

RESEARCH THAT MATTERS

THE IMPACT OF STIGMA AND DISCRIMINATION

Against LGBT People
in West Virginia

February 2021

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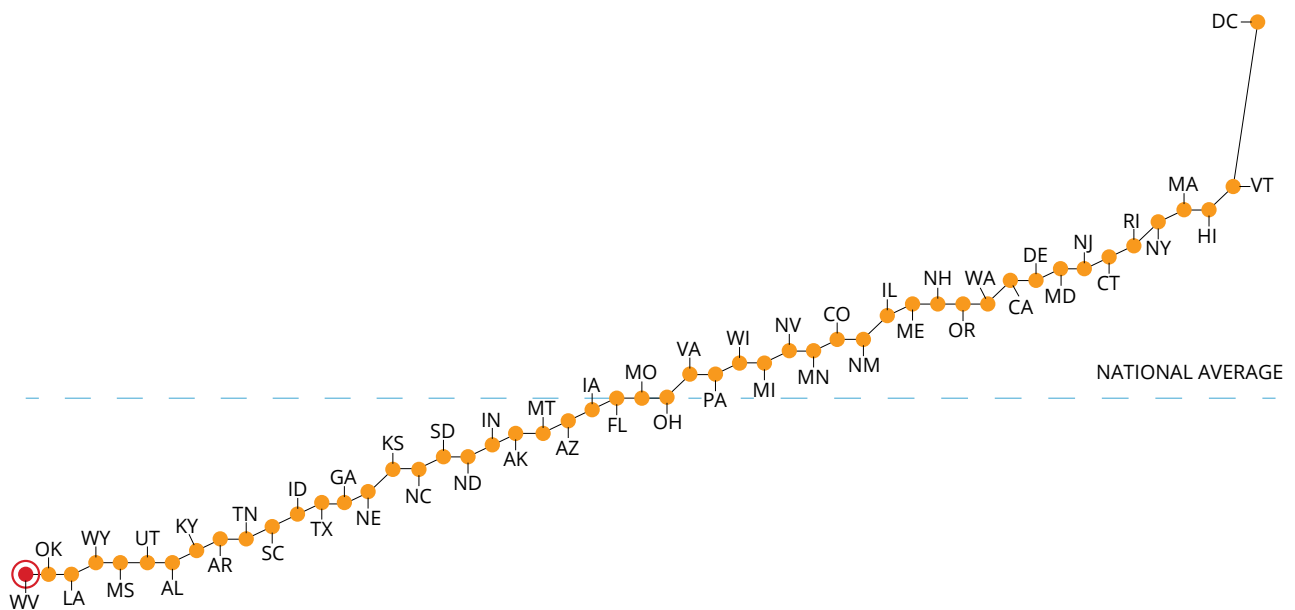
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EXECUTIVE SUMMARY

West Virginia is home to an estimated 57,800 LGBT adults¹ and approximately 10,300 LGBT youth.² LGBT people in West Virginia lack important state-level legal protections that have been extended in other states. For example, statewide statutes in West Virginia do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in West Virginia also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, West Virginia is tied for last in the nation on public support for LGBT rights and acceptance of LGBT people.³

Social acceptance of LGB people, ranked by state



The legal landscape for LGBT people in West Virginia 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 harassment at school and family rejection of LGBT youth; overrepresentation in the criminal legal 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 the U.S. and in West Virginia specifically, 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

¹ WILLIAMS INST., *infra* note 23.

² See *infra* Section 1.A.2.

³ See *infra* Section 1.C.

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 West Virginia can create a more supportive environment for LGBT people, it will reduce the economic instability and health disparities experienced by LGBT individuals, which, in turn, would benefit the state, employers, and the economy.

KEY FINDINGS

Prevalence of stigma and discrimination against LGBT people

LGBT people in West Virginia experience discrimination in employment, housing, and public accommodations.

- In response to a 2016 poll, 52% of West Virginia residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S.,⁴ and 58% of West Virginia residents said that they thought that transgender people experience a lot of discrimination in the U.S.⁵
- Incidents of discrimination against LGBT people in employment, housing, and public accommodations have been documented in a number of court cases and media reports.

LGBT youth in West Virginia experience bullying and harassment at school.

- The 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that, in the year prior to the survey, 82% of respondents from West Virginia said they had experienced verbal harassment at school based on their sexual orientation, and 76% said they had experienced verbal harassment at school based on their gender expression.⁶ Many students also reported experiencing physical harassment at school based on their sexual orientation (42%) or gender expression (34%) in the year prior to the survey.⁷
- A 2016 Campus Quality of Life survey of students at West Virginia University found that 27% of students thought that people on campus were generally unfriendly towards transgender people, and that 19% similarly thought that people on campus were generally unfriendly toward gay and lesbian people.⁸
- Instances of bullying and harassment in education in West Virginia have also been documented in a number of court cases and media reports.

⁴ PRRI, *infra* note 98.

⁵ PRRI, *infra* note 99.

⁶ GLSEN, *infra* note 143.

⁷ *Id.*

⁸ DeKESEREDY ET AL., *infra* note 150.

Impact of stigma and discrimination on LGBT individuals

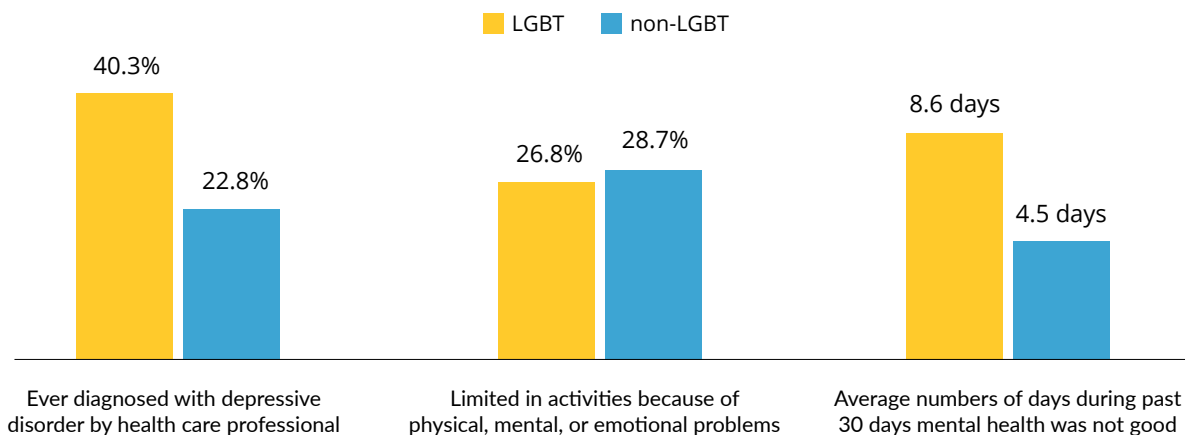
LGBT people in West Virginia experience economic instability.

- Stigma and discrimination against LGBT workers can lead to economic instability, including lower wages and higher rates of poverty.
- Gallup polling data from 2015–2017 show that 33% of LGBT adults in West Virginia reported that they did not have enough money for food, compared to 20% of non-LGBT adults in the state.⁹ In addition, 39% of LGBT adults in West Virginia reported having a household income below \$24,000, compared to 26% of non-LGBT adults.¹⁰ Finally, 14% of LGBT adults in West Virginia reported being unemployed, compared to 7% of non-LGBT adults.¹¹

LGBT adults and youth in West Virginia experience health disparities.

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT adults such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased likelihoods of dropping out of school, suicide, and substance use among LGBT youth.
- LGBT adult respondents to the 2015 West Virginia Behavioral Risk Factor Surveillance System survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGBT respondents (40 % vs. 23%).¹² In addition, LGBT adults in West Virginia were significantly more likely to report current smoking (43% vs. 25%) and binge drinking (18% vs. 10%) than non-LGBT adults.¹³

Health characteristics of adults in West Virginia, by LGBT identity



Source: 2015 West Virginia BRFSS

⁹ WILLIAMS INST., *infra* note 23.

¹⁰ *Id.*

¹¹ *Id.*

¹² See *infra* note 209 and accompanying text.

¹³ See *infra* notes 212–213 and accompanying text.

Economic impacts of stigma and discrimination

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

- **Productivity.** Unsupportive work environments can mean that LGBT employees are less likely to be open about their sexual orientation or gender identity at work, and more likely to be distracted, disengaged, or absent, and to be less productive. These outcomes could lead to economic losses for state and local governments, as employers, as well as for private sector employers in the state. Given that an estimated 40,000 workers in West Virginia identify as LGBT,¹⁴ 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 \$8,474, on average, for each employee who leaves the state or changes jobs because of an unsupportive environment in West Virginia.¹⁵
- **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 West Virginia to be unsupportive of LGBT people, it may be difficult for public and private employers in the state to recruit talented employees from other places.

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

- Bullying, harassment, and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or become unemployed or underemployed.
- Underattendance at school and instances of homelessness that arise due to bullying, harassment, and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Annie E. Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S.¹⁶ The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging-out cohort.

¹⁴ WILLIAMS INST., *infra* note 283.

¹⁵ See *infra* Section III.A.

¹⁶ ANNIE E. CASEY FOUND., *infra* note 346.

Health disparities for LGBT people negatively impact the economy.

- A more supportive legal landscape and social climate for LGBT people in West Virginia 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 West Virginia by 25% to 33.3% could benefit the state's economy by \$22.7 million to \$30.8 million.¹⁷ Reducing the disparity in current smoking by the same proportion could benefit the state's economy by \$18.0 million to \$24.5 million¹⁸, and similarly reducing the disparity in binge drinking could benefit the state's economy by \$10.2 million to \$13.3 million, in increased productivity and reduced health care costs each year.¹⁹ To the extent that a more supportive legal landscape would reduce other health disparities, the state's economy would benefit even more.

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

HEALTH CHARACTERISTIC	REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN WEST VIRGINIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
Major Depressive Disorder	25%–33.3%	1,400–1,900	\$22.7–\$30.8
Smoking	25%–33.3%	2,500–3,400	\$18.0–\$24.5
Binge Drinking	25%–33.3%	1,100–1,400	\$10.4–\$13.3

¹⁷ See *infra* Section IV.C.1.

¹⁸ See *infra* Section IV.C.2.

¹⁹ See *infra* Section IV.C.3.

DEMOGRAPHICS AND LEGAL LANDSCAPE

West Virginia is home to an estimated 57,800 LGBT adults and approximately 10,300 LGBT youth who reflect the diversity of the state's overall population. There are few state-level legal protections for LGBT people in West Virginia.²⁰ Additionally, the state is tied for last in the nation on LGBT social climate, as measured by public support for LGBT rights and acceptance of LGBT people.²¹ However, despite this standing, public opinion polls also show that a majority of adults in West Virginia support extending discrimination protections to LGBT people.²²

DEMOGRAPHICS OF LGBT PEOPLE IN WEST VIRGINIA

LGBT adults in West Virginia

West Virginia is home to approximately 57,800 LGBT adults (4.0% of adults in the state self-identify as LGBT),²³ including 6,100 transgender adults (0.42% of the adult population).²⁴ They are diverse across many socio-demographic characteristics, including age, sex, race-ethnicity, and the presence of children in the household:

- Representative data from the combined 2015–2017 Gallup Daily Tracking Surveys indicate that LGBT adults in West Virginia, like LGBT adults elsewhere across the U.S., are younger than non-LGBT adults.²⁵ As shown in Table 1 below, more than half of LGBT adults in West Virginia are under the age of 35.
- While similar proportions of non-LGBT adults in West Virginia are male as are female, LGBT adults in the state are more likely to be female.²⁶

²⁰ See *infra* Section I.B. for a discussion of the legal landscape for LGBT people in West Virginia.

²¹ AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST., *THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES* 22 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

²² Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, 2(4) RES. & POL. 1–8 (2015), <https://journals.sagepub.com/doi/pdf/10.1177/2053168015612246>.

²³ *LGBT Data & Demographics: West Virginia*, WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=13#density> (last visited Feb. 13, 2020) (percentage of adults in West Virginia identifying as LGBT). Total adult population in the state is 1,446,139. For total population, search *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 13, 2020) (select advanced search, enter “Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017” under topic or table name and “West Virginia” under state, county or place, select “Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017” 2017 estimates).

²⁴ 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?* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

²⁵ Unpublished analyses conducted by The Williams Institute of data from the combined 2015–2017 Gallup Daily Tracking Poll multiplied by the estimated number of LGBT adults in West Virginia, see *supra* note 23.

²⁶ *Id.*

- Nearly one in five of LGBT adults in West Virginia are people of color (18.6%).²⁷ Comparatively, less than one-tenth of non-LGBT adults in West Virginia are people of color.

Table 1. Weighted characteristics of West Virginia adult participants in the 2015–2017 Gallup Daily Tracking Surveys by LGBT and non-LGBT status (N=6,201)

	LGBT (N = 202)	NON-LGBT (N = 5,999)
	%	%
Age		
18–24	22.3%	8.7%
25–34	35.0%	15.1%
35–49	15.8%	23.2%
50–64	15.9%	27.3%
65+	11.0%	25.7%
Sex		
Female	59.2%	50.5%
Male	40.9%	49.5%
Race-ethnicity		
White	81.4%	91.1%
All other racial/ethnic groups	18.6%	8.9%
Children under 18 in household (among those ages 25+)	29.6%	33.0%

*Percentages suppressed because of small sample size.

- Many LGBT adults in West Virginia are raising children, in the context of same- and different-sex relationships, married and unmarried, and as single parents. Approximately 29.6% of LGBT adults ages 25 and older in West Virginia (approximately 13,300 individuals)²⁸ are raising children.²⁹ Data from the 2011–2013 American Community Survey indicate that there were approximately 2,848 cohabiting same-sex couples living in West Virginia, 17.8% of whom were raising children.³⁰

LGBT youth in West Virginia

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants managed by the U.S. Centers for Disease Control and Prevention (CDC). The YRBS is one of the few sources of data about LGB youth in grades 9 through

²⁷ Individual proportions of respondents who reported identifying as Asian, American Indian or Alaska Native, or Native Hawaiian or Other Pacific Islander were combined because of limited sample size.

²⁸ Unpublished analyses conducted by The Williams Institute of data from the combined 2015–2017 Gallup Daily Tracking Poll multiplied by the estimated number of LGBT adults in West Virginia, *see supra* note 23.

²⁹ *Id.*

³⁰ *Id.*

12.³¹ In 2016 and 2018, the CDC published reports on the health and well-being of youth from multiple states and large urban school districts that included measures of sexual orientation and behavior on the YRBS.³² Based on these data, we estimate that 9.2% of youth in grades 9–12 identify as gay, lesbian, or bisexual in the U.S.³³

We estimate that there are approximately 10,300 LGBT youth ages 13–17 in the state of West Virginia, including approximately 9,800 LGB youth³⁴ (600 of whom are also transgender³⁵) and approximately 500 transgender youth who are not LGB. In total, there are an estimated 1,150 transgender youth in West Virginia.³⁶

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

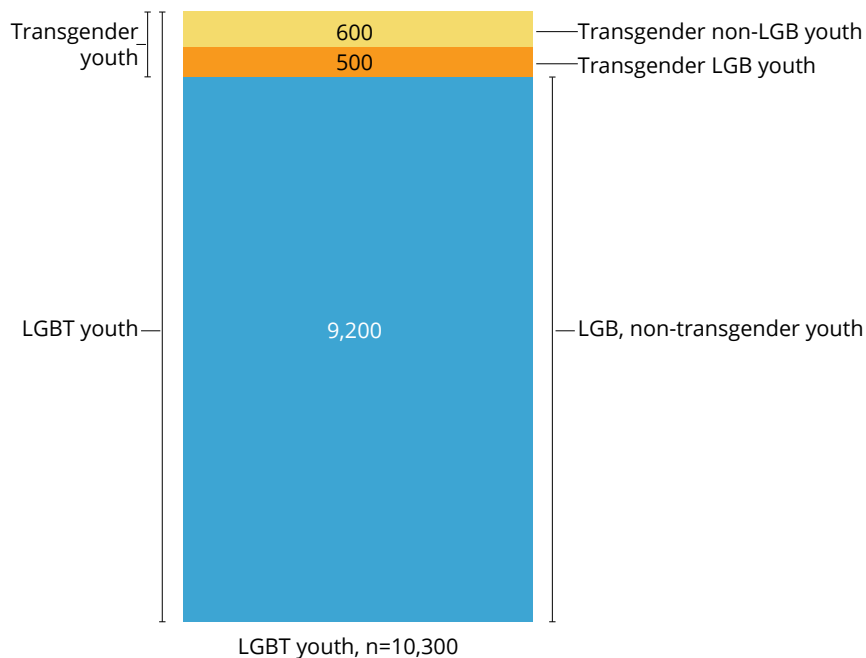
³² Laura Kann et al., *Youth Risk Behavior Surveillance — United States, 2017*, 67 MORBIDITY & MORTALITY WORLD REP. 1 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>; Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9–12 — United States and Selected Sites, 2015*, 65(9) MMWR SURVEILLANCE SUMMARIES 1–202 (2016), <https://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm>.

