-32.

³¹⁰ *Id.* at 133.

³¹¹ *Id.* at 137.

³¹² *Id.* at 141.

SECTION IV. ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION AGAINST LGBT PEOPLE

In 2014, USAID and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look to three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape and social climate on Texas'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.³¹³ In our analysis, we draw on data specific to Texas, and illustrate the magnitude of some of the costs resulting from different types of stigma and discrimination. Due to limited available data on LGBT people in the state, we are able to estimate only a few of the costs related to LGBT stigma and discrimination in Texas.

A. *Approach to Analyzing Economic Implications of Stigma and Discrimination against LGBT People*

In a 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.³¹⁴ In the micro-level analysis, the authors considered five types of exclusion of 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.³¹⁵

³¹³ The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on effects of such stigma and discrimination against LGBT people in Texas.

³¹⁴ M. V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST., *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and the defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

³¹⁵ *Id.*

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.”³¹⁶

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender identity minorities and economic development in emerging economies, measured by per capita GDP.³¹⁷ 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.”³¹⁸

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

Before we turn to the analysis, five important points:

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

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

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

³¹⁶ *Id.* at 6.

³¹⁷ *Id.* at 10.

³¹⁸ *Id.* at 3.

Fourth, focusing on LGBT stigma and discrimination alone will not address all negative outcomes experienced by LGBT people. LGBT people have a minority sexual orientation and/or gender identity, but also have other identities including 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 eliminate the poverty gap between same-sex and different sex-couples, as well as to lift many non-LGBT people out of poverty as well.³¹⁹

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.³²⁰ In particular, the routine inclusion of sexual orientation and gender identity measures on large, population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of three data sets specific to LGBT people in Texas that were unavailable just a few years ago—data from the Youth Risk Behavior Survey (YRBS), the Behavioral Risk Factor Surveillance System (BRFSS), and the U.S. Transgender Survey (USTS). 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.³²¹

B. Economic Impact of Harassment and Discrimination against LGBT People in the Workplace and Other Settings

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

To the extent that Texas’s legal landscape and social climate is unsupportive of LGBT workers, businesses within the state and the state as an employer are likely to experience negative economic outcomes. Research shows that LGBT workers in unsupportive environments are less likely to be open about their sexual orientation or gender identity at work, more likely to be

³¹⁹ 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>.

³²⁰ See, e.g., MARIELLA ARRENDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), available at <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

³²¹ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 314 at 49.

distracted on the job, and less likely to be committed to staying at their current employer, compared to LGBT employees at supportive workplaces. Moreover, LGBT and non-LGBT workers from outside of a state that they perceive as unsupportive may be less likely to accept job offers from employers in the state.

In addition, discrimination in employment, housing, and other areas of life can result in LGBT people experiencing economic instability, including poverty and homelessness. When LGBT people experience economic instability, they are more likely to rely on government benefits and services, which increases the costs of these programs to the state. To illustrate the impact of discrimination on state programs, we present an estimate of the costs associated with discrimination in employment and housing against transgender residents of Texas.

1. 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.³²² In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part, because the companies' perceive that the policies will have a positive impact on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination and 75% included gender identity.³²³ Further, 64% offered domestic partner benefits and 40% had transgender-inclusive benefits policies.³²⁴

Of the 54 Fortune 500 companies headquartered in Texas,³²⁵ at least 49 include sexual orientation in their non-discrimination policies, and at least 39 also include gender identity:³²⁶ Exxon, Phillips 66, AT&T, Valero, ConocoPhillips, Energy Transfer Equity, Sysco, American

³²² 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).

³²³ DARYL HERRSCHAFT ET AL., HUMAN RIGHTS CAMPAIGN, *DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT PEOPLE* 5 (2009), https://issuu.com/hrcworkplace/docs/hrc_degrees_of_equality_2009; DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, *CORPORATE EQUALITY INDEX 2016: RATING AMERICA'S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY* 7 (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

³²⁴ DEENA FIDAS & LIZ COOPER, *supra* note 323.

³²⁵ Fortune 500 Companies in Texas, Tex. Office of the Gov., http://gov.texas.gov/files/ecodev/Fortune_500.pdf (last visited Mar. 10, 2017).

