



# **The Impact of Stigma and Discrimination against LGBT People in Florida**

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**Jody L. Herman, PhD**, Scholar of Public Policy at the Williams Institute co-authored the section on the impact of gender identity discrimination in Texas on Medicaid and housing programs and services.

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## EXECUTIVE SUMMARY

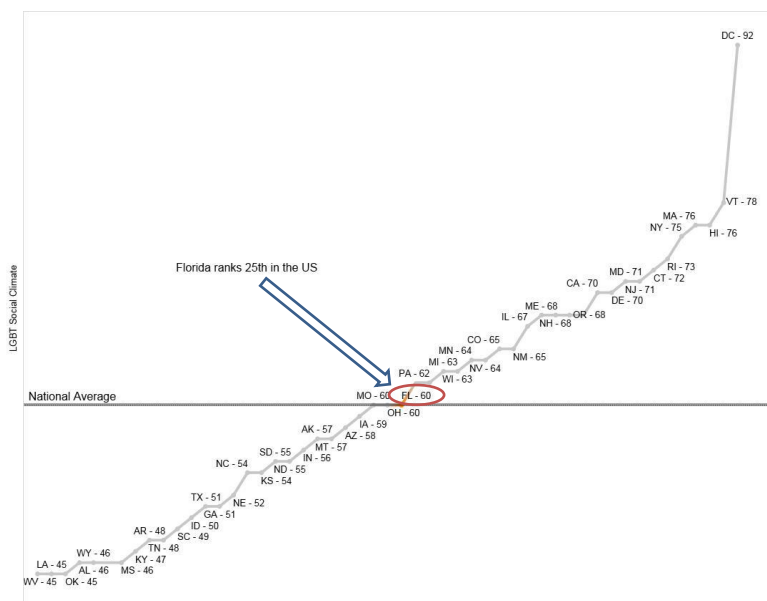
Florida is home to over 663,000 LGBT adults and 100,100 LGBT youth. LGBT people in Florida lack important legal protections and face a less supportive social climate than LGBT people in many other states. For example, statewide laws in Florida offer no protections from discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Florida also fail to adequately protect LGBT

students from bullying. In terms of social climate, Florida ranks 25<sup>th</sup> in the nation on public support for LGBT rights and acceptance of LGBT people. However, a growing number of businesses and localities in Florida have adopted LGBT-inclusive non-discrimination policies, and social attitudes toward LGBT people are becoming more positive over time.

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

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

State Ranking on LGBT Social Climate Scores



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

## **KEY FINDINGS INCLUDE:**

### ***Prevalence of Stigma and Discrimination against LGBT People in Florida***

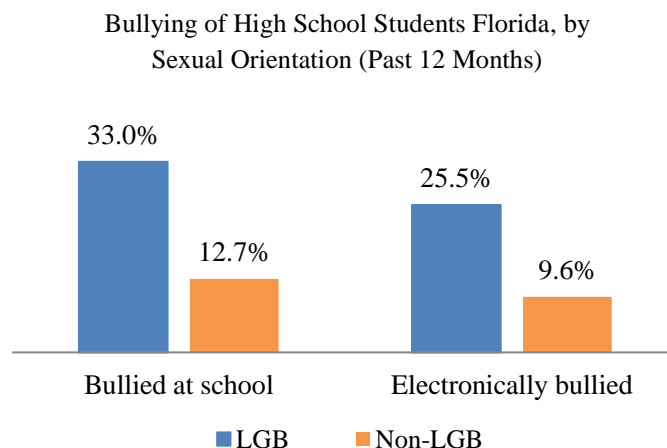
#### ***LGBT People in Florida Experience Discrimination in Employment, Housing, and Public Accommodations***

- A 2017 survey of faculty and staff at the University of West Florida found that 18.6% of LGBQ employees reported one or more experiences of derogatory treatment based on sexual orientation on campus in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (16.3%), unfair treatment (7.0%), exclusion (2.3%), and harassment/bullying (4.7%). A prior survey of faculty and staff at the University of West Florida conducted in 2013 found that 45.5% of LGBQ faculty and staff reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year: 45.5% reported insensitive or demeaning verbal or written comments, 13.6% reported unfair treatment, and 9.1% reported exclusion.
- In response to a 2016 survey of over 200 LGBT people in Jacksonville, Florida, 57.4% said they had experienced some form of discrimination based on their sexual orientation or gender identity within the five years prior to the survey. More specifically, 28% of respondents reported experiencing employment discrimination and 7% reported experiencing housing discrimination within the five years prior to the survey. In addition, many LGBT respondents reported experiencing discrimination in public accommodations within the five years prior to the survey: 23% of respondents said they had experienced discrimination at a restaurant, club, or bar, 11% said they had experienced discrimination by their physician's office, and 9% said they had experienced discrimination in adoption services within the five years prior to the survey.
- The 2011 National Transgender Discrimination Survey report found that 81% of the transgender respondents from Florida reported experiencing harassment or mistreatment on the job, 36% lost a job, 46% were not hired, and 29% were denied a promotion because of their gender identity or expression. In addition, 14% of respondents from Florida reported that they had been denied a home or apartment and nearly half (47%) said they had been discriminated against or harassed at a place of public accommodation.
- A 2010 survey of faculty, staff, and students at the University of North Florida found that nearly two-thirds (63%) of LGBQ faculty and staff had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity.

- Analysis of public opinion data collected from 2011 through 2013 indicates that 80% of Florida residents, non-LGBT and LGBT, thought that LGBT people experience discrimination in the state. Another public opinion poll conducted in 2016 found that 57% of Florida residents thought that gay and lesbian people experience “a lot” of discrimination in the U.S. and 58% of Florida residents thought that transgender people experience “a lot” of discrimination in the U.S
- Discrimination against LGBT people in Florida has also been documented in a number of court cases, administrative complaints, and the media. Instances of employment discrimination documented in these sources involve private and public sector workers in a range of occupations, including, for example, police officers, health care workers, and educational professionals. Examples of discrimination in housing and public accommodations have also been documented in these sources.