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

³⁴ We assume the same distribution of sexual orientation across all youth, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

³⁵ Unpublished analyses conducted by The Williams Institute of data from the combined 2015–2017 Behavioral Risk Factor Surveillance System (BRFSS) restricted to transgender-identified participants ages 18–24 indicate that 46.3% identify as straight or other sexual orientation (i.e., non-LGB). Data on the percentage of transgender youth identifying as LGB are not currently available, and we believe that the BRFSS measure from young adults ages 18–24 provides a close approximation for youth ages 13–17. We applied this percentage among 18–24 year old adults to the estimated number of transgender youth ages 13–17 estimated by JODY L. HERMAN ET AL., WILLIAM INST., *AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

³⁶ *Id.*

Figure 2. Estimate of the LGBT youth population of West Virginia, ages 13–17

Sources: National YRBS, 2015 & 2017; BRFSS, 2015–2017; 2017 population estimates based on 2010 Census; American Community Survey, 2011–2013

LGB youth are more likely to be female than male. Among national participants in both the 2015 and 2017 YRBS, male and female students were equally as likely to identify as gay or lesbian.³⁷

A larger percentage of female than male students identified as bisexual in both years.³⁸

LEGAL LANDSCAPE FOR LGBT PEOPLE IN WEST VIRGINIA

West Virginia's legal landscape reflects a history of state laws and policies that limit protections for LGBT people or discriminate against them. Although same-sex couples have been able to legally marry in the state since 2014 and the Supreme Court extended federal employment non-discriminations to LGBT people in 2020, the state and many localities continue to lack LGBT-supportive laws. The current and historical legal landscape for LGBT people in West Virginia can negatively impact their everyday lives and leaves them vulnerable to stigma and discrimination based on their sexual orientation and gender identity.³⁹

HISTORICAL LEGAL LANDSCAPE

Although West Virginia's sodomy law was repealed and marriage has been extended to same-sex couples in the state, historical anti-LGBT laws likely have lingering negative effects on the social climate for LGBT people.

³⁷ Kann et al. (2018), *supra* note 32.

³⁸ *Id.*

³⁹ See Nancy J. Knauer, *Legal Consciousness and LGBT Research: The Role of the Law in the Everyday Lives of LGBT Individuals*, 59 J. HOMOSEXUALITY 748 (2012).

Sodomy Laws. At the time of its admission to the Union in 1863, West Virginia's first constitution mandated that the laws of Virginia then in effect would remain in force for the new state.⁴⁰ In turn, this established Virginia's existing prohibition on sodomy⁴¹—then punishable by one to five years in prison—as West Virginia's first sodomy law.⁴² While this law saw little modification by the West Virginia legislature over the next century, the West Virginia Supreme Court broadened its scope by interpreting the law as inclusive of various acts throughout the 1940s and 1950s.⁴³ However, almost three decades before the U.S. Supreme Court held that sodomy laws were unconstitutional in *Lawrence v. Texas*,⁴⁴ the West Virginia legislature repealed this law in 1976 amidst a comprehensive revision of the state's sexual assault laws.⁴⁵

Marriage Equality. In 2000, the West Virginia legislature passed a bill prohibiting marriage for same-sex couples and prohibiting the recognition of same-sex marriages validly performed elsewhere.⁴⁶ In 2001, the legislature passed a separate statute authorizing individuals in specified positions to perform marriages in the state. The statute included language limiting marriage to “m[e]n and wom[e]n . . . [who then] assume the status of husband and wife.”⁴⁷

In 2013, three same-sex couples filed a lawsuit in a federal district court in West Virginia, challenging the constitutionality of the state's ban on marriage for same-sex couples. Their case followed that of a same-sex couple in Virginia, who had similarly filed a federal suit challenging the same-sex marriage ban in that state. In 2014, the district court held in favor of the Virginia couple, finding that the state's ban violated the Fourteenth Amendment's guarantees of due process and equal protection.⁴⁸ The Fourth Circuit Court of Appeals affirmed that decision later in 2014.⁴⁹ The U.S. Supreme Court declined to hear the Virginia case,⁵⁰ allowing marriage equality to go into effect for all states in the Fourth Circuit, including West Virginia. Immediately thereafter, West Virginia Attorney General Patrick Morrisey announced his intent to no longer defend against the suit challenging the state's same-sex marriage ban,⁵¹ and Governor Ray Tomblin issued an order requiring state agencies to comply with court orders regarding the ban,⁵² with marriage licenses to same-sex couples beginning to be issued

⁴⁰ W. VA. CONST. of 1863, art. XI, § 8.

⁴¹ George Painter, *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States - West Virginia*, GAY & LESBIAN ARCHIVES PAC. NORTHWEST (Aug. 10, 2004), https://www.glapn.org/sodomylaws/sensibilities/west_virginia.htm (citing GEORGE W. MUNFORD THE CODE OF VIRGINIA. SECOND EDITION, INCLUDING LEGISLATION TO THE YEAR 1860 (2nd Ed. 1860)).

⁴² W. VA. CODE § 61-8-13 (repealed 1976).

⁴³ Painter, *supra* note 41.

⁴⁴ 539 U.S. 558 (2003).

⁴⁵ Painter, *supra* note 41.

⁴⁶ S.B. 146, 74th Leg., 2nd Reg. Sess. (W. Va. 2000), currently codified at W. VA. CODE § 48-2-104 (2012) (marriage ban), § 48-2-603 (2012) (recognition ban).

⁴⁷ H.B. 2199, 75th Leg., 1st Reg. Sess. (W. Va. 2001), codified at W. VA. CODE § 48-2-401 (2001).

⁴⁸ *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. Feb. 13, 2014).

⁴⁹ *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014).

⁵⁰ *Schaefer v. Bostic*, 574 U.S. 875 (2014).

⁵¹ *Attorney General Patrick Morrisey Says His Office Will Respect U.S. Supreme Court Decision*, OFF. W. VA. ATT'Y GEN. (Oct. 9, 2014), <https://web.archive.org/web/20141011160234/https://ago.wv.gov/pressroom/2014/Pages/Attorney-General-Patrick-Morrissey-Says-His-Office-Will-Respect-U.S.-Supreme-Court-Decision.aspx>.

⁵² *Governor Tomblin Issues Statement Regarding Same-Sex Marriage in West Virginia*, OFF. GOVERNOR (Oct. 9, 2014), <https://web.archive.org/web/20141015073707/http://www.governor.wv.gov/media/pressreleases/2014/Pages/GOVERNOR-TOMBLIN-ISSUES-STATEMENT-REGARDING-SAME-SEX-MARRIAGE-IN-WEST-VIRGINIA.aspx>.

that same day.⁵³ Applying the Fourth Circuit’s precedent, the district court in the West Virginia case officially invalidated West Virginia’s ban one month later.⁵⁴ In 2015, the U.S. Supreme Court extended marriage equality nationwide in its decision in *Obergefell v. Hodges*.⁵⁵

Current legal landscape

Discrimination Protections. In June 2020, the Supreme Court held in *Bostock v. Clayton County*⁵⁶ that Title VII’s ban on sex discrimination also bars discrimination based on sexual orientation and gender identity. The decision extended federal protections from employment discrimination to LGBT workers across the country. While the decision likely has implications for non-discrimination laws that apply in other areas, such as housing and education, the decision itself addressed only discrimination in employment.⁵⁷ There is no federal law that expressly prohibits discrimination based on sexual orientation and gender identity.

Many states have their own non-discrimination laws that expressly bar discrimination based on sexual orientation and gender identity and reach more broadly than the *Bostock* decision by prohibiting discrimination in a range of settings, including employment, housing, and public accommodations.⁵⁸ West Virginia’s non-discrimination statutes do include these characteristics. The West Virginia Human Rights Act prohibits discrimination in employment and public accommodations based on race, religion, national origin, ancestry, sex, age, blindness, or disability.⁵⁹ The West Virginia Fair Housing Act⁶⁰ prohibits housing discrimination based on race, religion, national origin, ancestry, sex, blindness, disability, or familial status.⁶¹

Some local governments in West Virginia are authorized to enact local non-discrimination ordinances that offer broader protection than what is provided under state law. Such governments have been granted this power through West Virginia’s “Home Rule” pilot program, initiated in 2007, which gives participating municipalities greater latitude in implementing ordinances, resolutions, rules, and regulations.⁶² Under the program, participating municipalities can undertake such actions so long as they do not violate the West Virginia Code, federal law, and the U.S. and West Virginia Constitutions.⁶³

⁵³ Dave Mistich & Ashton Marra, *Meet the First Gay Couples to Get Marriage Licenses In West Virginia*, W VA. PUB. BROADCASTING (Oct. 9, 2014), <https://www.wvpublic.org/post/meet-first-gay-couples-get-marriage-licenses-west-virginia#stream/0>.

⁵⁴ *McGee v. Cole*, 66 F. Supp. 3d 747 (S.D.W. Va. 2014).

⁵⁵ 135 S. Ct. 1732 (2015).

⁵⁶ 590 U.S. __ (2020).

⁵⁷ CHRISTY MALLORY ET AL., THE WILLIAMS INSTITUTE, LEGAL PROTECTIONS FOR LGBT PEOPLE AFTER *Bostock v. Clayton County* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

⁵⁸ See Christy Mallory & Brad Sears, LGBT Discrimination, Subnational Public Policy, and Law in the United States, OXFORD RESEARCH ENCYCLOPEDIA OF POLITICS (2020), <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1200>.

⁵⁹ W. VA. CODE §§ 5-11-1 to -20 (2019).

⁶⁰ W. VA. CODE §§ 5-11a-1 to -20 (2019).

⁶¹ W. VA. CODE §§ 5-11a-1 to -20 (2019).

⁶² *The West Virginia Municipal Home Rule Program*, W. VA. DEP’T REVENUE, <https://revenue.wv.gov/homerule/Pages/About.aspx> (last visited Jan. 29, 2020).

⁶³ *Home Rule History in West Virginia*, City of Fairmont, <https://www.fairmontwv.gov/367/Home-Rule-History-in-West-Virginia> (last visited Jan. 29, 2020).

The pilot program became permanent as of January 2019⁶⁴, with 38 municipalities currently participating.⁶⁵

Fourteen municipalities in West Virginia—the majority of which participate in the Home Rule program⁶⁶— have enacted their own local-level protections against discrimination based on sexual orientation and gender identity. These include Athens, Beckley, Charles Town, Charleston, Harpers Ferry, Huntington, Keyser, Lewisburg, Martinsburg, Morgantown, Shepherdstown, Sutton, Thurmond, and Wheeling. All of these municipalities’ ordinances prohibit discrimination based on these characteristics in employment, housing, and public accommodations. These local ordinances protect 12% of West Virginia’s workforce age 16 and older from employment discrimination, and 12% of the state’s adult population from discrimination in housing and public accommodations based on sexual orientation and gender identity.⁶⁷

Parenting Rights. Until recently, West Virginia law presented unique barriers to family formation for same-sex couples. Prior to the U.S. Supreme Court’s decision in *Obergefell v. Hodges* in 2015,⁶⁸ single LGBT individuals in West Virginia could legally adopt a child as a single parent, but same-sex couples were unable to jointly adopt a child as a result of language in the state’s adoption laws limiting joint adoptions to different-sex married couples.⁶⁹ While the West Virginia Bureau for Children and Families has been silent following the *Obergefell* ruling with respect to how agencies should treat same-sex married couples for the purposes of joint adoption and adoptive placement, its current Homefinding Policy does not require that married applicants be of different sexes, nor does it use any gendered terms when discussing prospective adoptive or foster parents.⁷⁰ Notably, the State Code currently requires that child placing agencies ensure children have equal access to services regardless of gender or sexual orientation,⁷¹ and that agency employees be trained within 90 days of hiring on “[s]ensitivity to sexual identity including lesbian, gay, bisexual, transgender and questioning youth[.]”⁷² In December 2019, however, members of the House of Delegates proposed eliminating this equal

⁶⁴ W. VA. CODE § 8-1-5a (2019); see also *The West Virginia Municipal Home Rule Program*, W. Va. Dep’t Revenue, <https://revenue.wv.gov/homerule/Pages/About.aspx> (last visited Jan. 29, 2020).

⁶⁵ *Home Rule Cities*, W. VA. DEP’T REVENUE, <https://revenue.wv.gov/homerule/Pages/Home-Rule-Cities.aspx> (last visited Jan. 29, 2020).

⁶⁶ Specifically, the cities of Beckley, Charles Town, Charleston, Fairmont, Harpers Ferry, Huntington, Lewisburg, Martinsburg, Morgantown, Shepherdstown, and Wheeling. See *Home Rule Cities*, W. VA. DEP’T REVENUE, <https://revenue.wv.gov/homerule/Pages/Home-Rule-Cities.aspx> (last visited Jan. 29, 2020) (listing the cities in the Home Rule program); *West Virginia’s Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/profile_state/WV (last visited Jan. 29, 2020) (listing the cities that have passed LGBT-inclusive non-discrimination ordinances) [hereinafter MAP EQUALITY PROFILE].

⁶⁷ Calculated by the authors using data from the U.S. Census Bureau. See *American Community Survey Data Profiles, 2013-2017 ACS 5-Year Data Profile*, U.S. CENSUS BUREAU, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2017/> (last visited May 4, 2020) (select “State,” then “West Virginia,” click “Get Data Profile Links” and select “Demographic Characteristics”).

⁶⁸ 135 S. Ct. 2584 (2015).

⁶⁹ W. VA. CODE § 48-22-201 (2019).

⁷⁰ Office of Children & Adult Servs., *Homefinding Policy*, W. VA. DEP’T HEALTH & HUM. RESOURCES, BUREAU FOR CHILD. & FAMS. (Oct. 11, 2019), <https://dhhr.wv.gov/bcf/policy/Documents/Homefinding%20Policy.pdf>.

⁷¹ W. VA. CODE R. § 78-2-9 (2019).