³²⁶ Unless otherwise noted, the information about individual companies' policies is from the Human Rights Campaign report, *Corporate Equality Index 2016: Rating America's Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*. DEENA FIDAS & LIZ COOPER, *supra* note 323.

Airlines, Tesoro,³²⁷ Halliburton (sexual orientation only), Occidental Petroleum, Baker Hughes, United Services Automobile Association, National Oilwell Varco (sexual orientation only), Fluor Corporation, Kimberly-Clark, Holly Frontier, Southwest Airlines, Anadarko Petroleum, EOG Resources,³²⁸ Tenet Healthcare, Kinder Morgan, Western Refining (sexual orientation only), Whole Foods Market, Apache, Marathon Oil, Texas Instruments, J.C. Penney, CST Brands (sexual orientation only), Group 1 Automotive (sexual orientation only), Dean Foods, GameStop, CenterPoint Energy, Calpine (sexual orientation only), D.R. Horton, FMC Technologies (sexual orientation only), Quanta Services (sexual orientation only), Commercial Metals, Celanese, Buckeye Partners (sexual orientation only), KBR, iHeartMedia, Trinity Industries,³²⁹ Dr Pepper Snapple Group, Energy Future Holdings, MRC Global (sexual orientation only), Spectra Energy, Alliance Data Systems.³³⁰

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,³³¹ 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.³³²

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.³³³ 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.³³⁴ Some

³²⁷ Tesoro, Equal Employment Opportunity and Affirmative Action Policy Statement, <http://tsocorp.com/tesoro-careers/eoo-statement/> (last visited Feb. 15, 2017).

³²⁸ EOG Resources, Our Employees, <http://www.eogresources.com/responsibility/employees.html> (last visited Feb. 15, 2017).

³²⁹ See Trinity Partners open position announcements at Trinity Partners, Join Trinity, <http://www.trinitypartners.com/index.php/join-trinity/how-to-apply/> (last visited Feb. 15, 2017).

³³⁰ DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2016: RATING AMERICAS WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

³³¹ 576 U.S. __ (2015).

³³² Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 576 U.S. __ (2015) (Nos. 14-556, 14-562, 14-571, 14-574), available at http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf.

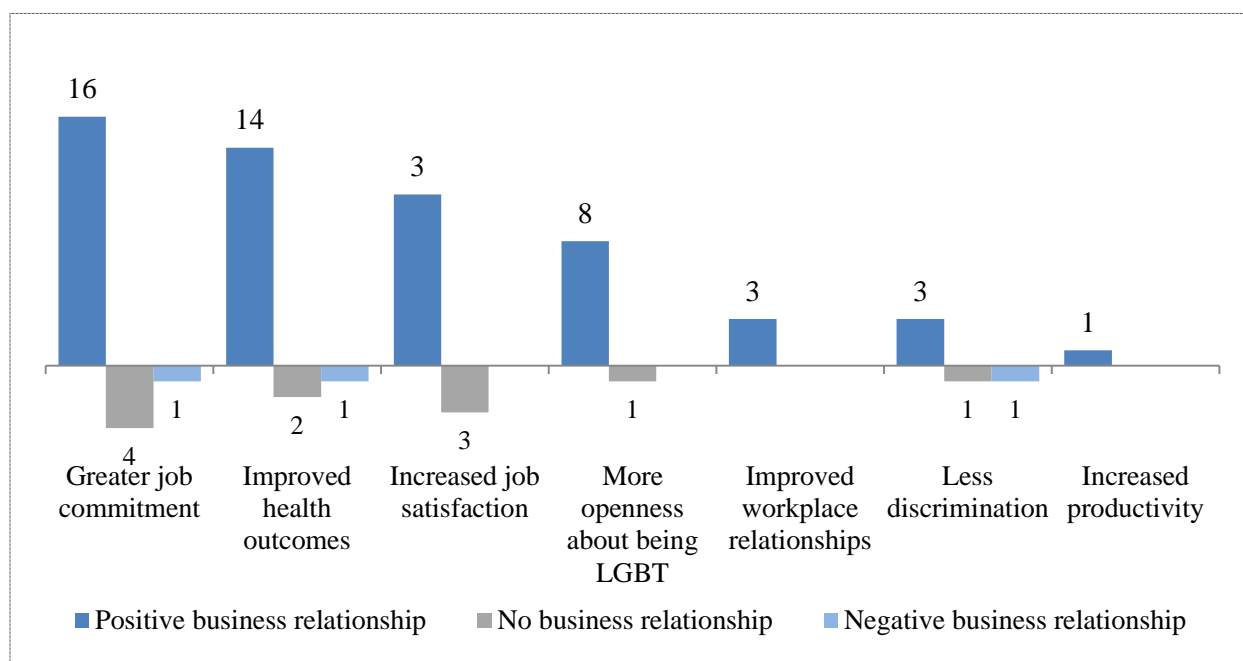
³³³ BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES, (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