#### *LGBT Youth and Young Adults in Florida Experience Bullying and Harassment at School*

- A 2017 survey of students at the University of West Florida found that 28.2% of LGBQ students reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (27.6%), unfair treatment (9.4%), exclusion (5.5%), harassment/bullying (10.5%), and threats of violence (2.2%). A prior survey of students at the University of West Florida conducted in 2013 found that 38.8% of LGBQ students reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year: 32.7% reported demeaning verbal or written comments, 7.8% reported unfair treatment, 12.1% reported exclusion, 12.1% reported harassment/bullying, and 2.6% reported threats of violence (2.6%).
- The 2015 Youth Risk Behavior Survey in Florida found that LGB students were more likely to report being bullied at school (33.0% v. 12.7%) and electronically bullied (25.5% v. 9.6%) in the 12 months prior to the survey than non-LGB students.
- In addition, LGB students in Florida were more likely than non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (15.8% v. 6.6%).
- The 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 73% of respondents from Florida said they had experienced verbal



harassment based on their sexual orientation at school, and 56% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey. Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender identity (22%) at school in the year prior to the survey.

- The 2011 National Transgender Discrimination Survey report found that 78% of survey respondents from Florida who were perceived to be transgender while in grades K-12 experienced verbal harassment, 41% experienced physical assault, and 10% experienced sexual violence while in school.
- A 2010 survey of the campus climate for LGBQ faculty, staff, and students at the University of North Florida found that nearly half (49%) of LGBQ students had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity. A similar percentage of LGBQ students (54%) reported that they observed incidents of bias and harassment experienced by LGBQ people.

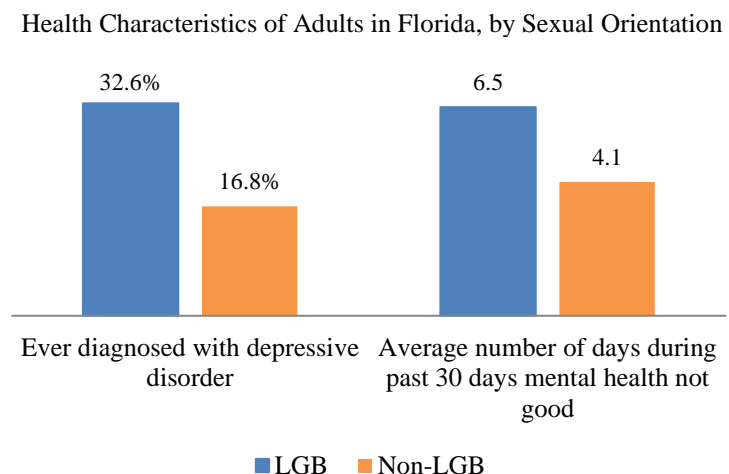
### ***Impact of Stigma and Discrimination on LGBT Individuals***

#### ***LGBT People in Florida Experience Economic Instability***

- Stigma and discrimination against LGBT workers can lead to economic instability, including lower wages and higher rates of poverty.
- Gallup polling data from 2012-2014 indicate that 28% percent of LGBT adults in Florida reported that they did not have enough money for food compared to 19% of non-LGBT adults in the state. Similar proportions of LGBT and non-LGBT people reported that they did not have enough money to meet their health care needs.
- The 2011 National Transgender Discrimination Survey found that 9% of respondents in Florida were unemployed, and 12% had an annual household income of \$10,000 or less.

#### ***LGBT Adults and Youth in Florida Experience Health Disparities***

- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT people such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased



likelihood of school dropout, suicide, and substance use among LGBT youth.

- LGBT adults in Florida who completed the 2012 Behavioral Risk Factor Surveillance System (BRFSS) survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGB adults who completed the survey (32.6% v. 16.8%). In addition, LGBT adults were significantly more likely to report binge drinking (26.5% v. 11.8%) and current smoking (34.3% v. 15.1%) than non-LGBT adults.
- The 2015 Florida Youth Risk Behavior Survey found that LGB students were much more likely to have seriously considered suicide in the year prior to the survey compared to non-LGB students (40.5% v. 10.7%). LGB students in Florida were also more likely than non-LGB students to report smoking cigarettes (22.2% v. 8.1%), drinking (46.6% v. 31.9%), and using marijuana (56.9% v. 34.4%) in the month prior to the survey.
- Similarly, a 2008 survey of college students at the University of West Florida found that rates of self-reported depression, anxiety, and binge drinking were higher for LGBTQ students (20.0%, 38.2%, and 7.3% respectively) than non-LGBTQ students (13.8%, 21.7%, and 3.3% respectively). Suicidal ideation was 2.3 times more likely to be reported in the previous year by LGBTQ students (20.0%) than non-LGBTQ students (8.5%) and suicide attempts were more than nine times more likely to be reported by LGBTQ students (5.6%) than non-LGBTQ students (0.6%)

### ***Economic Impacts of Stigma and Discrimination***

#### ***Discrimination against LGBT People in Employment and Other Settings Has Economic Consequences for Employers and the State Government***

- **Productivity.** Unsupportive work environments can mean that LGBT employees are less likely to be open about their sexual orientation or gender identity at work, and more likely to be distracted, disengaged, or absent, and to be less productive. These outcomes could lead to economic losses for state and local governments, as employers, and private businesses in the state. Given that over 400,000 workers in Florida identify as LGBT, the loss in productivity from a discriminatory environment could be significant.
- **Retention.** LGBT employees in less supportive work environments feel less loyal to their employers and are more likely to plan to leave their jobs. Given the average replacement costs of an employee, public and private employers risk losing \$8,810, on average, for each employee who leaves the state or changes jobs because of an unsupportive policy or social environment in Florida.
- **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 Florida 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 and Family Rejection of LGBT Youth Negatively Impact the Economy*

- Bullying and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or be unemployed or underemployed.
- In response to the 2011 National Transgender Discrimination Survey, of those respondents from Florida who said they had been harassed in school, 14% reported that the harassment was so severe that they had to drop out.
- School drop-out and homelessness that arise due to bullying and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Jim Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging out cohort.