⁷² W. VA. CODE R. § 78-3-11 (2019).

access protection, calling for its replacement with a provision that instead ensures equal access only for classes already protected under state and federal law.⁷³

Safe Schools and Youth. West Virginia’s anti-bullying law requires that county boards adopt and enforce policies against the bullying of students.⁷⁴ Unlike many state anti-bullying laws however, West Virginia’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. In an effort to establish consistency between schools, the West Virginia Department of Education issued formal policy guidance concerning the application of the anti-bullying law in 2011.⁷⁵ The guidance expressly notes protections for students from bullying and harassment based on sexual orientation and gender identity, among other personal characteristics.⁷⁶

Gender Marker and Name Changes. West Virginia law historically allowed individuals to change their name and the gender marker on both their birth certificate and driver’s license.⁷⁷ However, the state supreme court ruled in 2020 that circuit courts no longer have the authority to grant gender marker changes on birth certificates.⁷⁸ In order to change a name on a birth certificate, an individual must submit a court order showing a legal name change to the West Virginia Department of Health and Human Resource’s Vital Registration Office.⁷⁹ In order to change a driver’s license, the individual must present a court order showing a legal name change and a gender designation change request signed by a licensed physician certifying the individual’s gender identity to the state’s Division of Motor Vehicles.⁸⁰

Other Protections. West Virginia lacks several other legal protections for LGBT people that have been enacted in other states, including, for example, a hate crimes law that includes sexual orientation and gender identity,⁸¹ a ban on the use of conversion therapy on youth by professional health care providers, and a law that requires health care providers to offer coverage for gender-affirming medical care.⁸²

⁷³ Erin Beck, *Lawmakers Vote to Let Foster Care Agencies Turn Away LGBTQ Youth, Parents*, REGISTER-HERALD (Dec. 19, 2019), https://www.register-herald.com/news/state_region/lawmakers-vote-to-let-foster-care-agencies-turn-away-lgbtq/article_6211723d-da17-505d-b2fc-7f7aeba394ea.html.

⁷⁴ W. VA. CODE § 18-2C-3 (2019).

⁷⁵ *Policy 4373 Electronic Manual*, W. VA. DEP’T EDUC., <http://wvde.state.wv.us/healthyschools/ElectronicManual4373New.html#Level3InappropriateBehaviors> (last visited Jan. 29, 2020).

⁷⁶ *Id.*

⁷⁷ *ID Documents Center: West Virginia*, NAT’L CTR. FOR TRANSGENDER EQUALITY, <https://transequality.org/documents/state/west-virginia> (last visited Jan. 29, 2020); see also W. VA. CODE § 48-25-101 (2019) (name change statute).

⁷⁸ *In re: G.M.*, No. 19-0948 (W. Va. 2020) (memorandum decision).

⁷⁹ *Id.*

⁸⁰ *Id.*; see also Gender Designation Form, W. VA. DEP’T TRANSP., DIVISION MOTOR VEHICLES, <https://transportation.wv.gov/DMV/DMVFormSearch/DMV-99-RO-GenderDesignationForm.pdf> (last visited Jan. 29, 2020).

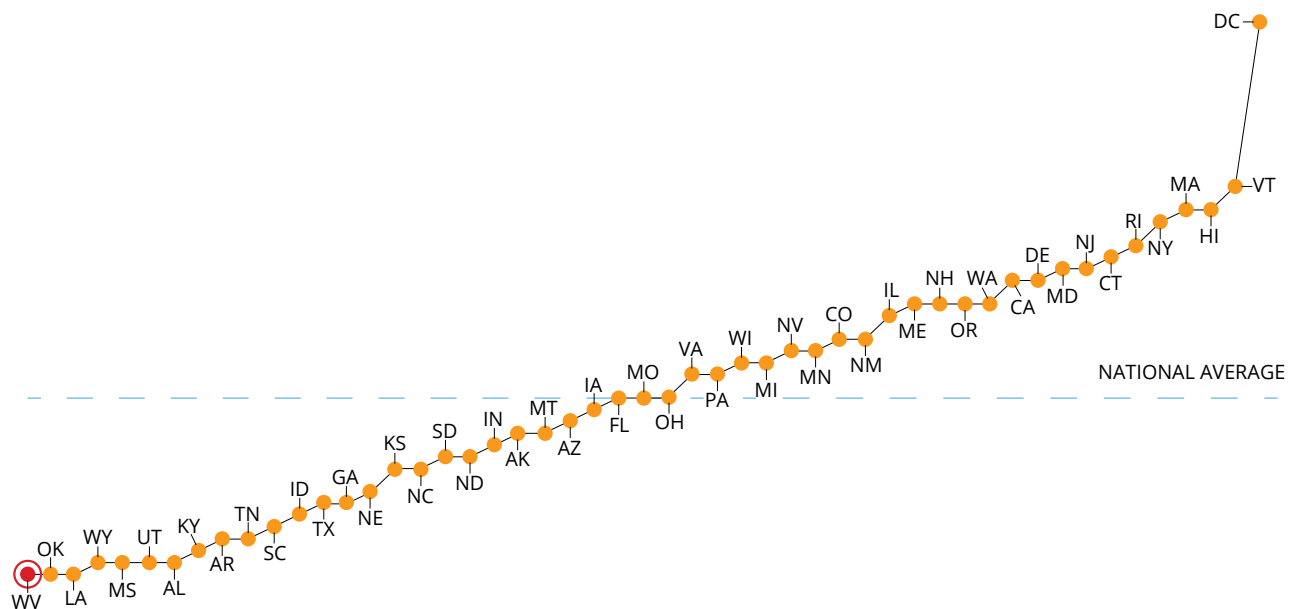
⁸¹ W. VA. CODE § 61-6-21 (2019) (West Virginia’s hate crimes statute, which is inclusive only of race, color, religion, ancestry, national origin, political affiliation, and sex); *State v. Butler*, 799 S.E.2d 718, 728 (W. Va. 2017) (finding that “sex” does not cover sexual orientation under the hate crimes statute and that therefore, “as it is currently written, the State cannot prosecute . . . for an alleged criminal civil rights violation arising out of the victims’ sexual orientation.”).

⁸² MAP EQUALITY PROFILE, *supra* note 66. In 2020, Lambda Legal filed a lawsuit challenging West Virginia’s blanket exclusion for gender-affirming care in the state’s Medicaid and state employee health plans. Press Release, Lambda Legal, West Virginia Medicaid Participants and State Employees File Lawsuit to Challenge Unlawful Ban on Transgender Health Care Coverage (Nov. 12, 2020).

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.⁸³ The Index summarizes four items concerning 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.⁸⁴ The Index provides climate scores for each state and the District of Columbia, denoting relative levels of social and political support for LGB 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, West Virginia has the lowest score for level of support for LGB people and issues.⁸⁵ Of the seventeen states in the South, West Virginia is ranked 15th.⁸⁶ Acceptance in West Virginia is far below the national average.

Figure 3. State rankings on LGB social & political Climate Index Scores, 2014



Although West Virginia is tied with Oklahoma and Louisiana as the lowest ranked state in terms of support for LGB people. However, attitudes toward LGBT people in the state are improving over time. Figure 4 below shows an increase in acceptance of same-sex marriage in West Virginia, among other Southern states, from 1992 to 2016.⁸⁷ In 1999, only 26% of West Virginia residents supported marriage

⁸³ HASENBUSH ET AL., *supra* note 21, at 5.

⁸⁴ *Id.* at 6.

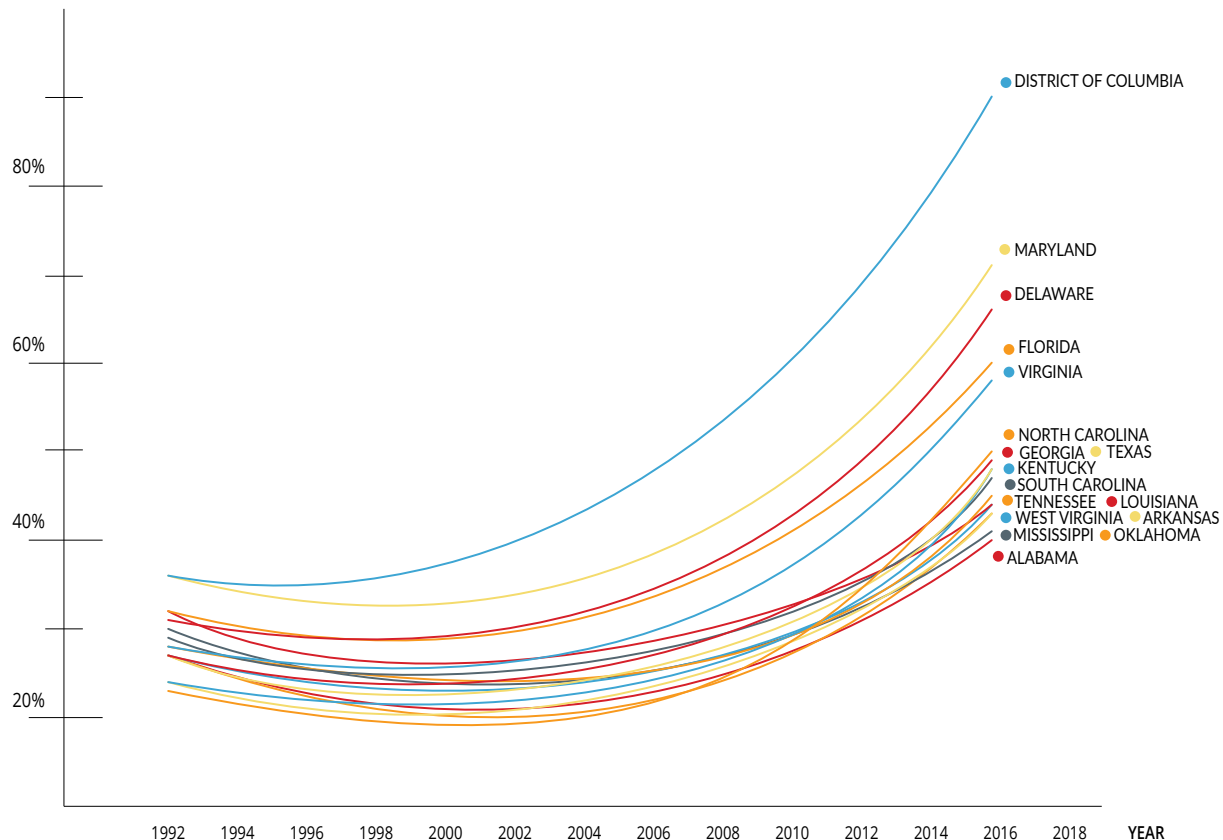
⁸⁵ *Id.* at 22.

⁸⁶ *Id.*

⁸⁷ Longitudinal changes in support for marriage equality are rooted in two causes: generational change and attitude change. See ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST., TRENDS IN PUBLIC SUPPORT FOR MARRIAGE SAME-SEX COUPLES BY STATE (2015), <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. See Gregory B. Lewis & Charles W. Gossett, *Changing Public Opinion on Same-Sex Marriage: The Case of California*, 36 POL. & POL'Y 4 (2008).

equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise with an estimated 44% in support in 2016. A separate survey of West Virginians conducted by the Cooperative Congressional Election Survey in November 2016 showed a similar percentage in favor of marriage equality at 45%.⁸⁸

Figure 4. Public support for same-sex marriage in the South, 1992–2016

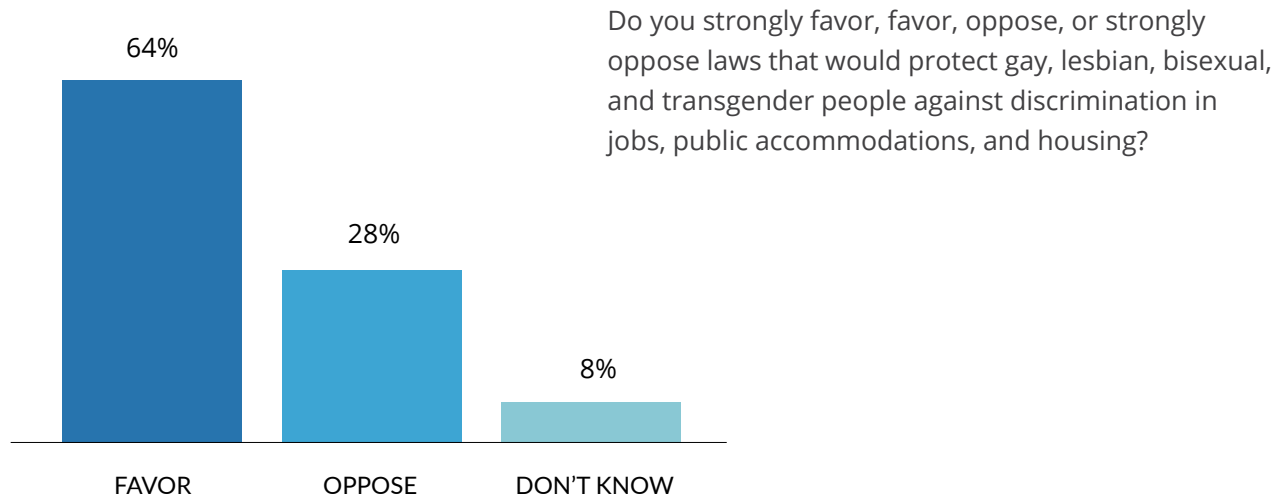


In addition, recent public opinion surveys also indicate that a majority of West Virginians support expanding non-discrimination protections to include LGBT people. The 2019 American Values Survey, a survey of 50,000 Americans across the entire U.S., found that public attitudes in West Virginia have remained clearly in favor of policies that would protect LGBT people from discrimination, with 64% of West Virginians supporting such policies, while only 28% opposed them.⁸⁹ Most (52%) West Virginia respondents to the 2018 American Values Survey reported that they were opposed to policies that would allow small businesses to refuse service to LGBT people for religious reasons. Estimates based on a 2011 survey of the American public found that 72% of respondents from West Virginia supported passage of a federal law to protect transgender people from employment discrimination.⁹⁰

⁸⁸ The sample consisted of 429 West Virginia residents, Stephen Asolabehere & Brian F. Schaffner, *CCES Common Content*, 2016, HARV. DATAVERSE (Mar. 3, 2017), <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/GDF6Z0&version=1.0>, doi: 10.7910/DVN/GDF6Z0.

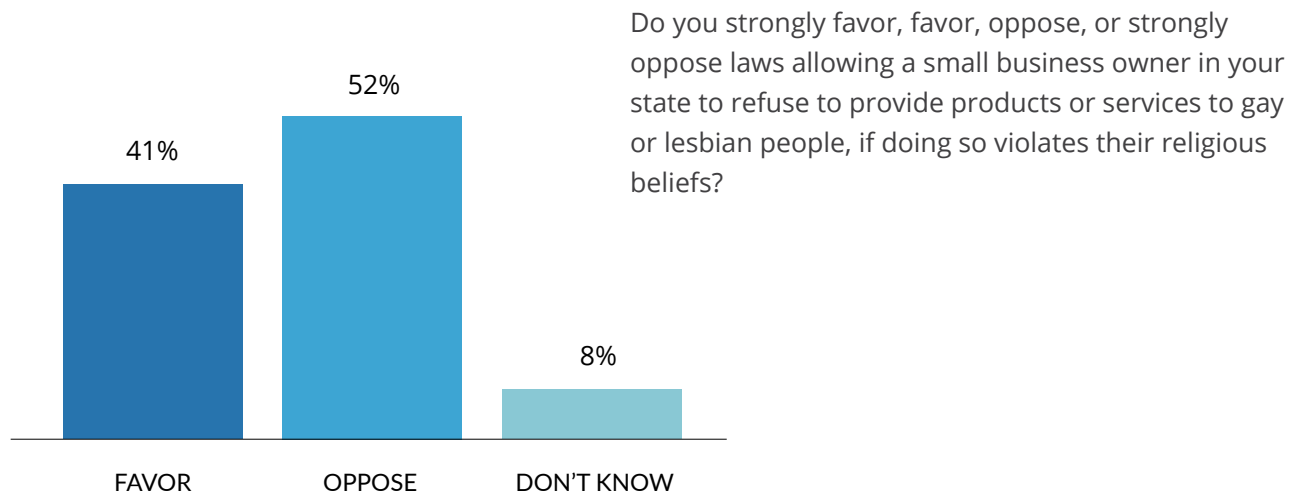
⁸⁹ American Values Atlas, PRRI, <http://ava.prri.org/#lgbt/2019/States/lgbtdis/m/US-WV> (last visited February 9, 2021).