³³⁴ 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),

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.³³⁵

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.³³⁶

Figure IV.a. 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.³³⁷ Many of the underlying studies included in the 2013 and 2014 literature

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

³³⁵ *Id.*; SEARS & MALLORY, *supra* note 333.

³³⁶ 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>.

³³⁷ Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

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 that:

Recruitment

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.³³⁸
- LGBT employees prefer to work in states with more supportive laws and social environments.³³⁹
- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.³⁴⁰
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,³⁴¹ particularly younger and more highly educated workers.³⁴²

Productivity/Engagement

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, increased productivity, and job satisfaction.³⁴³

³³⁸ Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM, Oct. 4, 2010, <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>; SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, *THE POWER OF “OUT” 2.0: LGBT IN THE WORKPLACE* 29 (2013).

³³⁹ Out & Equal et al., *Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, HARRIS POLL, Oct. 30, 2014, http://media.theharrisroll.com/documents/FINAL_2014_Out_Equal_Workplace_Survey_Release_10.30.2014.pdf.

³⁴⁰ 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).

³⁴¹ SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM, Oct. 4, 2010, <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>.

³⁴² Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact* 3 POLITICS, GROUPS, AND IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994); *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

³⁴³ Yuan-Hui Tsai, Sheng-Wuu Joe, Wei-Te Liu, Chieh-Peng Lin, Chou-Kang Chiu & Chaio-Chih Tang, *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 REV. MANAG. SCI. 197 (2015); SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); BADGETT ET AL., *supra* note 336.

- 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.³⁴⁴

These outcomes could lead to economic losses for state and local governments, as employers, and private businesses Texas. Since the state government of Texas employs nearly 590,000 people,³⁴⁵ its own loss in productivity from a discriminatory environment could be significant.

Retention

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.³⁴⁶
- LGBT employees in unsupportive environments feel less committed to their jobs.³⁴⁷
- 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.³⁴⁸ A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.³⁴⁹ This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs – up to 213% of annual salary.³⁵⁰ Based on the average annual mean wage in Texas,³⁵¹ public and private employers are at risk of losing approximately \$9,300, on average, for each employee that

³⁴⁴ Benjamin A. Everly, Margaret J. Shih & Geoffrey C. Ho, *Don't Ask, Don't Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 J. EXPERIMENTAL SOCIAL PSYCH. 407, 409 (2012).; SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 22,63 (2016).

³⁴⁵ For state government workforce: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 16, 2017) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "Texas" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over: April 1, 2010 to July 1, 2015" 2015 estimates).

³⁴⁶ HEWLETT & YOSHINO, *supra* note 344 at 20.

³⁴⁷ Belle R. Ragins, Romila Singh, John M. Cornwell, *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); IAN JOHNSON & DARREN COOPER, *OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE* 4, 47 (2015),

<http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, *THE POWER OF OUT* (2011); DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, *HUMAN RIGHTS CAMPAIGN, THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION* 22 (2014), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf; Blazovich et al., *supra* note 353 at 4.

³⁴⁸ HEATHER BOUSHEY & SARAH JANE GLYNN, *CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES* (2012), <https://www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ The annual mean wage in Texas is \$46,560. May 2015 State Occupational Employment and Wage Estimates: Texas, Bureau of Labor Stats, https://www.bls.gov/oes/current/oes_tx.htm (last visited Mar. 6, 2017).

leaves the state or changes jobs because of the negative environment facing LGBT people.³⁵²

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.³⁵³

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

2. Illustration of Costs to Texas Associated with Stigma and Discrimination

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. Here we use available data to estimate the fiscal impact of discrimination in two of many possible areas by estimating the costs associated with Medicaid participation and use of shelters that result from employment and housing discrimination against transgender people in Texas.