### *Health Disparities for LGBT People Negatively Impact the Economy*

- A more supportive legal landscape and social climate for LGBT people in Florida 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 Florida by 25% to 33.3% could benefit the state's economy by \$248.8 million to \$330.9 million, reducing the disparity in current smoking by the same proportion could benefit the state's economy by \$224.9 million to \$299.8 million, and reducing the disparity in binge drinking by the same proportion could benefit the state's economy by \$135.7 million to \$180.6 million in increased productivity and reduced health care costs each year. To the extent that a more supportive legal landscape and social climate would reduce other health disparities, the state's economy would benefit even more.

Reduction in Costs Associated with Major Depressive Disorder, Smoking, and  
Binge Drinking in Florida

| Health Characteristic            | Reduction in disparity between LGBT and Non-LGBT Floridians | LGBT individuals impacted | Annual reduction in costs (millions) |
|----------------------------------|---|---------------------------|--------------------------------------|
| <b>Major Depressive Disorder</b> | 25%-33.3%   | 16,400 - 21,800           | \$248.8 - \$330.9                    |
| <b>Smoking</b>                   | 25%-33.3%   | 31,800 - 42,400           | \$224.9 - \$299.8                    |
| <b>Binge Drinking</b>            | 25%-33.3%   | 25,400 - 33,800           | \$135.7 - \$180.6                    |

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

Florida is home to an estimated 663,000 LGBT adults and approximately 100,100 LGBT youth who reflect the diversity of the state's overall population. There are few legal protections for LGBT people in Florida. Additionally, the state is ranked 25<sup>th</sup> in the nation on LGBT social climate (as measured by public support for LGBT rights and acceptance of LGBT people).<sup>1</sup> However, despite this standing, public opinion polls also show that a majority of Floridians support extending discrimination protections to LGBT people.<sup>2</sup>

### A. *LGBT People in Florida*

#### 1. LGBT Adults in Florida

Florida is home to over 663,000 LGBT adults (4.1% of adults self-identify as LGBT).<sup>3</sup> In 2013, there were an estimated 100,300 (0.66%) transgender adults in Florida.<sup>4</sup> They are diverse across many socio-demographic characteristics, including age, sex, race-ethnicity, and the presence of children in the household.

- Representative data from the combined 2012-2014 Gallup Daily Tracking Surveys indicate that LGBT adults in Florida, like LGBT adults elsewhere in the South and across the United States, are younger than non-LGBT adults.<sup>5</sup> As shown in Table 1 below, nearly half of LGBT adults in Florida are under the age of 40.
- Approximately half of both LGBT and non-LGBT adults are female.
- More than two in five LGBT adults in Florida are people of color, including 14% African American/Black, 18% Latino/a, <1% Asian-Pacific Islander, <1% American Indian or Alaska Native, and 9% identified as another or other race. LGBT adults are more likely

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<sup>1</sup> AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST., *THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES* 22 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

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

<sup>3</sup> LGBT Data & Demographics: Florida, WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=12#density> (last visited July 13, 2017) (percentage of adults in Florida identifying as LGBT). Total adult population in the state is 16,176,475. For total adult population: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 16, 2017) (select advanced search, enter "2015 American Community Survey" under topic or table name and "Florida" under state, county or place, select "Age and Sex" 2015 1-Year estimates).

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

<sup>5</sup> LGBT Data & Demographics: Florida, Williams Inst., <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=12#density> (last visited July 13, 2017) (percentage of adults in Florida identifying as LGBT).

to be people of color than non-LGBT adults in Florida (36% of non-LGBT adults are people of color compared to 42% of LGBT adults).

**Table I.a. Weighted Characteristics of Florida Adult Participants in the 2012-2014 Gallup Daily Tracking Surveys by LGBT and non-LGBT Status (N = 20,342)<sup>6</sup>**

|                                  | LGBT (n = 714) | Non-LGBT (n = 19,628) |
|----------------------------------|----------------|-----------------------|
|                                  | %              | %                     |
| Age                              |                |                       |
| 18-24                            | 24             | 13                    |
| 25-39                            | 23             | 22                    |
| 40-64                            | 39             | 42                    |
| 65+                              | 13             | 23                    |
| Sex                              |                |                       |
| Female                           | 52             | 50                    |
| Male                             | 48             | 50                    |
| Race-ethnicity                   |                |                       |
| White                            | 58             | 64                    |
| African-American/Black           | 14             | 12                    |
| Latino/a or Hispanic             | 18             | 15                    |
| Asian-Pacific Islander           | <1             | 1                     |
| American Indian or Alaska Native | <1             | <1                    |
| Other                            | 9              | 7                     |
| Children under 18 in Household   | 26             | 34                    |

- Many LGBT adults in Florida have children in their households, in the context of same- and opposite-sex relationships, married and unmarried, and as single parents. Approximately 26% of LGBT adults in Florida (172,400 individuals)<sup>7</sup> and one in ten same-sex couples are raising children.<sup>8</sup> As of 2015, there were approximately 70,600 same-sex couples living in Florida;<sup>9</sup> while different-sex married couples are more likely to be raising children than same-sex couples, the children being raised by same-sex couples in the state are more likely to be adopted (10%) than the children being raised by different-sex married couples (2%).<sup>10</sup>

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

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

<sup>8</sup> Unpublished analyses conducted by The Williams Institute of data from the combined 2015 American Community Survey 1-Year estimates restricted to cohabiting couples in Florida indicate that 36.3% of different-sex couples and 10.5% of same-sex couples have a child under the age of 18 in the household.

<sup>9</sup> Unpublished analyses conducted by The Williams Institute. This figure is calculated by multiplying the number of LGBT adults in Florida in 2015 (663,000) by the percent of LGBT adults who are married to a same-sex spouse (9.6%) and the percent of LGBT adults who are in a cohabiting, unmarried same-sex couple (11.7%). The sum of these two estimates equals the number of same-sex couples in Florida in 2015. See Jeffrey M. Jones & Gary J. Gates, *Same-sex Marriages up After Supreme Court Ruling*, GALLUP (Nov. 5, 2015), <http://www.gallup.com/poll/186518/sex-marriages-supreme-court-ruling.aspx> (Detailing estimates of the proportion of LGBT adults who are in married and unmarried couples).