⁹⁰ Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, RES. & POL'Y 1 (2015), <https://journals.sagepub.com/doi/pdf/10.1177/2053168015612246>.

Figure 5. Support among people in West Virginia for LGBT-supportive non-discrimination policies

Source: American Values Survey, 2019

Values may not add to 100% due to rounding

Figure 6. Support among people in West Virginia for laws permitting small businesses to refuse services to gay and lesbian people

Source: American Values Survey, 2018

Values may not add to 100% due to rounding

In summary, West Virginia ranks low in terms of support for LGBT people, but residents of West Virginia have become more supportive of LGBT people and issues over time.

STIGMA AND DISCRIMINATION

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

DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Discrimination against LGBT people in the U.S. has been well documented. For example, a 2016 survey conducted by the Center for American Progress found that 25.2% of LGBT people had experienced some type of discrimination within the past year.⁹¹ Similarly, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents in the U.S. reported that they had been treated unfairly by an employer in hiring, pay, or promotions, and 18% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.⁹² Another national survey conducted in 2017 by NPR, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health found that 20% of LGBTQ respondents reported being discriminated against when applying for jobs, and that 22% of LGBTQ respondents reported being discriminated against when trying to rent an apartment or buy a house because of their sexual orientation or gender identity.⁹³ LGBTQ people of color were more likely to report experiencing employment discrimination in response to the survey than white LGBTQ respondents.⁹⁴ Further, 16% of LGBTQ respondents said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity, and 18% said they had avoided going to a doctor or seeking health care because they were afraid of discrimination.⁹⁵

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey (USTS) found that 27% of respondents in the U.S. who held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression, and 15% reported being

⁹¹ Sejal Singh & Laura E. Durso, *Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways*, CTR. FOR AM. PROGRESS (May 2, 2017), <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways>.

⁹² A SURVEY OF LGBT AMERICANS, PEW RES. CTR. (June 13, 2013), <https://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-20111.pdf>.

⁹³ NPR, ROBERT WOOD JOHNSON FOUNDATION & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS 1 (2017), https://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2017/rwjf441734.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.* at 1, 10.

verbally harassed, physically attacked, and/or sexually assaulted at work in the year prior to the survey because of their gender identity.⁹⁶ Further, 23% of transgender respondents nationwide reported having experienced some form of housing discrimination in the past year, and 31% reported having experienced at least one type of mistreatment in a place of public accommodation in the past year.⁹⁷

In response to a 2016 poll, 52% of West Virginia residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S.,⁹⁸ and 58% said that they thought that transgender people experience a lot of discrimination in the U.S.⁹⁹

Discrimination against LGBT people in West Virginia has been documented in surveys, court cases, and the media. Examples include:

- A 2020 survey of trans and nonbinary adults by Fairness WV documented discrimination in health care and barriers to accessing care.¹⁰⁰ Forty-four percent of respondents said that they had experienced at least one type of discrimination from health care providers and 23% said they had experienced discrimination from auxiliary health care staff. The types of discrimination reported included misgendering (36%), refusals to provide care (17%), excessive roughness (11%), and other forms. Over half (54%) of respondents said that they felt that providers in their area cannot provide competent care to transgender people. Respondents also reported encountering barriers to receiving gender-affirming care. Nearly half of the respondents (49%) said that they would have to travel over an hour to receive transition-related care from a doctor they felt comfortable with. Additionally, 36% of respondents with health insurance said that their insurance had denied coverage for transition-related care.
- In 2019, an openly gay hospital employee living with HIV recommended increasing LGBT-inclusive messaging and posting HIV-awareness posters around the hospital as part of committee discussions surrounding diversity.¹⁰¹ One committee member allegedly expressed a fear that being LGBT and HIV-inclusive would be bad for the hospital's image and that patients might fear being in the same hospital rooms as individuals living with HIV.¹⁰² In the wake of this discussion, the employee felt intimidated and alleged that other committee members began to avoid him.¹⁰³ He later left his position at the hospital following an internal

⁹⁶ SANDY E. JAMES ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

⁹⁷ *Id.* at 13, 16.

⁹⁸ *The American Values Atlas: West Virginia*, PRRI, <http://ava.prri.org/#discrimination/2016/States/lgdis/m/US-WV> (under dropdown menu for "Select Question" select "Discrimination Against Gay & Lesbian People;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016") (last accessed Feb. 10, 2020).

⁹⁹ *The American Values Atlas: West Virginia*, PRRI, <http://ava.prri.org/#discrimination/2016/States/lgdis/m/US-WV> (under dropdown menu for "Select Question" select "Discrimination Against Transgender People;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016") (last accessed Feb. 10, 2020).

¹⁰⁰ Fairness West Virginia, WV Transgender Health Survey, <http://fairnesswv.org/2020transhealthsurvey/> (last visited Dec. 29, 2020).

¹⁰¹ Chad Felix Greene, *I'm a Gay Conservative Who Thought Discrimination Claims were Overblown. Then it Happened to Me.*, LGBTQ NATION (Aug. 16, 2019), <https://www.lgbtqnation.com/2019/08/im-gay-conservative-thought-discrimination-claims-overblown-happened>.

¹⁰² *Id.*

¹⁰³ *Id.*

investigation that left him feeling like he “had ruined [his] chances of advancing in [his] job of three years.”¹⁰⁴

- In 2019, a transgender man alleged that the manager of a gym in Morgantown blocked his path to the exit after he completed his workout, stating that she had been watching him use the restroom at the gym over a period of time, and demanded to see a state ID showing that he was legally male.¹⁰⁵
- In 2018, a transgender woman reported facing a number of challenges while seeking employment in fast food restaurants in Parkersburg.¹⁰⁶ For example, potential employers often requested her birth certificate, as well as letters from her therapist affirming that gender dysphoria is a legitimate medical issue, as a prerequisite for employment.¹⁰⁷
- In 2018, a state judge in West Virginia refused to solemnize marriages of same-sex couples in violation of the Supreme Court’s ruling in *Obergefell v. Hodges*, extending marriage equality nationwide.¹⁰⁸ Rather than accept a sanction for violating the law as a public official, the judge chose to stop performing all marriages.¹⁰⁹
- In 2016, a lesbian assistant manager at a restaurant chain filed a lawsuit alleging that an employee with knowledge of her sexual orientation refused to speak to her, and that she experienced comments in the workplace about her private sexual activities that were “frequent, severe, physically threatening, and humiliating.”¹¹⁰ The comments from her coworkers allegedly included, “your kind aren’t welcome here,” and comments that one of her co-workers would “never work with a gay person again.”¹¹¹
- In 2015, three transgender women threatened to sue the West Virginia Division of Motor Vehicles over a policy that required them to remove makeup and conform to gender norms to obtain an updated driver’s license.¹¹² One woman reported being repeatedly called “it” while attempting to update her license, while another described her experience as “the most humiliation I ever got in my life”¹¹³ The DMV ultimately rescinded this policy.¹¹⁴
- In 2014, a same-sex couple was harassed by a deputy clerk at a West Virginia courthouse when they tried to obtain a marriage license. The clerk told the couple they were an

¹⁰⁴ *Id.*

¹⁰⁵ Joe Buchanan, *Morgantown Transgender Man Says Planet Fitness Manager Confronted Him for His ID After Using Men’s Locker Room*, WDTV (Oct. 11, 2019), <https://www.wdtv.com/content/news/Transgender-man-speaks-out-about-discrimination-at-Morgantown-Planet-Fitness-562856631.html>; Email from Robb Livingood to Rayna Momen (Dec. 8, 2020) (on file with authors).

¹⁰⁶ Whitney Kimball, *How Transphobic Anti-LGBTQ Groups Hijacked a Small Town’s Fight for Equality*, JEZEBEL (May 11, 2018), <https://jezebel.com/how-transphobic-anti-lgbtq-groups-hijacked-a-small-town-1825338200>.

¹⁰⁷ *Id.*

¹⁰⁸ Lou Chibbaro Jr., *W. Va. Judge Refuses to Perform Same-Sex Marriages*, WASHINGTONBLADE.COM (Dec. 18, 2018), <https://www.washingtonblade.com/2018/12/18/west-virginia-judge-no-same-sex-marriage/>.

¹⁰⁹ *Id.*

¹¹⁰ *Whitman v. Ruby Tuesday, Inc.*, No. 1:17CV58, 2017 WL 3402962, at *1 (N.D.W. Va. Aug. 8., 2017).

¹¹¹ *Id.* at *1 n.2.

¹¹² James Queally, *West Virginia DMV Changes Photo Policy After Transgender Women Threaten Lawsuit*, L.A. TIMES (July 7, 2015), <https://www.latimes.com/nation/la-na-nn-west-virginia-transgender-20150706-story.html>.

¹¹³ *Id.*

¹¹⁴ *Id.*

“abomination” and that God would “deal” with them.¹¹⁵ Another clerk told the couple shouted that it was their “religious right” to harass the couple.¹¹⁶ The couple filed a lawsuit against the clerk’s office and received a \$10,000 settlement.¹¹⁷

- In 2013, the Lincoln County Board of Education voted to fire a middle school teacher, allegedly over her attempts to “turn [her students] gay,” with the Board citing both her sexual orientation and “so-called lifestyle.”¹¹⁸
- In 2012, a woman hired as the executive director of a Charleston non-profit alleged that her job offer was rescinded when board members assumed that she was a lesbian based upon seeing her Facebook relationship status.¹¹⁹ A jury ultimately concluded that board members had in fact rescinded the woman’s job offer after discovering she was a lesbian, but concluded that the woman’s claim did not give rise to monetary damages.¹²⁰
- In 2012, a lesbian trainmaster filed a lawsuit against her employer alleging that she overheard a male coworker asking another coworker how she “taste[s] and feel[s] because [he] heard she’s never had a d*** in her.”¹²¹ After his behavior was reported to a supervisor, the male coworker was demoted, but leveraged his seniority to arrange a transfer so that the trainmaster became his new supervisor.¹²² The next morning, the trainmaster alleged that an unidentified man showed up at her home, pounding on her door while saying, “Come out b****. . . . You cost me my job”¹²³ The trainmaster said that she received harassing phone calls on a near-daily basis after this incident, which at times included derogatory terms.¹²⁴ Ultimately, the Supreme Court of Appeals of West Virginia affirmed a jury verdict awarding the trainmaster over \$1.5 million in compensatory damages and \$500,000 in punitive damages on the basis of sexual harassment and other claims.¹²⁵
- In 2010, a lesbian couple reported being denied the opportunity to rent an apartment in Huntington, with the landlord allegedly confirming it was because he had a problem with the couple’s sexual orientation.¹²⁶
- A gay man reported that left his job at a West Virginia coal mine after experiencing persistent

¹¹⁵ Rachel Chason, *Lesbians Win \$10,000 Judgment against County Clerk for Calling Them an ‘Abomination’*, WASHINGTONPOST.COM (Aug. 31, 2017).

¹¹⁶ *Id.*

¹¹⁷ Michael Virtanen, *Attorneys: West Virginia Clerk Apologizes to Lesbian Couple*, APNEWS.COM (Aug. 30, 2017).

¹¹⁸ Seán O’Donoghue, *Fired Teacher Denies Trying ‘to Turn Them Gay,’* THE LINCOLN J. (Mar. 7, 2013), <http://lincolnjournalinc.com/fired-teacher-denies-trying-to-turn-them-gay-p9667-1.htm>.

¹¹⁹ Cathleen Moxley, *UPDATE: Jury Deliberation in Charleston Discrimination Case*, WSAZ (Nov. 16, 2012), https://www.wsaz.com/home/headlines/Center_Losing_Grant_Money_for_Sexual_Discrimination_134790018.html.

¹²⁰ *West Virginia Court Supports Lesbian’s Bias Claim in Lost Job Offer*, INS. J. (Nov. 19, 2012), <https://www.insurancejournal.com/news/southeast/2012/11/19/270997.htm>.

¹²¹ CSX Transp., Inc. v. Smith, 729 S.E.2d 151, 158 & n.2 (W. Va. 2012).

¹²² *Id.* at 159.

¹²³ *Id.* at 158–59.

¹²⁴ *Id.* at 159.

¹²⁵ *Id.* at 175.

¹²⁶ Carrie Cline, *Gay Couple Encounters Housing Discrimination*, WSAZ (Feb. 22, 2010), <https://www.wsaz.com/home/headlines/84994592.html>.

workplace harassment, including name-calling and the destruction of his personal property.¹²⁷ According to the employee, the acts escalated to the point where he feared for his life while at work.¹²⁸ On one occasion, a screwdriver was taken to the employee's wheel weights, making it difficult for him to steer his vehicle on a one-lane mountain road with a significant drop-off.¹²⁹ The employee alleged that when he filed complaints with his supervisor, the papers were thrown into the trash.¹³⁰ When the employee asked mining inspectors about his rights, the employee was allegedly told, "[y]ou don't have no rights."¹³¹ He eventually left his job and the mining industry altogether.¹³² The employee filed a lawsuit against his employer in 2010,¹³³ which settled for an undisclosed amount in 2012.¹³⁴ During a 2015 interview, the employee stated that, "[i]f there was a perfect world out there I'd love to be a coal miner again," but expressed feeling that it would still be unsafe for him to return to that industry.¹³⁵

BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

Bullying and harassment

Survey data, court cases, and anecdotal reports indicate that LGBT youth and young adults across the U.S., including in West Virginia, face harassment, bullying, and exclusion between kindergarten and the twelfth grade (K–12) and in higher education. For example, analyses of data collected nationwide through the 2017 YRBS found that LGB¹³⁶ and transgender¹³⁷ high school students were more likely than their non-LGBT peers to report being bullied at school, being in a physical fight, and being threatened with a weapon on school property, among other negative outcomes.

The 2017 YRBS data also indicate that LGB youth in West Virginia experience higher rates of being bullied and threatened with violence than heterosexual youth. LGB students in West Virginia were almost twice as likely to report being bullied both at school (40% vs. 22%)¹³⁸ and electronically (34% vs. 18%)¹³⁹ in the year prior to the survey than heterosexual students. In addition, LGB students were more likely to report being in a physical fight in the year prior to the survey (25% vs. 19%)¹⁴⁰ and to

¹²⁷ Preston Mitchum, *Workplace Discrimination Series: Sam Hall*, CTR. FOR AM. PROGRESS (July 15, 2013), <https://www.americanprogress.org/issues/lgbt/news/2013/07/15/69595/workplace-discrimination-series-sam-hall/>.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Complaint, *Hall v. Spartan Mining Co.*, (Cir. Ct. Kanawha Cty. W. Va. filed Dec. 8, 2010) (No. 10-C-2202).

¹³⁴ See Roxy Todd, *Haunting Banjo Tune Inspired by Coal Miner's Struggle*, W. VA. PUB. BROADCASTING (Jan. 22, 2015), <https://www.wvpublic.org/post/haunting-banjo-tune-inspired-coal-miners-struggle-0#stream/0>.

¹³⁵ *Id.*

¹³⁶ Kann et al. (2018), *supra* note 32, at 169.

¹³⁷ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, 2017 YOUTH RISK BEHAVIOR SURVEY RESULTS: SELECT U.S. STATES HIGH SCHOOL SURVEYS (2019), https://www.cdc.gov/healthyyouth/disparities/pdf/states_transgender_report.pdf.

¹³⁸ Kann et al. (2018), *supra* note 32, at 168.

¹³⁹ *Id.* at 165.