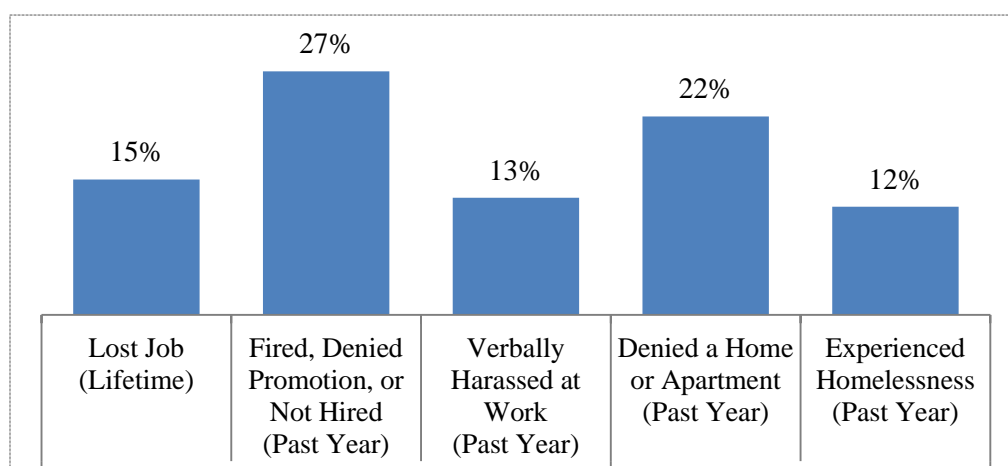
We use prevalence findings from the U.S. Transgender Survey (USTS), coupled with estimates of the size of the transgender Texas population (reported in Section I.A.), to estimate the number of transgender adults in Texas who have experienced specific forms of anti-transgender bias.

³⁵² Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Texas. *Id.*; BOUSHEY & GLYNN, *supra* note 348.

³⁵³ 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); Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which ... increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT ET AL., *supra* note 336 at 23 (“A ... study found that the more robust a company’s LGBT friendly policies, the better its stock performed over the course of four years (2002-2006), compared to other companies in the same industry over the same period of time.”); Garrett D. Voge, Investor Valuation: LGBTQ Inclusion and the Effect on a Firm’s Financials (unpublished manuscript, available at the University of Arizona Campus Repository) (2013) <http://arizona.openrepository.com/arizona/handle/10150/297778> (finding that institutional investors value LGBT-supportive corporate policies as evaluated by stock price increases after release of LGBT Corporate Equality Index report by the Human Rights Campaign).

Figure IV.b. Discrimination in Employment and Housing on the Basis of Gender Identity among USTS Respondents in Texas (n=1,490)

Source: U.S. Transgender Survey, 2015



Job loss, including due to anti-transgender bias, can result in economic insecurity and loss of a variety of benefits, such as health care coverage. People who experience job loss may become eligible for and enroll in Medicaid. Estimates from the Centers for Medicare and Medicaid Services find that as of December 2016, 4.8 million people were enrolled in Medicaid or the Children’s Health Insurance Program (CHIP) in Texas.³⁵⁴

Based on findings from the USTS, we estimate that 6.6% of transgender adults in Texas *who have* lost a job due to anti-transgender bias have enrolled in Medicaid. An estimated 2.4% of transgender adults in Texas *who have not* lost a job due to anti-transgender bias have enrolled in Medicaid. We attribute the difference in Medicaid enrollment between these two groups (4.2%) to the elevated need for Medicaid coverage resulting from employment discrimination based on gender identity. Applying this figure (4.2%) to the population of transgender adults in Texas who have lost a job because of gender identity bias, we estimate that 602 transgender Texans have enrolled in Medicaid because of employment discrimination on the basis of gender identity.³⁵⁵ In 2011, average state spending per Medicaid enrollee in Texas was approximately \$2,082.³⁵⁶ Therefore, we estimate that employment discrimination experienced by transgender

³⁵⁴ Medicaid & CHIP in Texas, Medicaid.gov, <https://www.medicaid.gov/medicaid/by-state/stateprofile.html?state=texas> (last visited Mar. 8, 2017).