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

## 2. LGBT Youth in Florida

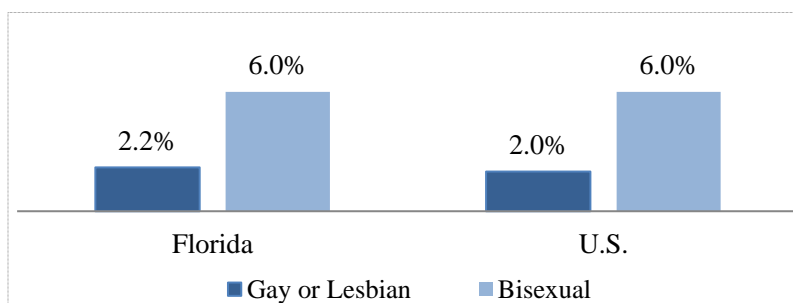
The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants that is managed by the Centers for Disease Control and Prevention (CDC). The YRBS is one of the few sources of data about LGB youth in grades 9 through 12. In 2016,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

The state of Florida and five large urban school districts in the state (Broward, Duval, Miami-Dade, Orange, and Palm Beach County school districts) included a measure of sexual orientation on their 2015 YRBS survey.

Weighted estimates from the Florida YRBS indicate that 8.2% of youth in grades 9-12 identify as gay or lesbian (2.2%) or bisexual (6.0%) (see Figure I.a.).<sup>12</sup> Nationally, 8.0% of youth in grades 9-12 identify as gay or lesbian (2.0%) or bisexual (6.0%) (see Figure I.a.).<sup>13</sup> Students from Florida's large urban school districts report identifying as LGB across a range from 6.4% in Miami-Dade County to 12.9% in Duval County.<sup>14</sup> In the state and each of the five school districts, students are more likely to identify as bisexual than gay or lesbian.<sup>15</sup> An additional 4.1% of students in Florida and 3.2% of students in the U.S. say they are unsure of their sexual orientation.<sup>16</sup>

**Figure I.a. Percentage of Students Who Identify as Gay or Lesbian or Bisexual in Florida and in the U.S.**

Source: Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9–12, United States and Selected Sites, 2016*



<sup>11</sup> See Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83 (2016), available at <http://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>.

<sup>12</sup> See *id.* 85

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

<sup>14</sup> *Id.*

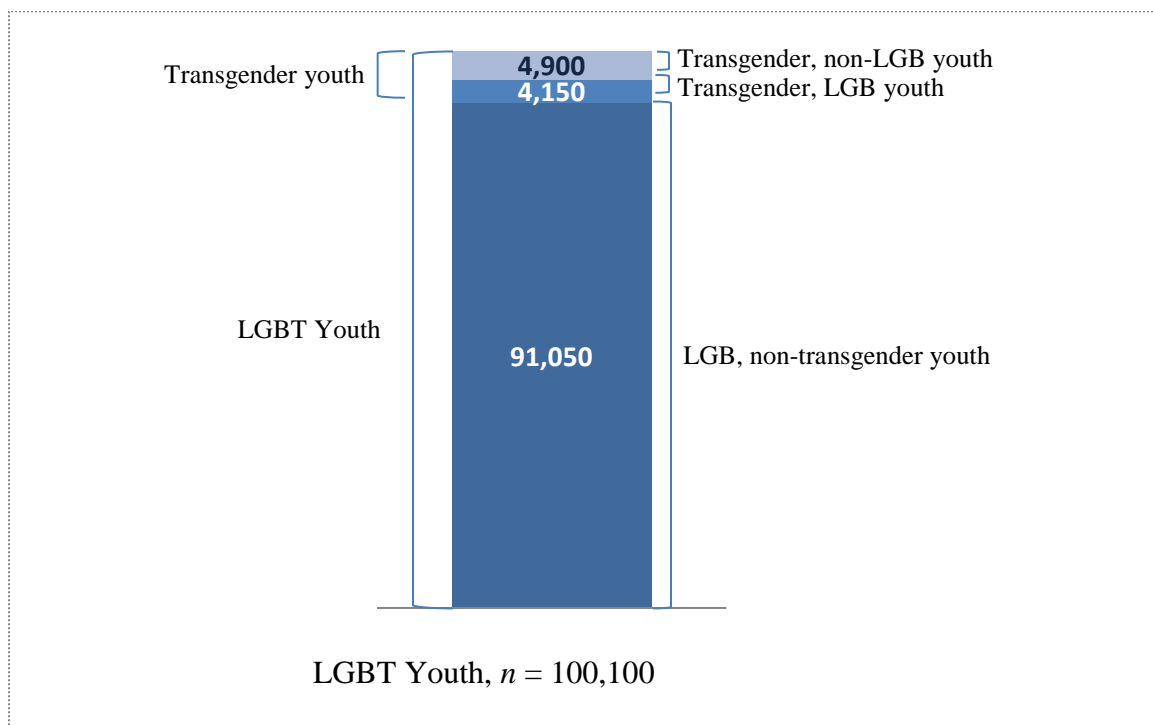
<sup>15</sup> *Id.*

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

We estimate that there are approximately 100,100 LGBT youth in the state of Florida, including almost 95,200 LGB youth, 4,150 of whom are also transgender, (8.2%<sup>17,18</sup> of 1,161,060 youth ages 13 to 17 in Florida)<sup>19</sup> plus an approximate 4,900 transgender youth who are straight/heterosexual (i.e., are not LGB). An estimated 9,050 youth ages 13 to 17 in Florida are transgender.<sup>20</sup> We estimate that 54% of these transgender youth identify as straight/heterosexual.<sup>21</sup>

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

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



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

<sup>17</sup> Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83 (2016), available at <http://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>.

<sup>18</sup> Using the national estimate, we assume the same distribution of sexual orientation across all youth in the state, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

<sup>19</sup> Population data (aged 13-17) derive from the 2011-2013 American Community Survey 3-Year estimates.