¹⁴⁰ *Id.* at 159.

report being threatened or injured with a weapon on school property 13% vs. 6%).¹⁴¹ Not surprisingly, LGBT students were over twice as likely as heterosexual students to report missing school because they felt unsafe at least once in the month prior to the survey (14% vs. 6%).¹⁴²

Bullying and harassment of LGBT youth in West Virginia have also been documented in other sources. For instance, the 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that, in the year prior to the survey, 82% of respondents from West Virginia said they had experienced verbal harassment at school based on their sexual orientation, and 76% said they had experienced verbal harassment at school based on their gender expression.¹⁴³ Many students also reported experiencing physical harassment at school based on their sexual orientation (42%) or gender expression (34%) in the year prior to the survey.¹⁴⁴ In addition, 18% of respondents reported that they had experienced physical assault at school because of their sexual orientation, and 14% of respondents said they had experienced physical assault because of their gender expression at school in the year prior to the survey.¹⁴⁵

Further, 42% of transgender student respondents from West Virginia reported that they were unable to use the bathroom at school that aligns with their gender identity, 37% were similarly unable to use the locker room that aligns with their gender identity, and 29% were prevented from using their chosen name or pronouns in school.¹⁴⁶ A significant majority (71%) of student respondents from West Virginia reported that they did not have access to a Gay-Straight Alliance or similar club in school.¹⁴⁷ Of students who were bullied or harassed at school, only 54% of students reported the incident to school staff.¹⁴⁸ Only 21% of those who reported bullying or harassment to staff said that it resulted in effective intervention.¹⁴⁹

In addition, 2016 Campus Quality of Life survey of students at West Virginia University (WVU) found that 27.4% of students thought that people on campus were generally unfriendly towards transgender people, and 18.9% thought that people on campus were generally unfriendly toward gay and lesbian people.¹⁵⁰ One transgender student at WVU described the university's lack of trans-inclusive policies as having great influence on her college experience, noting that "[attending WVU] is something I survived, not something I did, thrived in . . . It's just being able to make it out of here. . . . I'm a WVU survivor."¹⁵¹

¹⁴¹ *Id.* at 156.

¹⁴² *Id.* at 171.

¹⁴³ GLSEN, SCHOOL CLIMATE IN WEST VIRGINIA 1 (2019), https://www.glsen.org/sites/default/files/2019-11/West%20Virginia_Snapshot_2017_0.pdf.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.* at 1.

¹⁴⁹ *Id.*

¹⁵⁰ WALTER S. DEKESEREDY ET AL., WEST VIRGINIA UNIVERSITY'S CAMPUS QUALITY OF LIFE SURVEY: PRELIMINARY RESULTS 25 (2016), <https://violenceresearch.wvu.edu/files/d/84a017d6-a15d-486c-9a99-d2cfeaf1171/survey-report.pdf>.

¹⁵¹ Melissa M. Chesanko, *Identit(ies) and Agency: College Students' Navigations of Sexuality and Gender in Complex Figured Worlds* 124 (2014) (unpublished Ph.D. dissertation, West Virginia University) (on file with author).

A 2020 survey of teachers conducted by Fairness WV found that many educators in the state have witnessed bullying of LGBTQ students in schools and do not feel that they are adequately prepared to meet the needs of these students.¹⁵² In response to the survey, 57% of teachers said they had heard anti-LGBTQ slurs from students in the past year and 14% reported hearing slurs from school staff or other administrators. More than a third of teachers (35%) reported that they were concerned with the way their colleagues spoke to or treated LGBTQ students, while 28% of teachers reported that they witnessed bullying against LGBTQ students in the past year. Many respondents said they received no training on how to support LGBTQ students (70%), did not incorporate LGBTQ issues into their lesson plans (59%), and were unfamiliar with their school's policy regarding facilities trans students may use (38%).

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

- In 2019, the mother of a gay teenager in Morgantown filed a lawsuit against the school board and several other individuals associated with a youth program for allegedly ignoring incidents of bullying, including being forcibly outed, that led to her son being raped.¹⁵³ As part of her allegations, the mother noted one of her son's teachers was aware of the rape and other assaults for around eleven months, but that the teacher had decided not to report the incidents.¹⁵⁴
- At a 2019 Beckley Common Council hearing on a non-discrimination ordinance, a mother reported that her transgender son experienced bullying in school every day—especially in restrooms and during gym class.¹⁵⁵ The mother reported that her son would hold his urine and dehydrate himself at school so that he would not have to use the school's restrooms.¹⁵⁶
- In 2018, the assistant principal of a high school allegedly followed a transgender teenager into the bathroom and ordered him to use a urinal while the assistant principal watched to prove that the student was a boy.¹⁵⁷ The assistant principal also allegedly blocked the bathroom door, preventing the student from leaving.¹⁵⁸ After escaping the restroom, the student was allegedly confronted by the parent of another classmate and the assistant principal, who told the student, “[y]ou freak me out.”¹⁵⁹ Although the assistant principal was initially removed from his position at the high school, he ultimately won an appeal and was reinstated.¹⁶⁰ In

¹⁵² Fairness West Virginia, West Virginia Educator Survey, <http://fairnesswv.org/2020/08/03/education-report/> (last visited Dec. 29, 2020). 129 teachers from 22 of WV's 55 counties responded to the survey. The majority of respondents taught high school, although elementary and middle school teachers were also represented.

¹⁵³ Matt Harvey, *Gay Youth and Mom File Lawsuit Accusing Monongalia County WV BOE of Sweeping His Rape 'Under the Rug,'* The Morgantown News (Oct. 3, 2019), https://www.wvnews.com/morgantownnews/news/gay-youth-and-mom-file-lawsuit-accusing-monongalia-county-wv/article_2cb849b1-6006-535c-b183-dbf4d6581ff5.html.

¹⁵⁴ *Id.*

¹⁵⁵ Jessica Farrish, *City of Beckley's LGBTQ Ordinance Moves Forward*, THE REGISTER-HERALD (Jan. 8, 2019), https://www.register-herald.com/news/city-of-beckley-s-lgbtq-ordinance-moves-forward-with-video/article_f4937e6c-13ca-11e9-bdaa-8b537e80e9df.html.

¹⁵⁶ *Id.*

¹⁵⁷ Complaint at 2, M.C. ex rel. C.C. and J.C. v. Harrison Cty. Bd. of Educ. (available at <https://www.wboy.com/wp-content/uploads/sites/43/2019/08/Complaint8-28-19.pdf>).

¹⁵⁸ *Id.* at 3.

¹⁵⁹ *Id.*

¹⁶⁰ AP, *Principal Accused of Harassing Transgender Boy Gets Job Back*, WCHS NEWS (Apr. 29, 2019), <https://wchstv.com/news/local/principal-accused-of-harassing-transgender-boy-gets-job-back>.

August of 2019, the teenager and his family filed a lawsuit based on these allegations.¹⁶¹

- In 2018, a transgender student at Marshall University reported that, while in a gender-neutral restroom in the university's gender-neutral dorm floor, a member of the cleaning staff walked in while she was washing her face and was later heard telling another co-worker that, "I just assumed it was a female."¹⁶² The student reported repeated usage of the word "it" in reference to her, and that she overheard the employee express an aversion to entering such gender-neutral facilities out of a desire to avoid future encounters with transgender students.¹⁶³
- In 2017, a teenage student at a Charleston high school reportedly used an anti-gay slur to refer to another student during a presentation about the increased risk of bullying experienced by LGBT youth.¹⁶⁴
- In 2017, a transgender teenager reported to the media that when she tried to use the girl's bathroom at school, another student screamed at her.¹⁶⁵ The next day, the student saw a note on a bathroom stall that read: "You're not a girl, get out of my bathroom."¹⁶⁶

¹⁶¹ ACLU-WV Files Suit Over Abuse of Trans High School Student, ACLU W. VA. (Aug. 28, 2019), <https://www.acluww.org/en/news/aclu-wv-files-suit-over-abuse-trans-high-school-student>.

¹⁶² Jessica Lilly & Molly Born, *Inside Appalachia: LGBT Issues in Our Region*, W. VA. PUB. BROADCASTING (June 22, 2018), <https://www.wvpublic.org/post/inside-appalachia-lgbt-issues-our-region#stream/0> (audio, beginning at 32:20).

¹⁶³ *Id.*

¹⁶⁴ Erin Beck, *Anti-bullying Speaker Hoping to Make a Difference for WV LGBT Community*, CHARLESTON GAZETTE-MAIL (Apr. 27, 2017), https://www.wvgazettemail.com/news/education/anti-bullying-speaker-hoping-to-make-difference-for-wv-lgbt/article_08fd633e-65d7-5fee-a97a-4afe871225fb.html.

¹⁶⁵ Corinne Segal, *In West Virginia, LGBTQ Advocates See a Shift toward Support*, PBS (Mar. 26, 2017), <https://www.pbs.org/newshour/nation/west-virginia-lgbtq-advocates-see-shift-toward-support>.

¹⁶⁶ *Id.*

Family rejection

For many youth, the challenges that they face at school are compounded by having unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.¹⁶⁷ For example, in one study about the challenges that youth face, LGBT youth ranked non-accepting families as the most important problem in their lives (26%), followed by school and bullying problems (21%) and fear of being open about being LGBT (18%).¹⁶⁸ 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.¹⁶⁹

¹⁶⁷ E.g., Bryan N. Cochran et al., *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 *Am. J. Pub. Health* 733 (2002); Anthony R. D'Augelli et al., *Parents' Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 *J. Marriage & Fam.* 474 (2005); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 *Nev. L.J.* 774, 788 (2006); Darrel Higa et al., *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 *Youth & Soc'y* 663, 669 (2012); Bryan E. Robinson et al., *Responses of Parents to Learning that their Child is Homosexual and Concern Over AIDS: A National Study*, 1 *J. Homosexuality* 59, 67 (1989); Les B. Whitbeck et al., *Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 *J. Sex Res.* 329 (2004); CHRISTY MALLORY ET AL., 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>.

¹⁶⁸ 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.

¹⁶⁹ *Id.*

EFFECTS OF STIGMA AND DISCRIMINATION

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

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

ECONOMIC INSTABILITY

Wage gaps for LGBT people

Wage gap analysis has been used by economists to measure employment discrimination against women, people of color, and LGBT people. Several studies have found evidence of wage gaps affecting gay men and transgender people, and for many LGBT people who face discrimination based on multiple intersecting identities, the combined impacts are even more severe.

In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all studies found an earnings penalty for gay men, with an average of -11% compared to heterosexual men.¹⁷⁰ Klawitter also noted that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in government sector jobs where wages are more highly regulated. For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium in comparison to heterosexual women, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.¹⁷¹ However, the pattern of an earnings premium for lesbians working in the private and non-profit sectors did not persist in the public sector—lesbians have no earning premium in government employment.¹⁷²

Klawitter concluded that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians.”¹⁷³ However, despite this premium, most lesbians still earn less than most gay and heterosexual men because of the gender wage

¹⁷⁰ Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUSTR. REL. 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

¹⁷¹ *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

¹⁷² Klawitter, *supra* note 170, at 22.

¹⁷³ *Id.* at 21.

gap.¹⁷⁴ Klawitter posited several reasons to explain why gay men may face more discrimination than lesbians in the workplace, including that straight men in the U.S. have less positive attitudes toward gay men than toward lesbians, and that straight men are more likely to be in wage-determining senior positions than women.¹⁷⁵

Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.¹⁷⁶ 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.¹⁷⁷

A simple comparison¹⁷⁸ of median incomes in West Virginia also suggests that men in same-sex couples may face a wage gap. An analysis of Census 2000 data found that the median income of men in same-sex couples in the state was approximately 16.8% lower than the median income of men in different-sex marriages.¹⁷⁹

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.”¹⁸⁰ The study concludes that transgender adults who are wage earners experience a “household income penalty” equivalent to 12% of annual household income.¹⁸¹

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.”¹⁸²

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps.

¹⁷⁴ M.V. LEE BADGETT & ALYSSA SCHNEEBBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

¹⁷⁵ Klawitter, *supra* note 170, at 21–22.

¹⁷⁶ *Id.* at 22.

¹⁷⁷ E.g., LOTTA SAMELIUS & ERIK WÄGBERG, SIDA, SEXUAL ORIENTATION AND GENDER IDENTITY ISSUES IN DEVELOPMENT (2005), http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-is-sues-in-development_718.pdf.

¹⁷⁸ Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

¹⁷⁹ The median income of women in same-sex couples in West Virginia 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 ROSKY, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: WEST VIRGINIA 3 (2008), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/WestVirginiaCensus2000Snapshot.pdf>.

¹⁸⁰ Christopher S. Carpenter, Samuel T. Eppink & Gilbert Gonzales, *Transgender Status, Gender Identity, and Socioeconomic Outcomes in the United States*, INDUSTR. AND LABOR REL. REV., <https://doi.org/10.1177/0019793920902776> (Feb. 11, 2020).

¹⁸¹ *Id.*

¹⁸² Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUSTR. REL. 59, 96 (2015).

A 2009 study found that in states with sexual orientation non-discrimination laws, men and women in same-sex couples had a wage premium (3% and 2% respectively) compared to men and women in different-sex couples, and they earned approximately 0.3% more for each year the policy was in effect.¹⁸³ Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings¹⁸⁴ and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men, especially in private-sector jobs.¹⁸⁵ Furthermore, a 2015 study found that the enactment of state-level non-discrimination laws increased wages (by 4.2%) and rates of employment (by 2%) for gay men.¹⁸⁶

Poverty in the LGBT community

While national averages indicate that LGBT people may be more likely to have higher household incomes than non-LGBT people, those averages can mask that LGBT people are also disproportionately poor¹⁸⁷ and that poverty is concentrated in certain groups within the LGBT community, such as bisexual women, people of color, and transgender people. For example, a 2019 study on poverty in the LGBT community found that 21.6% of LGBT adults in the U.S. experience poverty, compared to 15.7% of cisgender straight adults.¹⁸⁸ Bisexual women and transgender people had especially high rates of poverty, with 29.4% of people in both groups reporting that they were living in poverty.¹⁸⁹ In addition, a 2013 study found that 7.6% of lesbian couples were living in poverty, compared to 5.7% of married different-sex couples, and that over one in five children of same-sex couples were living in poverty, compared to 12.1% of children of married different-sex couples.¹⁹⁰

Similarly, research on the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have enough money to feed themselves or their families, and nearly half of LGB adults ages 18–44 who are raising children (46%) participated in SNAP, the federal food stamps program.¹⁹¹

¹⁸³ GARY J. GATES, CAL. CTR. FOR POPULATION RES., THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

¹⁸⁴ Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011).

¹⁸⁵ 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).

¹⁸⁶ Ian Burn, *Legal Differences in Non-Discrimination Laws and the Effect of Employment Protections for Gay Men* (Feb. 2015) (unpublished manuscript available at the Princeton University repository). The study also found that state non-discrimination laws with stronger damages, statutes of limitations, and attorney's fees increase the positive impact on gay men's wages. *Id.*

¹⁸⁷ M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

¹⁸⁸ M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS 1 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

¹⁸⁹ *Id.*

¹⁹⁰ BADGETT & SCHNEEBAUM, *supra* note 174, at 1–3.

¹⁹¹ TAYLOR N.T. BROWN, ADAM P. ROMERO & GARY J. GATES, WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

The 2015 USTS found that, nationally, 29% of respondents were living at or near the federal poverty line, which was more than twice the rate of poverty in the U.S. general population (12%).¹⁹² Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of Black, 34% of Middle Eastern, and 32% of Asian transgender respondents reporting that they were living in poverty, compared to 24% of White transgender respondents.¹⁹³

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.¹⁹⁴

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.¹⁹⁵ The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination, and in regions of the country such as the Midwest, with a poorer social climate and fewer legal protections.¹⁹⁶ For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in states with protective laws to \$11,000 in states that lack such laws.¹⁹⁷

Data from the 2015–2017 Gallup Daily Tracking poll show similar disadvantages for LGBT people in West Virginia, including:¹⁹⁸

- 33% of LGBT adults in West Virginia reported that they do not have enough money for food, compared to 20% of non-LGBT adults.
- 39% of LGBT adults in West Virginia reported having a household income below \$24,000, compared to 26% of non-LGBT adults.
- 14% of LGBT adults in West Virginia reported that they were unemployed, compared to 7% of non-LGBT adults.