³⁵⁵ According to the USTS, 77.7% of transgender adults in Texas have ever worked at a job or business, and 14.7% of those adults have experienced job loss due to anti-transgender bias. By applying the percentage of those adults who have experienced job loss due to transgender bias (14.7%) to the number of transgender adults who have ever applied for or held a job (97,522; or 77.8% of 125,350 transgender adults), we estimate that 14,336 transgender adults in Texas have experienced job loss due to anti-transgender bias. Multiplying this figure by 4.2% yields 602 transgender adults who are enrolled in Medicaid due to job loss resulting from anti-transgender bias.

³⁵⁶ Medicaid per enrollee figure available at Henry J. Kaiser Family Foundation, Texas: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2011 <http://kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/> (last visited Nov. 18, 2016). More recent data on spending per Medicaid enrollee is not available. Further calculations to determine the state proportion of expenditures, based off of the 2011 Federal Medical Assistance

adults on the basis of gender identity costs Texas approximately \$1,253,000 annually in state Medicaid expenditures.

Individuals who are denied housing because of anti-transgender bias may experience homelessness and seek housing at a homeless shelter. We estimate that 6.4% of transgender adults in Texas *who have been* denied a home or apartment due to anti-transgender bias have stayed at a shelter one or more times in the past year. An estimated 0.4% of transgender adults in Texas *who have not* been denied a home or apartment due to anti-transgender bias have stayed at a shelter one or more times in the past year. Therefore, we estimate that approximately 6.0% of transgender adults in Texas who have experienced housing discrimination, or 177 individuals, have had to stay at a shelter because of discrimination in the past year.³⁵⁷

A 2010 study by the U.S. Department of Housing and Urban Development (HUD) estimated that the cost of housing an individual at a shelter for an average length of stay based on cost data from three cities (Des Moines, IA; Houston, TX; and Jacksonville, FL) is approximately \$2,100.³⁵⁸ This is likely a conservative estimate of costs to shelter facilities as the HUD estimate only considers those experiencing homelessness for the first time and individuals only, not families. Applying this estimate to the 177 transgender residents of Texas whom we estimate to have had to stay at a shelter in the past year due to housing discrimination on the basis of gender identity, we estimate that this form of housing discrimination may cost Texas up to \$372,000 annually in shelter expenditures.

Reducing or eliminating discrimination against LGBT people in employment and housing can be a cost-saving measure for the state of Texas. As our illustration shows, to the extent that a statewide prohibition against gender identity discrimination can reduce or eliminate bias in employment and housing against transgender individuals, the state of Texas could save up to \$1.6 million annually in Medicaid and shelter expenses alone. These particular costs represent only two of a variety of costs that can accrue to the state and localities when LGBT individuals face discrimination.

Percentage or FMAP (65.33%), were conducted by the authors. We believe this is a conservative estimate as the average per enrollee spending estimate includes Medicaid spending for eligible children who consistently have lower spending levels than adults. It is unclear how these changes since 2011 have impacted the per-enrollee state expenditure for Medicaid. Texas has not adopted Medicaid expansion under the Patient Protection and Affordable Care Act (ACA).

³⁵⁷ According to the USTS, 62% of transgender adults in Texas (77,717 individuals) were in a position to experience housing discrimination in the past year because, for example, they rented a house or apartment during that time. Of those respondents, 3.8% (2,953 individuals) were denied a home or apartment because of anti-transgender bias within the past year. We estimate that 6.0% of individuals who were denied a home or apartment due to bias stayed in a shelter (177 individuals).

³⁵⁸ The HUD estimate refers to costs to shelter facilities.

C. *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.”³⁵⁹ For these reasons, poor health, in general, imposes costs on employers and governments.³⁶⁰ When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.³⁶¹

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

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

In this report, we used CUISR’s method to estimate the costs associated with higher prevalence of two health outcomes – major depressive disorder and binge drinking – in LGBT adults in Texas. To the extent possible, we used data on these health outcomes and related costs specific to Texas. Where we could not find reliable cost data for these health outcomes at the state-level, we used national 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 Texas 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 disorder were lower in states with more supportive laws, but were still present.³⁶²

³⁵⁹ 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 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² Hatzenbuehler, Keyes & Hasin, *supra* note 271 at 2277.

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

Further, we note that there may be significant overlap in the costs that we estimate because some people may have major depressive disorder and binge drink, 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 either health outcome were reduced.