<sup>20</sup> ANDREW R. FLORES ET AL., WILLIAMS INST., AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES 4 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

<sup>21</sup> Unpublished analyses conducted by The Williams Institute of data from the combined 2014-2015 Behavioral Risk Factor Surveillance System (BRFSS) restricted to transgender-identified participants ages 18-24 indicate that 54% identify as straight.

percentage of female students identified as bisexual than male students (9.8% versus 2.4%, respectively).

## ***B. Legal Landscape for LGBT People in Florida***

Florida'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 January 2015,<sup>22</sup> the state and most localities continue to lack protections from sexual orientation and gender identity discrimination in the workplace, housing, public accommodations, and other areas.

### **1. Historical Legal Landscape**

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

**Sodomy Law.** Enforcement of Florida's sodomy law indicates a centuries-long history of discrimination against LGB people in the state. In 1842, the Florida legislature enacted a law specifically targeting acts of sodomy. The 1842 law, which repealed prior statutes so far as they conflicted with it, stated that "any person, who shall commit buggery or sodomy with either human being or beast, shall be adjudged guilty of felony and shall suffer death."<sup>23</sup> In 1868, a new criminal law replaced the 1842 sodomy law, making it a felony to engage in an "abominable and detestable crime against nature," which was interpreted by courts to include sodomy.<sup>24</sup> In 1917, Florida enacted a misdemeanor law prohibiting "unnatural and lascivious acts."<sup>25</sup>

In 1971, the Florida Supreme Court held that the "crimes against nature" felony statute was unconstitutionally vague.<sup>26</sup> However, the court ruled that sodomy could still be prosecuted under the "unnatural and lascivious acts" law.<sup>27</sup>

Florida's sodomy laws were used not only to criminalize adults who engaged in private, consensual sexual activity,<sup>28</sup> but were also used by the state to justify discrimination against LGB people. In 1957, the Florida Legislative Investigations Committee (known as the Johns Committee) began an effort to purge gay and lesbian teachers and professors from public schools in part because they engaged in conduct criminalized under the state's sodomy law.<sup>29</sup> At the end

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<sup>22</sup> Brenner v. Scott, 999 F. Supp. 2d 1278 (N.D. Fla. 2014).

<sup>23</sup> *Acts of Florida 1842*, page 20, No. 22 §2, enacted Mar. 5, 1842.

<sup>24</sup> See e.g. Delaney v. State, 190 So. 2d 578, 581 (Fla. 1966). Notably, this statute applies equally to same-sex and heterosexual couples.

<sup>25</sup> FLA. STAT. ANN. §§ 798.02, 800.02 (West 2017).

<sup>26</sup> Franklin v. State, 257 So. 2d 21 (Fla. 1971).

<sup>27</sup> *Id.* at 24.

<sup>28</sup> George Painter, The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States, SODOMY LAWS, (last modified Aug. 10, 2004), <https://www.glapn.org/sodomylaws/sensibilities/florida.htm>.

<sup>29</sup> WILLIAM N. ESKRIDGE, JR., DISHONORABLE PASSIONS: SODOMY LAWS IN AMERICA 1861-2003 103 (2008).

of the Committee's six-year effort, it announced that the state board of education had "revoked seventy-one teachers' certificates (with sixty-three more cases pending); fourteen professors had been removed from the state universities (nineteen pending); and thirty-seven federal employees had lost their jobs, while fourteen state employees faced removal in pending cases."<sup>30</sup> The Johns Committee also provided information to professional licensing boards about individuals investigated because of their sexual orientation, causing doctors, lawyers, and others to lose their licenses.<sup>31</sup>

Florida's sodomy law was struck down by the United States Supreme Court in the landmark case *Lawrence v. Texas*,<sup>32</sup> overturning its earlier decision in *Bowers v. Hardwick*.<sup>33</sup> The Court held that laws banning private, consensual sexual conduct between adults violated the Due Process Clause of the U.S. Constitution.<sup>34</sup> In *Lawrence*, both the majority and concurring opinions noted the link between sodomy laws and discrimination against LGB people, stating that "the criminal conviction carries with it other collateral consequences... such as notations on job application forms, to mention but one example"<sup>35</sup> and that a conviction under the law "would disqualify [individuals] from or restrict their ability to engage in a variety of professions, including medicine, athletic training, and interior design."<sup>36</sup> Although Florida's sodomy law is no longer enforceable after *Lawrence*, the law remains on the books.<sup>37</sup>

**Marriage Equality.** Years before any state extended marriage to same-sex couples, the Florida Legislature passed several statutes restricting relationship recognition for same-sex couples. Florida first enacted legislation restricting marriage to different-sex couples in 1977.<sup>38</sup> In November 2008, the legislature passed a more sweeping constitutional amendment prohibiting the state from recognizing both marriage and civil unions for same-sex couples.<sup>39</sup> In 2014, a federal district court in the Northern District of Florida held in *Brenner v. Scott* that Florida's law prohibiting recognition of marriage for same-sex couples was unconstitutional.<sup>40</sup> Same-sex couples were legally permitted to marry in Florida beginning on January 6, 2015, when the stay requested by the State in its appeal from the judgment in *Brenner* expired.<sup>41</sup>

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<sup>30</sup> *Id.* (citing FLA. LEG. INVESTIGATION COMMITTEE, STAFF MEMORANDA, July-Sept. 1964, in Johns Papers, Box 1, Folder 6).

<sup>31</sup> *Id.* at 104.

<sup>32</sup> 539 U.S. 558 (2003).

<sup>33</sup> 478 U.S. 186 (1986).

<sup>34</sup> *Lawrence*, 539 U.S. at 558.

<sup>35</sup> *Id.* at 576.

<sup>36</sup> *Id.* at 581 (O'Connor, J., concurring).

<sup>37</sup> FLA. STAT. ANN. §§ 798.02, 800.02 (West 2017).

<sup>38</sup> *Askew signs bill to ban gay marriage*, BOCA RATON NEWS, June 9, 1977, at 5A.

<sup>39</sup> FLA. CONST. art. I § 27 (amend. 2008) ("Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.")