¹⁹² JAMES ET AL., *supra* note 96.

¹⁹³ *Id.*

¹⁹⁴ BADGETT, DURSO & SCHNEEBaum, *supra* note 187, at 25.

¹⁹⁵ HASENBUSH ET AL., *supra* note 21.

¹⁹⁶ 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, “[i]t’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.” *Id.*

¹⁹⁷ HASENBUSH ET AL., *supra* note 21.

¹⁹⁸ WILLIAMS INST., *supra* note 23.

HEALTH DISPARITIES FOR LGBT PEOPLE

Health disparities for LGBT adults

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climate, have been shown to contribute to health disparities for LGBT people. Substantial research has documented that LGBT people experience disparities on a range of health outcomes and health-related risk factors compared to their non-LGBT counterparts. Research shows that mood¹⁹⁹ and anxiety disorders,²⁰⁰ attempted suicide,²⁰¹ and self-harm²⁰² 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.²⁰³ In addition, LGB people are more likely to report tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.²⁰⁴ As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in West Virginia indicate that LGBT adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

Health Disparities for LGBT Adults in West Virginia

One source for assessing health disparities between LGBT and non-LGBT people in West Virginia is the West Virginia BRFSS.²⁰⁵ However, the West Virginia Department of Health and Human Resources only

¹⁹⁹ Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005); 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).

²⁰⁰ 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); King et al., *supra* note 199.

²⁰¹ SUSAN D. COCHRAN & VICKIE M. MAYS, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 J. EPIDEMIOLOGY 516 (2000); King et al., *supra* note 199.

²⁰² Balsam et al., *supra* note 199. 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).

²⁰³ See INSTITUTE OF MEDICINE, *supra* note 202, at 193–97.

²⁰⁴ Cochran & Mays, *supra* note 201; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012); AMERICAN LUNG ASSOC., *SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY* (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>.

²⁰⁵ *About BRFSS*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/brfss/about/index.htm> (last visited Feb. 13, 2020); *Behavioral Risk Factor Surveillance System*, W. VA. DEP'T OF HEALTH & HUM. RESOURCES, <http://www.wvdhhr.org/bph/hsc/statserve/BRFSS.asp> (last visited Feb. 13, 2020). Administered jointly by the CDC and the West Virginia Department of Health and Human Resources, the West Virginia BRFSS is an anonymous survey of adults ages 18 and older about a variety of health behaviors and preventive health practices. See *2015 Behavioral Risk Factor Surveillance System Questionnaire*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 24, 2014), <https://www.cdc.gov/brfss/questionnaires/pdf-ques/2015-brfss-questionnaire-12-29-14.pdf>. The 2015 BRFSS sexual orientation measure asked respondents the following: “Do you consider yourself to be: 1 - Straight; 2 - Lesbian or gay; 3 - Bisexual.” Respondents who indicated other or another sexual orientation were coded as “other.” The transgender status question asked respondents: “Do you consider yourself to be transgender?” Id. If respondents answered “yes,” the interview then asked “Do you consider your-

included questions measuring sexual orientation or gender identity on the state BRFSS in 2015. In the analysis presented here, we utilized data from that 2015 West Virginia BRFSS, noting where our results are similar or dissimilar to patterns observed in the general population.

We assessed the health of LGBT and non-LGBT adults on three health outcomes that are widely viewed as stress-coping responses and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking;²⁰⁶ as well as two other health indicators: the number of days respondents experienced poor mental health during the month prior to the survey, and respondents' experiences of feeling limited in their usual activities because of poor health. In our analyses, we included individuals who identified as LGBT and those who did not identify as LGBT (non-LGBT), including those who identified as straight and not transgender.²⁰⁷

The proportions of LGBT (n = 144) and non-LGBT (n = 5,327) people in West Virginia who reported each health outcome are shown below. We weighted estimations of these proportions to reflect the population of West Virginia, as recommended by the CDC when analyzing these data.²⁰⁸

Mental Health. Estimates of the proportions of LGBT and non-LGBT adults in the 2015 West Virginia BRFSS who reported certain health characteristics are presented in Figure 7. LGBT adults in the sample were significantly more likely to have ever been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when compared to non-LGBT adults in West Virginia (40.3% vs. 22.8%).²⁰⁹ LGBT respondents reported, on average, more days of not being in good mental health in the month prior to the survey than non-LGBT respondents

self to be 1. Male-to-female, 2. Female-to-male, or 3. Gender non-conforming?" *Id.* If respondents asked about the definition of the term transgender, the interviewer stated, "[s]ome people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Some transgender people change their physical appearance so that it matches their internal gender identity. Some transgender people take hormones and some have surgery. A transgender person may be of any sexual orientation – straight, gay, lesbian, or bisexual." *Id.* If respondents asked about the term gender non-conforming, the interviewer stated, "[s]ome people think of themselves as gender non-conforming when they do not identify only as a man or only as a woman." *Id.*

²⁰⁶ 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).

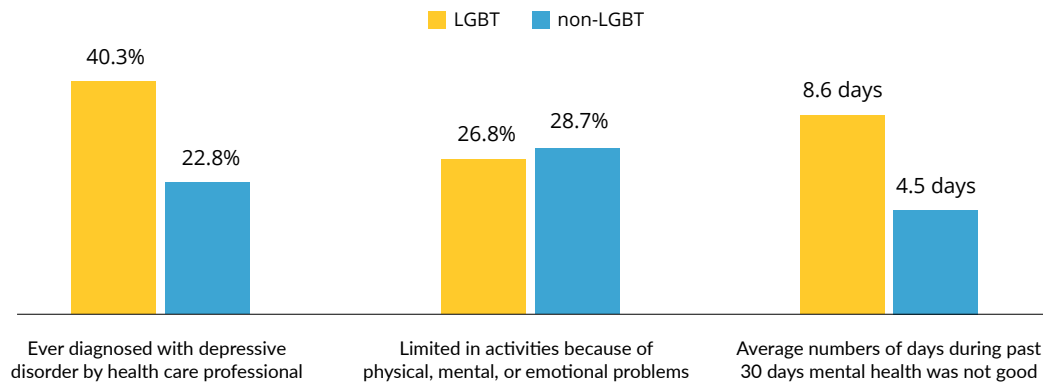
²⁰⁷ Respondents who identified as lesbian, gay, or bisexual and responded to the transgender status question were coded as LGBT. Similarly, respondents who identified as transgender and responded to the sexual orientation question were coded as LGBT. Respondents who identified as straight or other in response to the sexual orientation question AND identified as not transgender were coded as non-LGBT. We coded all other respondents as missing.

²⁰⁸ *Behavioral Risk Factor Surveillance System: Weighting BRFSS Data, BRFSS 2015*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/brfss/annual_data/2015/pdf/weighting_the_data_webpage_content.pdf (last visited Feb. 13, 2020). LGBT survey respondents in West Virginia were younger than the non-LGBT survey respondents and were more likely to be female than male. In order to make fair comparisons between sexual orientation groups, we used statistical controls to make the two groups comparable on age and sex.

²⁰⁹ Adjusted odds ratio (95% CI) = 2.02 (1.47, 3.29).

(8.6 days vs. 4.5 days).²¹⁰ LGBT respondents, though, were approximately as likely to report being limited in any activities because of physical, mental, or emotional problems as non-LGBT respondents (26.8% vs. 28.7%).²¹¹

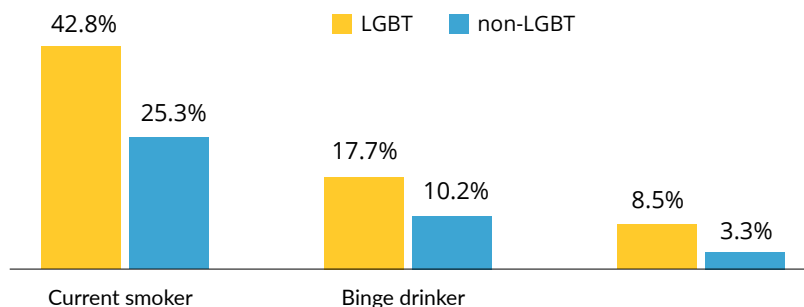
Figure 7. Health characteristics of adults in West Virginia, by LGBT identity



Source: 2015 West Virginia BRFSS

Substance Use. Estimates of the proportions of LGBT and non-LGBT adults in the 2015 West Virginia BRFSS who reported engaging in substance use, specifically smoking and drinking alcohol, are presented in Figure 8. LGBT adults in West Virginia were significantly more likely to be current smokers than non-LGBT adults (42.8% vs. 25.3%).²¹² Additionally, greater proportions of LGBT adults than non-LGBT adults were identified as binge drinkers (17.7% vs. 10.2%)²¹³ and heavy drinkers (8.5% vs. 3.3%),²¹⁴ though the difference in binge drinkers was not statistically significant.

Figure 8. Substance abuse among adults in West Virginia, by LGBT identity



Source: 2015 West Virginia BRFSS

Our findings are consistent with analyses of BRFSS data collected in other states and with analyses of

²¹⁰ Adjusted b = 3.02, p < 0.01.

²¹¹ Adjusted b = 0.66, p > 0.05.

²¹² Adjusted odds ratio (95% CI) = 1.93 (1.29, 2.89). Current smokers included respondents who reported having smoked at least 100 cigarettes in their lifetimes and reported now smoking every day or some days.

²¹³ Adjusted odds ratio (95% CI) = 1.55 (0.88, 2.73). Binge drinking is defined in the BRFSS as five or more alcoholic drinks on one occasion for males, and four or more alcoholic drinks on one occasion for females.

²¹⁴ Adjusted odds ratio (95% CI) = 2.35 (1.11, 5.00). Heavy drinking is defined in the BRFSS as more than 14 drinks per week among males, and more than seven drinks per week among females.

data from the National Health Interview Survey, a national probability survey administered by the federal government.²¹⁵ For example, an analysis of BRFSS data collected in 10 states²¹⁶ in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts.²¹⁷ Similarly, an analysis of data from the 2013 National Health Interview Survey found that LGB adults ages 18–64 in the U.S. were more likely to be current smokers (27.2% lesbian or gay vs. 29.5% bisexual vs. 19.6% non-LGB).²¹⁸ Additionally, a 2018 analysis of 2016 BRFSS data compared health-related behavior across sexual orientation and transgender identity and found that gay men, lesbian women, and bisexual women were significantly more likely to be current smokers than their heterosexual counterparts.²¹⁹ Two studies analyzing BRFSS data from Massachusetts²²⁰ and Washington state²²¹ 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.

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 2020²²² and by the Institute of Medicine of the National Academies.²²³ 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.

²¹⁵ *About the National Health Interview Survey*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/nchs/nhis/about_nhis.htm (last visited Feb. 13, 2020).

²¹⁶ In 2010, 12 states had added a question about sexual orientation to their BRFSS surveys (Alaska, Arizona, California, Colorado, Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Washington, and Wisconsin), but data from two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the study was based on data collected in the remaining 10 states. See John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States*, 2010, 46 AM. J. PREV. MED. 337, 338 (2014).

²¹⁷ *Id.* at 340.

²¹⁸ Brian W. Ward et al., *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey*, 2013, 77 NAT'L HEALTH STATS. REP. 1, 4 (2015), <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

²¹⁹ Timothy J. Cunningham, Fang Xu & Machel Town, *Prevalence of Five Health-Related Behaviors for Chronic Disease Prevention among Sexual and Gender Minority Adults – 25 U.S. States and Guam*, 2016, 67 MORBIDITY & MORTALITY WORLD REP. 888 (2018).

²²⁰ 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. PUB. HEALTH 1953 (2010).

²²¹ Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUB. HEALTH 460 (2010).

²²² *Healthy People 2020*, U.S. DEP'T OF HEALTH & HUM. SERVS., https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf (last visited Feb. 13, 2020). Healthy People 2010 identified the gay and lesbian population among groups targeted to reduce health disparities in the U.S. *Id.* In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, “[t]he issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety.” OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, U.S. DEP'T OF HEALTH & HUM. SERVS., *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

²²³ INSTITUTE OF MEDICINE, *supra* note 202, at 14 (“LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma”).

The minority stress model suggests that unsupportive social climates, created by anti-LGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for LGBT people compared to non-LGBT people.²²⁴ Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.²²⁵ 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.²²⁶

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,²²⁷ such as depression²²⁸ and psychological distress,²²⁹ as well as loneliness, suicidal intention,²³⁰ deliberate self-harm,²³¹ and low self-esteem.²³² 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.²³³

For example, a 2016 study by the American Psychological Association, based on a nationally

²²⁴ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674 (2009); INSTITUTE OF MEDICINE, *supra* note 202.

²²⁵ AM. PSYCH. ASSOC., STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION 8, 22 (2016); *id.*

²²⁶ 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).

²²⁷ 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 RES. & SOC. POL'Y 80 (2009).

²²⁸ E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. COUNSELING PSYCHOL. 302 (2006).

²²⁹ E.g., David M. Heubner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?*, 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. HEALTH & SOC. BEHAV. 38 (1995).

²³⁰ 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. PUB. HEALTH 1200 (2004).

²³¹ James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRIT. J. PSYCHIATRY 479 (2004).

²³² E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being among HIV-positive Latino Gay Men*, 27 HISP. J. BEHAV. SCI. 101 (2005).

²³³ E.g., Craig Rodriguez-Seijas & Nicholas R. Eaton, *Prevalence of Psychiatric Disorders at the Intersection of Race and Sexual Orientation: Results from the National Epidemiologic Survey of Alcohol and Related Conditions-III*, 87 J. CONSULTING & CLINICAL PSYCH. 321 (2019); Megan E. Slater et al., *Sexual Orientation-Based Discrimination, Excessive Alcohol Use, and Substance Use Disorders Among Sexual Minority Adults*, LGBT Health, doi:10.1089/lgbt.2016.0117 (2016); Mark L. Hatzenbuehler, 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. PUB. HEALTH 452 (2010); Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, 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. PUB. HEALTH 1946 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

representative sample, linked experiences of discrimination to increased stress and poorer health for LGBT people.²³⁴ The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% vs. 23%) in the prior 30 days than adults who were non-LGBT.²³⁵ Job stability was a current source of stress for 57% of LGBT adults, compared to 36% of non-LGBT adults.²³⁶ The study also found that many LGBT respondents had experienced discrimination.²³⁷ Nearly one-fourth (23%) of LGBT adults reported having ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; nearly one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to continue their education; and one-third (33%) reported being unfairly not hired for a job.²³⁸

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 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.²³⁹ 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, while rates were unchanged in states that did not pass such bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”²⁴⁰

²³⁴ AM. PSYCH. ASSOC., *supra* note 225.

²³⁵ *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% vs. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% vs. 20%).

²³⁶ *Id.*

²³⁷ The percentage of respondents who were reported as having experienced discrimination said that they had either experienced “at least one of the five day-to-day stressors ‘less than once a year’ or more often; or ever experienced one of nine major forms of discrimination.” The five day-to-day stressors included: 1) You are treated with less courtesy or respect than other people; 2) You receive poorer service than other people at restaurants or stores; 3) People act as if they think you are not smart; 4) People act as if they are afraid of you; 5. You are threatened or harassed. The nine major forms of discrimination included: 1) Have you ever been unfairly fired from a job? 2) Have you ever been unfairly denied a promotion? 3) For unfair reasons, have you ever been not hired for a job? 4) Have you ever been unfairly stopped, searched, questioned, physically threatened or abused by the police? 5) Have you ever been unfairly discouraged by a teacher or advisor from continuing your education? 6) Have you ever been unfairly prevented from moving into a neighborhood because the landlord or a realtor refused to sell or rent you a house or apartment? 7) Have you ever moved into a neighborhood where neighbors made life difficult for you or your family? 8) Have you ever been treated unfairly when receiving health care? 9) Have you ever been treated unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.)? Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology, <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Feb. 13, 2020) (see Measurement with Experience with Discrimination).