1. Excess Costs Associated with LGBT Major Depressive Disorder (MDD)

In order to best estimate the annual costs associated with MDD, we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004-5 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.³⁶³ 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.³⁶⁴

Applying the percentage of excess prevalence of MDD among LGB people (18.0% - 8.1% = 9.9%) to Texas's LGBT population (an estimated 770,000 adults)³⁶⁵ indicates that there are approximately 76,200 more people who have major depressive disorder in Texas than would be expected in the general population. As shown in Table V.a. 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 19,100 and 25,400 fewer LGBT people living with MDD.

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*

³⁶³ Hatzenbuehler, Keyes & Hasin, *supra* note 271 at 2279. For an explanation of how major depressive disorder is determined on the NESARC see U.S. ALCOHOL EPIDEMIOLOGIC DATA REFERENCE MANUAL, ALCOHOL USE AND ALCOHOL USE DISORDERS IN THE UNITED STATES, A 3-YEAR FOLLOW-UP: MAIN FINDINGS FROM THE 2004-2005 WAVE 2 NATIONAL EPIDEMIOLOGIC SURVEY ON ALCOHOL AND RELATED CONDITIONS (NESARC) 19 (2010), https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf.

³⁶⁴ 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).

³⁶⁵ See Section I.A.1, *supra*.

2010).³⁶⁶ The study found that the annual total cost of MDD, nationwide, in 2010 was \$210.5 billion. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with MDD, we divided the total cost by the number of adults with the condition in 2010.³⁶⁷ Next, we adjusted the cost per person with MDD in 2010 for inflation.³⁶⁸ In inflation-adjusted dollars, the 2017 cost per person with MDD was \$15,179.72.³⁶⁹

For the reasons described above, we estimate that Texas 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 Texas of approximately \$289.9 to \$385.3 million.

Table IV.a. Reduction in Costs Associated with MDD in Texas if LGBT Disparity Were Reduced

Reduction in disparity between LGBT and Non-LGBT Texans	LGBT individuals impacted	Annual reduction in costs (millions)
25%	19,100	\$289.9
33.3%	25,400	\$385.3

2. Excess Costs Associated with LGBT Binge Drinking

Our analysis of Texas's 2015 BRFSS data found that 25.5% of LGBT respondents were binge drinkers, compared to 14.3% of non-LGBT respondents. Applying the percentage (11.2%) of excess prevalence of binge drinking among LGB people in Texas to the state's LGBT population (770,000 adults)³⁷⁰ indicates that there are approximately 86,200 more people who currently binge drink in Texas than would be expected in the general population.

We drew from a 2015 study, *2010 National and State Costs of Excessive Alcohol Consumption*, to estimate the annual cost per binge drinker in Texas.³⁷¹ The study found that the annual total

³⁶⁶ 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 major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with major depressive disorder (and compared to a control group). Similarly, the prevalence of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

³⁶⁷ The study found that, in 2010, 15,446,771 adults in the U.S. suffered from major depressive disorder. *Id.* Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

³⁶⁸ To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at CPI Inflation Calculator, U.S. Bureau of Labor Stats., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 28, 2016).

³⁶⁹ We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).

³⁷⁰ See Section I.A.1. *supra*.

³⁷¹ Jeffrey J. Sacks, Katherine R. Gonzales, Ellen E. Bouchery, Laura E. Tomedi, & Robert D. Brewer, *2010 National and State Costs of Excessive Alcohol Consumption*, 29 AM. J. PUBLIC HEALTH 73 (2015).

cost of binge drinking in Texas in 2010 was \$14,968,100,000.³⁷² Associated costs included loss in productivity in the workplace, health care costs, and other losses such as costs to the criminal justice system related to binge drinking.³⁷³ We adjusted the cost per binge drinker for inflation³⁷⁴ for an estimated cost per binge drinker in Texas in 2017 of \$5,478.53.³⁷⁵

For the reasons described above, we estimate that Texas may be able to reduce the disparity in 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 Texas of approximately \$118.3 to \$157.2 million.