<sup>40</sup> *Brenner v. Scott*, 999 F. Supp. 2d 1278, 1293 (N.D. Fla. 2014).

<sup>41</sup> Cristela Guerra, Jeff Burley & Rick Neale, *After State Ban is Lifted, Gays Marry Across Florida*, USATODAY.COM, Jan. 6, 2015, <https://www.usatoday.com/story/news/nation/2015/01/06/gay-marriage-florida/21322099/>.



Although marriage equality is now recognized in all fifty states, Florida law still defines marriage as only “a legal union between one man and one woman as husband and wife.”<sup>42</sup>

## 2. Current Legal Landscape

**Discrimination Protections.** Florida does not have any state-level non-discrimination laws that explicitly include sexual orientation or gender identity as protected characteristics.<sup>43</sup> The Florida Civil Rights Act of 1992 does prohibit discrimination based on other personal characteristics, including race, religion, sex, pregnancy, national origin, age, disability, and marital/family status, in employment, housing, real estate, and public accommodations.<sup>44</sup>

A number of localities in Florida have enacted local ordinances that prohibit discrimination based on sexual orientation and gender identity, creating a patchwork of legal protections for LGBT people in parts of the state. At least eleven counties and thirty municipalities have enacted local ordinances barring discrimination against the LGBT community—particularly in the area of employment. These protections, which encompass sexual orientation and gender identity, now cover 61% of Floridians. The ordinances differ in terms of scope, enforcement, and remedies.

- The following cities and counties prohibit discrimination in employment for sexual orientation and gender identity or expression in both the private and public sectors: City of Atlantic Beach,<sup>45</sup> City of Boynton Beach,<sup>46</sup> City of Delray Beach,<sup>47</sup> City of Dunedin,<sup>48</sup> City of Gainesville,<sup>49</sup> City of Greenacres,<sup>50</sup> City of Gulfport,<sup>51</sup> City of Jacksonville,<sup>52</sup>

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<sup>42</sup> FLA. STAT. ANN. § 741.212 (West 2017).

<sup>43</sup> Some federal laws that prohibit discrimination based on sex, including Title VII, have been interpreted by some courts and federal agencies to also prohibit discrimination based on gender identity and sexual orientation. These laws would apply to workers and residents of Florida, though they are not discussed here because they are outside the scope of this memo. See Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, U.S. EEOC, [https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm) (last visited Jan. 3, 2017).

<sup>44</sup> FLA. STAT. ANN. §§ 760.01-760.11 (West 2017).

<sup>45</sup> ATLANTIC BEACH, FL., CODE, ch. 9, art. 1 (2014).

<sup>46</sup> BOYNTON BEACH, FL., CODE, ch. 1, § 1-12(a) (2015).

<sup>47</sup> DELRAY BEACH, F.L., CODE § 137.01 (2015); Chris Joseph, *Delray Beach Unanimously Passes LGBT-Inclusive Civil Rights Ordinance*, NEW TIMES BROWARD-PALM BEACH, Jul. 8, 2015, <http://www.browardpalmbeach.com/news/delray-beach-unanimously-passes-lgbt-inclusive-civil-rights-ordinance-7101162>.

<sup>48</sup> DUNEDIN, F.L., CODE § 42-32 (2013).

<sup>49</sup> GAINSEVILLE, F.L., CODE § 8-46 (2013).

<sup>50</sup> GREENACRES, F.L., CODE § 1-25 (2015); Chris Joseph, *Greenacres Enacts LGBT-Inclusive Civil Rights Ordinance*, NEW TIMES BROWARD-PALM BEACH, May 19, 2015, <http://www.browardpalmbeach.com/news/greenacres-enacts-lgbt-inclusive-civil-rights-ordinance-6986292>.

<sup>51</sup> GULFPORT, F.L., CODE § 26-22 (2011).

<sup>52</sup> Jim Piggott, *Supporters cheer as Jacksonville City Council passes HRO expansion*, NEWS4JAX, Feb. 13, 2017, <http://www.news4jax.com/news/hro-expansion-vote-goes-to-full-council-tuesday; ACLU of Florida Responds to Jacksonville Human Rights Ordinance Vote>, ACLU, Feb. 14, 2017, <https://aclufl.org/2017/02/14/aclu-of-florida-responds-to-jacksonville-human-rights-ordinance-vote/>.



City of Key West,<sup>53</sup> Town of Lake Clarke Shores,<sup>54</sup> City of Lake Worth,<sup>55</sup> City of Leesburg,<sup>56</sup> City of Mascotte,<sup>57</sup> City of Miami,<sup>58</sup> City of Miami Beach,<sup>59</sup> City of Mount Dora,<sup>60</sup> City of North Port,<sup>61</sup> City of Orlando,<sup>62</sup> City of Sarasota,<sup>63</sup> City of St. Augustine Beach,<sup>64</sup> City of Tampa,<sup>65</sup> City of Venice,<sup>66</sup> City of West Palm Beach,<sup>67</sup> Village of Wellington,<sup>68</sup> Alachua County,<sup>69</sup> Broward County,<sup>70</sup> Hillsborough County,<sup>71</sup> Leon County,<sup>72</sup> Miami-Dade County,<sup>73</sup> Monroe County,<sup>74</sup> Orange County,<sup>75</sup> Osceola County,<sup>76</sup> Palm Beach County,<sup>77</sup> Pinellas County<sup>78</sup> and Volusia County.<sup>79</sup> Note that many of these ordinances provide discrimination protection for housing and public accommodations, and a few also cover important areas such as fair credit, family leave, and public services.<sup>80</sup>

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<sup>53</sup> KEY WEST, F.L., CODE § 38-221 (2014).

<sup>54</sup> Phil Ammann, 2 *Florida municipalities praised for passing new anti-discrimination protections*, FLORIDA POLITICS, Sept. 17, 2015, <http://floridapolitics.com/archives/190586-two-florida-municipalities-praised-for-passing-new-anti-discrimination-protections>.

<sup>55</sup> LAKE WORTH, F.L., CODE § 20-2 (2013).