²³⁸ AM. PSYCH. ASSOC., *supra* note 225, at 6–7.

²³⁹ Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUB. HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. *Id.* at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. *Id.* at 2277.

²⁴⁰ Hatzenbuehler et al. (2010), *supra* note 233, 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. PUB. HEALTH 1101 (2015).

Drawing on these findings and prior research, Hatzenbuehler later concluded, that “the recent [anti-LGBT] laws that have been passed [in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”²⁴¹

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 these disparities:

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthful social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.²⁴²

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.²⁴³ 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.²⁴⁴

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than their LGBT peers in worse health, which would heighten observed disparities in less accepting places.²⁴⁵ Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, likely contribute to LGBT health disparities in less supportive states, including West Virginia.

Health disparities for LGBT youth

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC’s analysis of 2017 YRBS data reported high

²⁴¹ 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>.

²⁴² 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).

²⁴³ Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People’s Lives*, 19 J. PUBLIC MANAGEMENT & SOCIAL POL’Y. 65, 75 (2013).

²⁴⁴ *Id.* at 71, 76.

²⁴⁵ Hatzenbuehler et al. (2010), *supra* note 233, at 452.

rates of poor mental health and health risk behavior, commonly considered stress coping behavior,²⁴⁶ that disproportionately impact LGB youth.²⁴⁷ Analyses of YRBS data from prior years also indicated sexual orientation disparities in mental health and health risk behaviors.²⁴⁸ 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.²⁴⁹

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.²⁵⁰ Similarly, a 2011 study of youth in Oregon found that, in general, LGB youth were more likely to have attempted suicide than heterosexual youth, and that LGB youth in unsupportive school environments were at a 20% greater risk of attempting suicide than were LGB youth in supportive school environments.²⁵¹ High levels of school-based victimization have been associated with higher levels of illicit drug use and risky sexual behavior.²⁵² Research has also linked unsupportive family environments to depression and suicidality,²⁵³ high levels of stress,²⁵⁴ tobacco use,²⁵⁵ and illicit drug use²⁵⁶ 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.²⁵⁷

²⁴⁶ See, e.g., sources cited *supra* note 206.

²⁴⁷ Kann et al. (2018), *supra* note 32.

²⁴⁸ *Id.*; Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors among Students in Grades 9–12 – Youth Risk Behavior Surveillance, Selected Sites, United States 2001–2009*, 60 MORBIDITY & MORTALITY WORLD REP. 1 (2011).

²⁴⁹ 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).

²⁵⁰ Julia Raifman et al., *Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 JAMA PEDIATRICS 350 (2017), doi: 10.1001/jamapediatrics.2016.4529.

²⁵¹ Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896 (2011).

²⁵² 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. (2018), *supra* note 32, at 11.

²⁵³ 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).

²⁵⁴ 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).

²⁵⁵ 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).

²⁵⁶ *Id.*

²⁵⁷ 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).

ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION

In 2014, the U.S. Agency for International Development (USAID) and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look at three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape on West Virginia'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.²⁵⁸ In our analysis, we draw on data specific to West Virginia, 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 West Virginia.

FRAMEWORK FOR ANALYSIS

In the aforementioned 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.²⁵⁹ In the micro-level analysis, the authors considered five types of discrimination against LGBT people and explained how they might be linked to harmful economic outcomes:

1. Police abuse and over-incarceration;
2. Higher rates of violence;
3. Workplace harassment and discrimination;
4. Discrimination and bullying of LGBT students in schools; and
5. Health disparities.²⁶⁰

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.”²⁶¹

²⁵⁸ The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on the effects of such stigma and discrimination against LGBT people in West Virginia.

²⁵⁹ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST., *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 6

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender minorities and economic development in emerging economies, measured by per capita GDP.²⁶² 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.”²⁶³

While the USAID and Williams Institute study focused on national economies outside of the U.S., similar types of discrimination and stigma confront LGBT people at the state level and are likely to have similar economic effects.

Before we turn to the analysis, we note five important points:

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

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

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

Fourth, focusing on LGBT stigma and discrimination alone will not address all negative outcomes experienced by LGBT people. LGBT people also have identities associated with their race, ethnicity, age, disability, and gender. While a singular focus on LGBT stigma will not entirely eliminate the disparities we discuss, an approach that embraces eliminating disparities for diverse LGBT people, no matter what their cause, will improve the lives of many non-LGBT people as well. For example, eliminating gender and racial-ethnic wage gaps in the U.S. would both help to eliminate the poverty gap between same-sex and different-sex couples, as well as lift many non-LGBT people out of poverty.²⁶⁴

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.²⁶⁵ In particular, the routine inclusion of sexual orientation

²⁶² *Id.* at 10.

²⁶³ *Id.* at 3.

²⁶⁴ BADGETT & SCHNEEBAUM, *supra* note 174.

²⁶⁵ See, e.g., MARIELLA ARRENDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

and gender identity measures on large population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of BRFSS data specific to LGBT people, which was unavailable just a few years ago. We also need more research about the lived experiences of LGBT people and the effectiveness of legal protections to further assess the impact of LGBT supportive laws and climates on LGBT people.²⁶⁶

ECONOMIC IMPACT IN THE WORKPLACE AND OTHER SETTINGS

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

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

In addition, discrimination in employment, housing, and other areas of life can result in LGBT people experiencing economic instability, including poverty and homelessness. When 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.

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.²⁶⁷ In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part because the companies perceive that the policies will have a positive impact on their bottom line. As of 2019, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination, and 85% of such policies

²⁶⁶ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 259, at 49.

²⁶⁷ 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).

also included gender identity.²⁶⁸ Further, 49% of these companies offered domestic partner benefits, and 62% had transgender-inclusive benefits policies.²⁶⁹

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,²⁷⁰ 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.²⁷¹

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.²⁷² 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.²⁷³ Some of the specific business-related outcomes that have motivated employers to adopt LGBT-supportive policies include: recruiting and retaining talented employees, sparking new ideas and innovations, attracting and serving a diverse customer base, and enhancing employee productivity.²⁷⁴

Academic research conducted over the past two decades supports the business case for LGBT inclusion. In 2013, the Williams Institute reviewed 36 academic studies examining the effects of LGBT-supportive policies and concluded that the research supports the existence of many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers (Figure 9).²⁷⁵

²⁶⁸ BECK BAILEY, LIZ COOPER & MADELINE PERROU, HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2019: RATING AMERICA’S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 6 (2016), https://assets2.hrc.org/files/assets/resources/CEI-2019-FullReport.pdf?_ga=2.147242679.1034985380.1576106439-581265351.1576106439; 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.

²⁶⁹ BAILEY ET AL., *supra* note 268.

²⁷⁰ 135 S. Ct. 2584 (2015).

²⁷¹ Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571, 14-574), http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf.

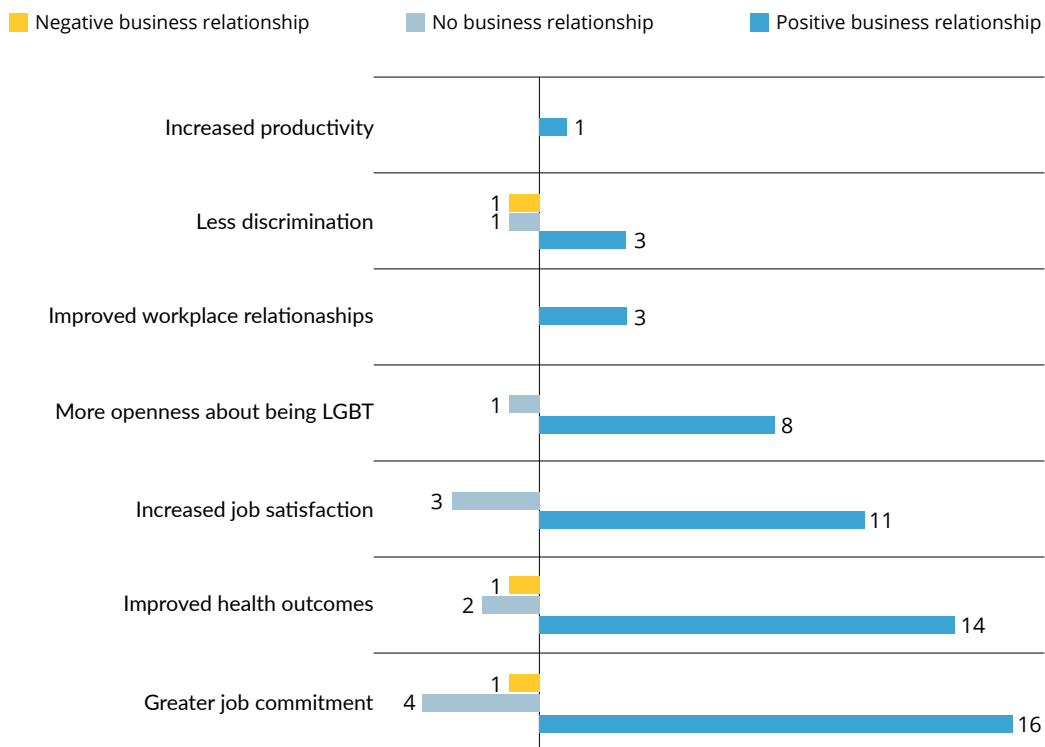
²⁷² BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

²⁷³ JODY L. HERMAN, WILLIAMS INST., COSTS AND BENEFITS OF PROVIDING TRANSITION-RELATED HEALTH CARE COVERAGE IN EMPLOYEE HEALTH BENEFIT PLANS: FINDINGS FROM A SURVEY OF EMPLOYERS 3 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

²⁷⁴ *Id.*; SEARS & MALLORY, *supra* note 272.

²⁷⁵ M.V. LEE BADGETT, LAURA DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, WILLIAMS INST., THE BUSINESS IMPACT OF LGBT SUPPORTIVE WORKPLACE POLICIES (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-May-2013.pdf>.

Figure 9. 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.²⁷⁶ Many of the underlying studies included in the 2013 and 2014 literature reviews focused on three specific areas of the case for business diversity: employee recruitment, productivity/engagement, and retention.

Studies focused on these outcomes have shown the following:

Recruitment

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.²⁷⁷
- LGBT employees prefer to work in states with more supportive laws and social environments.²⁷⁸

²⁷⁶ Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA — SOC. & BEHAV. SCI.* 1203, 1208–10 (2014).

²⁷⁷ 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).

²⁷⁸ *Out & Equal et al., Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, *HARRIS POLL* (Oct. 30, 2014), http://media.theharrispoll.com/documents/FINAL_2014_Out_Equal_Workplace_Survey_Release_10.30.2014.pdf.

- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.²⁷⁹
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,²⁸⁰ particularly younger and more highly educated workers.²⁸¹

Productivity/Engagement

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, and increased productivity and job satisfaction.²⁸² Given that an estimated 40,000 workers in West Virginia identify as LGBT, the loss in productivity from a discriminatory environment could be significant.²⁸³
- 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.²⁸⁴
- Negative outcomes related to unsupportive policies and environments could lead to economic losses for state and local governments as employers, and for private businesses in West Virginia. Since the state government of West Virginia employs 56,451 people,²⁸⁵ 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.²⁸⁶

²⁷⁹ 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).

²⁸⁰ SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); Harris Interactive, *supra* note 277.

²⁸¹ Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact*, 3 POLS., GROUPS, & IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994); *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited Feb. 13, 2020).

²⁸² 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. (2013), *supra* note 275.

²⁸³ WILLIAMS INST., *LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES* 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

²⁸⁴ 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 SOC. PSYCH. 407, 409 (2012).; SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 22, 63 (2016).

²⁸⁵ For the state government workforce, search U.S. CENSUS BUREAU, *supra* note 23 (last visited Feb. 13, 2020) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "West Virginia" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over" 2017 1-year estimates).

²⁸⁶ HEWLETT & YOSHINO, *supra* note 280, at 20.

- LGBT employees in unsupportive environments feel less committed to their jobs.²⁸⁷
- 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.²⁸⁸ A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.²⁸⁹ This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs—up to 213% of one's annual salary.²⁹⁰ Based on the average annual mean wage in West Virginia,²⁹¹ public and private employers are at risk of losing approximately \$8,474, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people in the state.²⁹²

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.²⁹³

²⁸⁷ Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, HUM. RIGHTS CAMPAIGN, THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION 22 (2014), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf; IAN JOHNSON & DARREN COOPER, OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 4, 47 (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, THE POWER OF OUT (2011); Belle R. Ragins, Romila Singh, John M. Cornwell, *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 4 (Apr. 2013) (unpublished manuscript, available online).

²⁸⁸ 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/>.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ The annual mean wage in West Virginia is \$42,370. See May 2018 State Occupational Employment and Wage Estimates: West Virginia, U.S. BUREAU OF LABOR STATS., https://www.bls.gov/oes/current/oes_wv.htm#00-0000 (last visited Feb. 13, 2020).

²⁹² Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in West Virginia. *Id.*; BOUSHEY & GLYNN, *supra* note 288.

²⁹³ CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic profit generation, and that stocks of companies who have LGBT people in senior roles outperform those who do not); Feng Li and Venky Nagar, *Diversity and Performance*, 59 MGMT. SCI. 529 (2013) (finding improved operating returns on assets (ROA) after companies adopt domestic partner benefits for same-sex couples); Blazovich et al., *supra* note 287, at 35–36 (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which . . . increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT ET AL. (2013), *supra* note 275, at 23 (“A . . . study found that the more robust a company's LGBT friendly policies, the better its stock performed over the course of four years (2002–2006), compared to other companies in the same industry over the same period of time.”); Garrett D. Voge, Investor Valuation: LGBTQ Inclusion and the Effect on a Firm's Financials (unpublished manuscript, available at the University of Arizona Campus Repository) (2013), <http://arizona.openrepository.com/arizona/handle/10150/297778> (finding that institutional investors value LGBT-supportive corporate policies as evaluated by stock price increases after release of the LGBT Corporate Equality Index report by the Human Rights Campaign).

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

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.”²⁹⁴ For these reasons, poor health, in general, imposes costs on employers and governments.²⁹⁵ When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the state’s economy will benefit.²⁹⁶

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

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

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

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of West Virginia 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 ultimately still present.²⁹⁷

Specifically, we assume that a range of a 25% to 33.3% reduction in the *disparity* between LGBT and non-LGBT people on each outcome could be achieved if the state were to move towards extending legal protections and improving the social climate for LGBT people. This range is a conservative

²⁹⁴ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 259.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ Hatzenbuehler et al. (2009), *supra* note 239, at 2277.

assumption based on our review of the best available research on LGB-health disparities in LGBT-supportive and unsupportive environments, including the 2009 and 2010 Hatzenbuehler et al. studies.

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

Excess costs associated with major depressive disorder among LGBT people

In order to best estimate the annual costs associated with Major Depressive Disorder (MDD), we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004–2005 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.²⁹⁸ 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.²⁹⁹

Applying the percentage of excess prevalence of MDD among LGB people (18.0% - 8.1% = 9.9%) to West Virginia's adult LGBT population (an estimated 57,800 adults)³⁰⁰ indicates that there are approximately 5,700 more LGBT adults who have MDD in West Virginia than would be expected in the general population. As shown in Table 2 below, we further estimate that if 25% to 33.3% of the sexual orientation and gender identity disparity were reduced by improving the social climate for LGBT people, there would be between 1,400 and 1,900 fewer LGBT people living with MDD in the state.