Table IV.b. Reduction in Costs Associated with Binge Drinking in Texas if LGBT Disparity Were Reduced

Reduction in disparity between LGBT and Non-LGBT Texans	LGBT individuals impacted	Annual reduction in costs (millions)
25%	21,600	\$118.3
33.3%	28,700	\$157.2

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

D. Economic Impact of Bullying and Family Rejection of LGBT Youth

School-based bullying of LGBT youth is pervasive³⁷⁶ and increases the likelihood of school dropout,³⁷⁷ poverty,³⁷⁸ and suicide.³⁷⁹ Educational attainment, especially high school

³⁷² Id. at 77.

³⁷³ Id. at 75.

³⁷⁴ To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. Feb. 17, 2017).

³⁷⁵ In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in Texas in 2010. According to the 2010 Texas BRFSS, 14.6% of the respondents were binge drinkers. Tex. Dept't of State, Behavioral Risk Factor Surveillance System, https://www.dshs.texas.gov/chs/brfss/query/brfss_form.shtml (select Year: 2010 and Risk Factor: Alcohol Use: Binge Drinking) (last visited Feb. 17, 2017). Applying this percentage to Texas's adult population in 2010 (20,839,248) (data from 2010 Census) indicates that 3,042,530 people in Texas were binge drinkers in 2010. Dividing the total cost (\$14,968,100,000) by the number of binge drinkers 3,042,530) indicates that the cost per binge drinker in Texas was \$4,919.62 in 2010. We assume that the costs associated with binge drinking would be the same in 2017 as they were in 2010 (adjusted for inflation).

³⁷⁶ See, e.g., Kate L. Collier, Gabriël van Beusekom, Henny M.W. Bos & Theo G.M. Sandfort, *Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychological and Health Outcomes*, 50 J. SEX ROLES 299 (2013); Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 J. ADOLESCENT HEALTH 366 (2010); Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth*

completion, is a significant determinant of economic status and health across the life course.³⁸⁰ As a result, early experiences of harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."³⁸¹

Laws in Texas do not adequately protect LGBT youth from bullying in schools, and expressly require teachers to provide anti-LGB instruction in sex education lessons.³⁸² 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 the homeless. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

1. 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 2011 meta-analysis of 18 studies that used YRBS or National Longitudinal Study of Adolescent Health data found that, on average, LGB students were almost three times as likely to report not going to school because of safety concerns as their non-LGBQ counterparts.³⁸³ Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB³⁸⁴

Risk Behavior Surveillance, Selected Sites, United States, 2001–2009, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 11 (2011); JOSEPH G. KOSCIW ET AL., GLSEN, THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS (2015), available at

<https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>; EMILY A. GREYTAK, JOSEPH G. KOSCIW &

ELIZABETH M. DIAZ,

GLSEN, HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS (2009), available at <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

³⁷⁷ 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).

³⁷⁸ Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 ECONOMICS EDUC. REV. 387 (2008).

³⁷⁹ Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 INT. J. ADOLESCENT MED. HEALTH 133 (2008).

³⁸⁰ John Lynch & George Kaplan, *Socioeconomic Factors*, in SOCIAL EPIDEMIOLOGY 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

³⁸¹ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, *supra* note 314 at 26.

³⁸² See Section I.B., *supra*.

³⁸³ Kann et al., *supra* note 376 at 12.

high school students reported significantly higher rates of skipping school because they felt unsafe.³⁸⁵

Studies based on convenience samples also indicate that many LGBT youth skip school due to bullying and harassment. A 2009 report by the National Education Association found that, nationwide, approximately half of LGBT students who said that they experienced frequent or severe verbal harassment because of their sexual orientation or gender identity missed school at least once a month, and around 70% who said they experienced frequent or severe physical harassment missed school more than once a month.³⁸⁶ The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.³⁸⁷ In response to the U.S. Transgender Discrimination Survey, 73% of respondents from Texas who were perceived to be transgender while in grades K-12 experienced verbal, physical, or sexual harassment at school, and 14% said the harassment was so severe that they had to leave school as a result.³⁸⁸ Other studies have found that bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism.³⁸⁹

2. Overrepresentation in Foster Care, Juvenile Justice System, and Among the Homeless Population

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

³⁸⁴ The study defined LGB students as those students who reported in response to the survey that they had had sexual contact with others of the same-sex or both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 AM. J. PUBLIC HEALTH, 255, 256 (2014).