<sup>56</sup> “Adopted Ordinance 15-20 Amending the City of Leesburg Discrimination Policy,” *Minutes of the City Commission Meeting*, LEESBURG, F.L. (May 26, 2015), available at <https://www.leesburgflorida.gov/Modules/ShowDocument.aspx?documentid=5668>.

<sup>57</sup> *Minutes of City Council Meeting*, MASCOTTE, F.L. (Nov. 2, 2015), available at <http://www.cityofmascotte.com/vertical/Sites/%7B968A2D2A-9E48-45DF-8E6D-641B1A34136E%7D/uploads/11-2-2015.pdf>.

<sup>58</sup> MIAMI, F.L., CHARTER PT. 1 § 52 (2014).

<sup>59</sup> MIAMI BEACH, F.L., CODE § 62-31 (2013).

<sup>60</sup> MOUNT DORA, F.L., CODE § 58 (2016).

<sup>61</sup> NORTH POINT, F.L., CODE § 16.01 (2015).

<sup>62</sup> ORLANDO, F.L., CODE § 57-14 (2014).

<sup>63</sup> SARASOTA, F.L., CODE § 18-38 (2014).

<sup>64</sup> ST. AUGUSTINE BEACH, F.L., ORD. NO. 2013-03 (2013).

<sup>65</sup> TAMPA, F.L., CODE § 12-26 (2014).

<sup>66</sup> VENICE, F.L., CODE § 2-354 (2014).

<sup>67</sup> WEST PALM BEACH, F.L., CODE § 42-31 (2014).

<sup>68</sup> Phil Ammann, 2 *Florida Municipalities Praised for Passing New Anti-Discrimination Protections*, FLORIDA POLITICS, Sept. 17, 2015, <http://floridapolitics.com/archives/190586-two-florida-municipalities-praised-for-passing-new-anti-discrimination-protections>.

<sup>69</sup> ALACHUA COUNTY, F.L., CODE § 11.03 (2014).

<sup>70</sup> BROWARD COUNTY, F.L., CODE § 16.5-33 (2014).

<sup>71</sup> HILLSBOROUGH COUNTY, F.L. CODE § 30-18 (2014).

<sup>72</sup> LEON COUNTY, F.L., CODE § 9-25 (2013).

<sup>73</sup> MIAMI-DADE COUNTY, F.L., CODE § 11A-26 (2013).

<sup>74</sup> MONROE COUNTY, F.L., CODE § 14-41 (2013).

<sup>75</sup> ORANGE COUNTY, F.L., CODE § 22-26 (2014).

<sup>76</sup> OSCEOLA COUNTRY, F.L. CODE § 27-1 (2015).

<sup>77</sup> PALM BEACH COUNTY, F.L., CODE § 2-263 (2014).

<sup>78</sup> PINELLAS COUNTY, F.L., CODE § 70-53 (2014).

<sup>79</sup> VOLUSIA COUNTY, F.L., CODE § 36-27 (2014).

<sup>80</sup> See generally *Human Rights Ordinances in Florida Municipalities*, NATIONAL CENTER FOR LESBIAN RIGHTS (2008), available at [http://ncflr.convio.net/site/DocServer/FL\\_HROs\\_Feb\\_2008\\_2\\_.pdf?docID=2541](http://ncflr.convio.net/site/DocServer/FL_HROs_Feb_2008_2_.pdf?docID=2541); *Legal Handbook for LGBT Floridians and Their Families*, EQUALITY FLORIDA INSTITUTE, INC., 70-71 (2015), available at [http://www.eqfl.org/sites/default/files/Legal\\_Guide\\_081414.pdf](http://www.eqfl.org/sites/default/files/Legal_Guide_081414.pdf).

- The following cities prohibit discrimination in employment for sexual orientation and gender identity or expression in the public sector only: City of Largo,<sup>81</sup> City of Neptune Beach,<sup>82</sup> City of Oakland Park,<sup>83</sup> Town of Haverhill,<sup>84</sup> Village of Tequesta,<sup>85</sup> and the City of Wilton Manors.<sup>86</sup>

The county ordinances generally require an attempt at voluntary conciliation first, after which enforcement is typically through administrative hearings. However, Leon,<sup>87</sup> Orange,<sup>88</sup> Osceola,<sup>89</sup> and Volusia<sup>90</sup> Counties do not have human rights commissions to handle complaints.

Additionally, counties differ in providing a private right of action. Volusia,<sup>91</sup> Palm Beach,<sup>92</sup> Osceola,<sup>93</sup> Orange,<sup>94</sup> Miami-Dade,<sup>95</sup> Monroe,<sup>96</sup> and Leon<sup>97</sup> Counties expressly provide a private right of action. Alachua County provides such action only after a reasonable cause determination.<sup>98</sup> Broward<sup>99</sup> and Hillsborough<sup>100</sup> Counties only allow an appeal of an administrative decision, and Pinellas County allows administrative decisions to be enforced by a “petition for enforcement” filed with the appropriate court.<sup>101</sup>

Among Florida’s 20 largest cities – cities with over 100,000 residents – six prohibit discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations. Each has a human rights commission, and each except for West Palm

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<sup>81</sup> CITY OF LARGO, EMPLOYEE HANDBOOK, A-46 (2013).

<sup>82</sup> NEPTUNE BEACH, F.L., RES. NO. 2015-05 (2014), available at [http://ci.neptune-beach.fl.us/zupload/user/Resolutions/Resolution2014-05PersonnelPolicySECOND\\_VERSION2.pdf](http://ci.neptune-beach.fl.us/zupload/user/Resolutions/Resolution2014-05PersonnelPolicySECOND_VERSION2.pdf); Teresa Stepzinski, *Neptune Beach council amends city personnel policy so it protects LGBT employees*, THE FLORIDA TIMES-UNION, Jun. 2, 2014, [http://jacksonville.com/news/metro/2014-06-02/story/neptune-beach-council-amends-city-personnel-policy-so-it-protects-lgbt?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+JacksonvillecomNews+%28Jacksonville+Local+News+%E2%80%93+Jacksonville.com+and+The+Florida+Times-Union%29](http://jacksonville.com/news/metro/2014-06-02/story/neptune-beach-council-amends-city-personnel-policy-so-it-protects-lgbt?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+JacksonvillecomNews+%28Jacksonville+Local+News+%E2%80%93+Jacksonville.com+and+The+Florida+Times-Union%29).