To estimate the annual cost per person suffering from MDD, we drew from a 2015 study, *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*.³⁰¹ The study found that the annual total cost of MDD, nationwide, was \$210.5 billion in 2010. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with

²⁹⁸ *Id.* at 2279. For an explanation of how MDD is determined on the NESARC, see NAT'L INSTITUTES OF HEALTH, U.S. ALCOHOL EPIDEMIOLOGIC DATA REFERENCE MANUAL, ALCOHOL USE AND ALCOHOL USE DISORDERS IN THE UNITED STATES, A 3-YEAR FOLLOW-UP: MAIN FINDINGS FROM THE 2004-2005 WAVE 2 NATIONAL EPIDEMIOLOGIC SURVEY ON ALCOHOL AND RELATED CONDITIONS (NESARC) 19 (2010), https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf.

²⁹⁹ 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).

³⁰⁰ See *supra* Section I.A.1.

³⁰¹ Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLIN. PSYCHIATRY 155 (2015). Greenberg et al. used data from the National Survey on Drug Use and Health to identify people who met the diagnostic criteria for a major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with MDD (and compared to a control group). Similarly, the prevalence of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

MDD, we divided the total cost by the number of adults with the condition in 2010.³⁰² Next, we adjusted the cost per person with MDD in 2010 for inflation.³⁰³ In inflation-adjusted dollars, the 2020 cost per person with MDD is \$16,227.³⁰⁴

For the reasons described above, we estimate that West Virginia 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 West Virginia of approximately \$22.7 to \$30.8 million.

Table 2. Reduction in costs associated with MDD in West Virginia if LGBT disparity was reduced

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN WEST VIRGINIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	1,400	\$22.7
33.3%	1,900	\$30.8

Excess costs associated with smoking among LGBT people

Our analysis of West Virginia's 2015 BRFSS data found that 42.8% of LGBT respondents were current smokers, compared to 25.3% of non-LGBT respondents.³⁰⁵ Applying the percentage (17.5%) of excess prevalence of smoking among LGBT people in West Virginia to the state's LGBT population (57,800 adults)³⁰⁶ indicates that there are approximately 10,100 more LGBT people who currently smoke in West Virginia than would be expected in the general population.

A 2010 study estimated the annual costs per current smoker in West Virginia to be \$6,084.09.³⁰⁷ The total included costs from workplace productivity losses (\$806.65), medical care costs (\$2,261.62), and

³⁰² The study found that, in 2010, 15,446,771 adults in the U.S. suffered from MDD. *Id.* Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

³⁰³ 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 Feb. 13, 2020).

³⁰⁴ We assume that the costs associated with MDD would be the same in 2020 as they were in 2010 (adjusted for inflation).

³⁰⁵ See *supra* Section III.B.1.

³⁰⁶ See *supra* Section I.A.1.

³⁰⁷ JILL S. RUMBERGER, CHRISTOPHER S. HOLLENBEAK & DAVID KLINE, POTENTIAL COSTS OF SMOKING CESSATION: AN OVERVIEW OF THE APPROACH TO STATE SPECIFIC ANALYSIS (2010), <http://www.lung.org/assets/documents/tobacco/economic-benefits.pdf>. See also W.V. DEPT' OF HEALTH & HUM. RES., ADDRESSING TOBACCO USE AND ITS ASSOCIATED HEALTH CONDITIONS IN WEST VIRGINIA (2016), [https://dhhr.wv.gov/wvdt/ Documents/ Revised_Reduce%20Tobacco%20Use%20and%20Associated%20Conditions%20in%20WV%20-%20January%202016%20\(incl%20%202014%20BRFSS%20Data\).pdf](https://dhhr.wv.gov/wvdt/ Documents/ Revised_Reduce%20Tobacco%20Use%20and%20Associated%20Conditions%20in%20WV%20-%20January%202016%20(incl%20%202014%20BRFSS%20Data).pdf); W.V. DEPT' OF HEALTH & HUM. RES., TOBACCO IS KILLING (AND COSTING) US (2005), <http://www.wvdhhr.org/bph/hsc/pubs/other/tobkill/3tobaccokill.pdf>.

premature death (\$3,015.82).³⁰⁸ We adjusted for inflation³⁰⁹ to estimate that the 2020 cost per current smoker in West Virginia is \$7,199.33.³¹⁰

For the reasons described above, we estimate that West Virginia may be able to reduce the disparity in current smoking between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with smoking in West Virginia of approximately \$18.0 to \$24.5 million.

Table 3. Reduction in costs associated with smoking in West Virginia if LGBT disparity was reduced

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN WEST VIRGINIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	2,500	\$18.0
33.3%	3,400	\$24.5

Excess costs associated with binge drinking among LGBT people

Our analysis of West Virginia's 2015 BRFSS data found that 17.7% of LGBT respondents were binge drinkers, compared to 10.2% of non-LGBT respondents. Applying the percentage (7.5%) of excess prevalence of binge drinking among LGB people in West Virginia to the state's LGBT population (57,800 adults)³¹¹ indicates that there are approximately 4,300 more LGBT adults who currently binge drink in West Virginia 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 West Virginia.³¹² The study found that the annual total cost of binge drinking in West Virginia in 2010 was \$1.05 billion.³¹³ Associated costs included loss in productivity in the workplace, health care costs, and other losses such as costs to the criminal legal system related to binge drinking.³¹⁴ We adjusted the cost per binge drinker for

³⁰⁸ *Id.*

³⁰⁹ To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator. U.S. BUREAU OF LABOR STATS., *supra* note 303.

³¹⁰ We assume that the costs associated with smoking would be the same in 2020 as they were in 2010 (adjusted for inflation).

³¹¹ See Section I.A.1. *supra*.

³¹² 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. PUB. HEALTH 73 (2015).

³¹³ *Id.* at 78.

³¹⁴ *Id.* at 75.

inflation³¹⁵ for an estimated cost per binge drinker in West Virginia in 2020 of \$9,484.75.³¹⁶

For the reasons described above, we estimate that West Virginia 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 West Virginia of approximately \$10.4 to \$13.3 million.

Table 4. Reduction in costs associated with binge drinking in West Virginia if LGBT disparity was reduced

REDUCTION IN DISPARITY BETWEEN LGBT AND NON-LGBT PEOPLE IN WEST VIRGINIA	LGBT INDIVIDUALS IMPACTED	ANNUAL REDUCTION IN COSTS (MILLIONS)
25%	1,100	\$10.4
33.3%	1,400	\$13.3

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

³¹⁵ To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator. U.S. Bureau of Labor Stats., *supra* note 303.

³¹⁶ In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in West Virginia in 2010. According to the 2010 West Virginia BRFSS, 9% of respondents were binge drinkers. *BRFSS Prevalence & Trends Data: West Virginia*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, https://nccd.cdc.gov/BRFSSPrevalence/rdPage.aspx?rdReport=DPH_BRFSS.ExploreByLocation&rdProcessAction=&SaveFileGenerated=1&irbLocationType=States&islLocation=54&islState=&islCounty=&islClass=CLASS01&islTopic=TOPIC07&isIYear=2010&hidLocationType=States&hidLocation=54&hidClass=CLASS01&hidTopic=TOPIC07&hidTopic-Name=Binge+Drinking&hidYear=2010&irbShowFootnotes=Show&rdICL-icIndicators=_RFBING4&icIndicators_rdExpandedCollapsedHistory=&icIndicators=_RFBING4&hidPreviouslySelectedIndicators=&DashboardColumnCount=2&rdShowElementHistory=divClassUpdating%3dHide%2cisClass%3dShow%2cddivTopicUpdating%3dHide%2cisTopic%3dShow%2cddivYearUpdating%3dHide%2cisYear%3dShow%2c&rdScrollX=0&rdScrollY=200&rdRnd=79642 (last visited Feb. 13, 2020). Applying this percentage to West Virginia's adult population in 2010 (1,466,493) (data from 2010 American Community Survey, see U.S. CENSUS BUREAU, *supra* note 23 (last visited Feb. 13, 2020) (select Geographies, State, "West Virginia;" select table "Age and Sex"; select year 2010)) indicates that 131,984 people in West Virginia were binge drinkers in 2010. Dividing the total cost (\$1,051,500,000) by the number of binge drinkers (131,984) indicates that the cost per binge drinker in West Virginia was \$7,966.87 in 2010. We assume that the costs associated with binge drinking would be the same in 2020 as they were in 2010 (adjusted for inflation).

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

Schoolbased bullying and harassment of LGBT youth is pervasive³¹⁷ and associated with an increased likelihood of school dropout,³¹⁸ poverty,³¹⁹ and suicide.³²⁰ Educational attainment, especially high school completion, is a significant determinant of economic status and health across the life course.³²¹ As a result, early experiences of harassment may not only shape the economic prospects of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."³²²

Laws in West Virginia do not adequately protect LGBT youth from bullying and harassment in schools.³²³ To the extent the state's legal landscape and social climate foster an environment that is not inclusive of LGBT youth, the state is likely to experience losses in human capital, as well as costs associated with an overrepresentation of LGBT youth in foster care, the juvenile justice system, and among those experiencing homelessness. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

School outcomes

Research shows that bullying can lead to skipping school and low academic performance among LGBT youth. Several studies, relying on representative samples of youth, found that LGB students were more likely than non-LGB students to skip school as a result of feeling unsafe. According to 2017 YRBS data, LGB students nationally were more than twice as likely as heterosexual students to report skipping school because they felt unsafe (10.0% vs. 6.1%).³²⁴ Similarly, a 2014 analysis of pooled

³¹⁷ See, e.g., Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 *J. Adolescent Health* 366 (2010); Kate L. Collier, 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); Kann et al. (2011), *supra* note 248; JOSEPH G. KOSCIW ET AL., GLSEN, *THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS* (2015), <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>; EMILY A. GREYTAK, JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, GLSEN, *HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS* (2009), <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

³¹⁸ 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).

³¹⁹ Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 *Econ. Educ. Rev.* 387 (2008).

³²⁰ Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 *INT. J. ADOLESCENT MED. HEALTH* 133 (2008).

³²¹ John Lynch & George Kaplan, *Socioeconomic Factors*, in *SOCIAL EPIDEMIOLOGY* 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

³²² BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 259, at 26.

³²³ See *supra* Section I.B.2.

³²⁴ Kann et al. (2018), *supra* note 32, at 19.

YRBS data from 13 sites found that LGB³²⁵ high school students reported significantly higher rates of skipping school because they felt unsafe.³²⁶ And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGB students were almost three times as likely to report not going to school because of safety concerns as their heterosexual counterparts.³²⁷

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.³²⁸ The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.³²⁹ In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 15% said the harassment was so severe that they had to leave school as a result.³³⁰ Other studies have found that the bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism for these students.³³¹

Overrepresentation in state systems and services

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

³²⁵ The study defined LGB students as those students who reported in response to the survey that they had sexual contact with others of the same sex or had both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 Am. J. PUBLIC HEALTH, 255, 256 (2014).

³²⁶ *Id.*

³²⁷ Kann et al. (2018), *supra* note 32, at 12.

³²⁸ ROBERT KIM, NAT'L EDUC. ASSN., REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEP-PING OUT OF THE CLOSET, INTO THE LIGHT 30 (2009), <http://www.nea.org/assets/docs/HE/glbtsstatus09.pdf>.

³²⁹ *Id.*

³³⁰ Jaime M. Grant et al., NAT'L CTR. FOR TRANSGENDER EQUALITY AND NAT'L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 33 (2011), https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

³³¹ E.g., Shelley L. Craig & Mark S. Smith, *The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth*, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>; Alicia L. Fedewa & Soyeon Ahn, *The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature*, 7 J. GLBT FAMILY STUDIES 398 (2011); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 SOC. PROBLEMS 523 (2007); Joseph P. Robinson & Dorothy L. Espelage, *Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice*, 41 EDUC. RESEARCHER 309 (2012); Stephen T. Russell, 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) MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <https://archives.lib.state.ma.us/bitstream/handle/2452/265304/ocn911187611-2009.pdf?sequence=1&isAllowed=y> (last visited Feb. 13, 2020).

justice system. In addition to the human toll, there are costs to government and social service systems created by the overrepresentation of LGBT youth in these systems.³³²

LGBT youth are overrepresented in the foster care system; for example, 19% of youth in foster care in Los Angeles County are LGBT, two to three times their proportion of the general youth and young adult population.³³³ Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.³³⁴ Of those who age out of foster care: more than one in five will experience homelessness after age 18; one in four will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19-year-olds); fewer than 3% will earn a college degree by age 25 (compared to 28% of all 25-year-olds); and at the age of 24, only half will be employed.³³⁵

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.³³⁶ A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth, in public high schools were experiencing homelessness, compared to 3% of heterosexual youth.³³⁷ Similarly, a 2015 survey of youth in Atlanta, Georgia, experiencing homelessness found that 28.2% of the respondents identified as LGBT.³³⁸

³³² 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).

³³³ *Id.* at 6.

³³⁴ *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).

³³⁵ 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_EMBAR-GOED%20until%20May%206.pdf.

³³⁶ 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 332.

³³⁷ 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).

³³⁸ ERIC R. WRIGHT ET AL., ATLANTA YOUTH COUNT! FINAL REPORT 3 (May 2016), https://atlantayouthcount.weebly.com/uploads/7/9/0/5/79053356/aycna_final_report_may_2016_final.pdf.

Data from the National Survey of Youth in Custody indicate that 12.2% of youth in custody identify as LGBT.³³⁹ Another study found that LGBT youth made up 15% of detained youth nationally.³⁴⁰ In West Virginia, data from 2018 showed that 7.2% of youth entering residential facilities under the West Virginia Division of Juvenile Services identified as LGBTI.³⁴¹ Research has shown that LGBT youth are more likely to be detained for offenses such as running away, truancy, curfew violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.³⁴² Other studies have shown that in some instances, LGBT youth have been punished for defending themselves against their harassers,³⁴³ and there is evidence of selective enforcement against LGBT youth.³⁴⁴

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.”³⁴⁵ For example, nationally, the Anne E. Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year.³⁴⁶ The best available data suggest that LGBT youth make up one-fifth, if not more, of each such annual cohort.

³³⁹ ALLEN J. BECK & DAVID CANTOR, U.S. BUREAU OF JUSTICE STATS., U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012 at 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

³⁴⁰ 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).

³⁴¹ ANNUAL REPORT, W. VA. DIV. JUVENILE SERVICES (2018), https://dcr.wv.gov/resources/Documents/annual_reports/WVD-JSAnnual%20Report%20FY18%20FINAL.pdf.

³⁴² 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>.

³⁴³ MAJD ET AL., *supra* note 342, at 77.

³⁴⁴ Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

³⁴⁵ *Id.*

³⁴⁶ ANNIE E. CASEY FOUND., COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE 5 (2013), <https://www.aecf.org/resources/cost-avoidance-the-business-case-for-investing-in-youth-aging-out-of-foster/>.

CONCLUSION

West Virginia is home to an estimated 57,800 LGBT adults and 10,300 LGBT youth. LGBT people in West Virginia lack important legal protections that have been extended in other states. For example, statewide statutes in West Virginia do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in West Virginia also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, West Virginia ranks last in the nation on public support for LGBT rights and acceptance of LGBT people.

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

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ACKNOWLEDGMENTS

In addition, the following scholars and students made substantial contributions to the paper:

Andrew R. Flores, PhD, Assistant Professor of Government at American University, researched and authored the section on public opinion; and

Madison Orcutt, 2019 Williams Institute extern and second-year student at the University of San Diego School of Law, provided research support.

This report was informed by an approach to understand the economic consequences of stigma and discrimination articulated in: 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).

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