³⁸⁵ *Id.*

³⁸⁶ ROBERT KIM, NATIONAL EDUC. ASSN., REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEPPING OUT OF THE CLOSET, INTO THE LIGHT 30 (2009), <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

³⁸⁷ *Id.*

³⁸⁸ SANDY JAMES ET AL., *supra* note 228.

³⁸⁹ E.g., Joseph P. Robinson & Dorothy L. Espelage, *Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice*, 41 EDUC. RESEARCHER 309 (2012); Alicia L. Fedewa & Soyeon Ahn, *The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature*, 7 J. GLBT FAMILY STUDIES 398 (2011); Shelley L. Craig & Mark S. Smith, *The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth*, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>; MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <http://www.mass.gov/cgly/YRBS09Factsheet.pdf> (last visited May 3, 2016); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 SOC. PROBLEMS 523 (2007); Stephen T. Russell, Hinda Seif & Nhan L. Truong, *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 J. ADOL. 111 (2001).

In addition to the human toll, there are direct costs to the government and social service systems created by the overrepresentation of LGBT youth in these systems.³⁹⁰ LGBT youth are overrepresented in the foster care system; 19% of youth in foster care in Los Angeles County are LGBT, 2-3 times their proportion of the general youth and young adult population.³⁹¹ Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.³⁹² While some of those who age out transition successfully into adulthood, many do not.

Of those who age out of foster care: more than 1 in 5 will become homeless after age 18; 1 in 4 will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19 year olds); fewer than 3% will earn a college degree by age 25 (compared to 28% all 25 year olds); and at the age of 24, only half will be employed.³⁹³

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.³⁹⁴ A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth in public high school were homeless, compared to 3% of heterosexual youth.³⁹⁵ Similarly, a 2015 survey of homeless youth in Atlanta, Georgia, found that 28.2% of the respondents identified as LGBT.³⁹⁶

³⁹⁰ 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).

³⁹¹ *Id.* at 6.

³⁹² *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).

³⁹³ 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%20EMBARGOED%20until%20May%206.pdf>.

³⁹⁴ LAURA DURSO & GARY J. GATES, WILLIAMS INST., *SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICES PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS* 3 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; SOON KYU CHOI, BIANCA D.M. WILSON, JAMA SHELTON & GARY J. GATES, WILLIAMS INST., *SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH EXPERIENCING HOMELESSNESS* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. See also WILSON ET AL., *supra* note 390.

³⁹⁵ Heather L. Corliss, Carol S. Goodenow, Lauren Nichols & S. Bryn Austin, *High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample*, 9 AM. J. PUB. HEALTH 1683 (2011). For further research on homelessness among LGBTQ youth, see MALLORY ET AL., *supra* note 197.

³⁹⁶ AYCNA 2016 Key Findings, Atlanta Youth Count, <http://atlantayouthcount.weebly.com/2016-key-findings.html> (last visited Nov. 29, 2016).

Data from the National Survey of Youth in Custody indicates that 12.2% of youth in custody identify as LGBT.³⁹⁷ Another study found that LGBT youth made up 15% of detained youth.³⁹⁸ Studies have shown that LGBTQ 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.³⁹⁹ Research also shows that in some instances, LGBT youth have been punished for defending themselves against their harassers,⁴⁰⁰ and evidence of selective enforcement against LGBT youth.⁴⁰¹

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.”⁴⁰² For example, nationally, the Jim Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual cohort.

CONCLUSION

Texas’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 Texas were to take steps toward a more supportive legal landscape and social climate, the state’s economy would likely benefit.

³⁹⁷ ALLEN J. BECK & DAVID CANTOR, BUREAU OF JUSTICE STATS., U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012 at 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

³⁹⁸ 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).

³⁹⁹ KATAYOON MAJD, JODY MARKSAMER & CAROLYN REYES, 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; SHANNAN WILBER, CAITLIN RYAN & JODY MARKSAMER, CHILD WELFARE LEAGUE OF AMERICA, BEST PRACTICE GUIDELINES FOR SERVING LGBT YOUTH IN OUT-OF-HOME CARE 4 (2006), <http://familyproject.sfsu.edu/sites/sites7.sfsu.edu.familyproject/files/bestpracticeslgbtyouth.pdf>.

⁴⁰⁰ MAJD ET AL., *supra* note 399 at 77.

⁴⁰¹ Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

⁴⁰² *Id.*