<sup>83</sup> OAKLAND PARK, F.L., CODE § 2-158 (2014).

<sup>84</sup> *Haverhill, Fla. Protects LGBT Town Employees*, THE RAINBOW TIMES, Jan. 11, 2016, <http://www.therainbowtimesmass.com/haverhill-protects-lgbt-town-employees/>.

<sup>85</sup> VILLAGE OF TEQUESTA, PERSONNEL POLICIES, (2007), available at <http://www.tequesta.org/documentcenter/view/5815>.

<sup>86</sup> *LGBT Life in Wilton Manors*, WILTON MANORS, F.L., <http://www.wiltonmanors.com/290/LGBT-Life-in-Wilton-Manors>.

<sup>87</sup> LEON COUNTY, F.L. CODE §§ 9-1 to -72 (2017).

<sup>88</sup> ORANGE COUNTY, F.L. CODE §§ 22-1 to -61 (2017).

<sup>89</sup> OSCEOLA COUNTY, F.L. CODE §§ 27-1 to -19 (2017).

<sup>90</sup> VOLUSIA COUNTY, F.L. CODE §§ 36-1 to -56 (2017).

<sup>91</sup> VOLUSIA COUNTY, F.L. CODE § 36-4 (2017).

<sup>92</sup> PALM BEACH COUNTY, F.L. CODE §§ 2-311, 15-56 (2017).

<sup>93</sup> OSCEOLA COUNTY, F.L. CODE § 27-4 (2017).

<sup>94</sup> ORANGE COUNTY, F.L. CODE § 22-4 (2017).

<sup>95</sup> MIAMI-DADE COUNTY, F.L. CODE §§ 11A-15, 11A-24, 11A-28(10)(a) (2017).

<sup>96</sup> MONROE COUNTY, F.L. CODE § 14-46 (2017).

<sup>97</sup> LEON COUNTY, F.L. CODE § 9-4 (2017).

<sup>98</sup> ALACHUA COUNTY, F.L. CODE § 111.3(h)(1) (2017).

<sup>99</sup> BROWARD COUNTY, F.L. CODE § 16½-51 (2017).

<sup>100</sup> HILLSBOROUGH COUNTY, F.L. CODE § 30-28(g) (2017).

<sup>101</sup> PINELLAS COUNTY, F.L. CODE § 70-78(b) (2017).

Beach expressly provides a private right action for housing discrimination. Cities differ, however, in providing a private right action for employment and public accommodations discrimination. Gainesville provides such within one year of a reasonable cause determination.<sup>102</sup> Miami<sup>103</sup> and Tampa<sup>104</sup> allow the complainant to demand the right to sue if conciliation fails, as does Jacksonville for public accommodations claims.<sup>105</sup> For employment claims, Jacksonville only allows the County Counsel to pursue a lawsuit.<sup>106</sup> Orlando further limits complainants to appealing board decisions through a “quasi-judicial” process,<sup>107</sup> while West Palm Beach provides no express private right action for employment or public accommodations discrimination.

Over 404,500 workers in Florida, aged 16 and older, identify as LGBT (4.5% of the state’s workforce). An estimated 61% of the state’s civilian workforce is protected from employment discrimination based on sexual orientation or gender identity under local ordinances and personnel policies.<sup>108</sup>

**Parenting Rights.** For over thirty years, gay men and women were not allowed to adopt in Florida as a result of a 1977 statute passed by the Florida Legislature, which stated: “No person eligible to adopt may adopt if that person is a homosexual.”<sup>109</sup> After a trial in 2008, a Florida court held that the law violated the equal protection clause of the Florida Constitution.<sup>110</sup> In 2010, a Florida Court of Appeals affirmed the trial court’s decision,<sup>111</sup> and the Florida Governor and Attorney General declined to pursue additional appeals.<sup>112</sup> In 2015, the Florida legislature passed HB 7013, a comprehensive overhaul of the adoption statute, which removed the prohibition on gay and lesbian people adopting.<sup>113</sup>

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<sup>102</sup> GAINESVILLE, F.L. CODE § 70-78(b) (2017).

<sup>103</sup> MIAMI, F.L. CHARTER PT. A § 52 (2017) (adopting the Miami-Dade County Citizens' Bill of Rights); MIAMI-DADE COUNTY, F.L., CODE §§ 11A-24, 11A-28(10)(a) (2017).

<sup>104</sup> TAMPA, F.L. CODE §§ 12-48(f), 12-68 (2017).

<sup>105</sup> JACKSONVILLE, F.L. CODE § 406.409 (2017)

<sup>106</sup> JACKSONVILLE, F.L. CODE § 402.310 (2017)

<sup>107</sup> ORLANDO, F.L. CODE § 57.14.5 (2017)

<sup>108</sup> For workforce data: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited July 12, 2017) (enter Florida or locality name and select go, click on income tab, choose Selected Economic Characteristics for the 2015 American Community Survey). In 2015, there were 8,990,221 people in Florida’s civilian workforce (employed).

<sup>109</sup> Formerly Fla. Stat. Ann. § 63.042(d). See also RONNIE L. SANLO, UNHEARD VOICES: THE EFFECTS OF SILENCE ON LESBIAN AND GAY EDUCATORS, 14 (Bergin & Garvey, 1999).

<sup>110</sup> Fla. Dep’t of Children & Families v. X.X.G., 45 So. 3d 79, 82 (Fla. Dist. Ct. App. 2010).

<sup>111</sup> *Id.* at 92.

<sup>112</sup> Mary Ellen Klas, *Bill McCollum drops gay adoption case, so Florida’s ban is no more*, TAMPA BAY TIMES, Oct. 22, 2010, <http://www.tampabay.com/news/politics/stateroundup/bill-mccollum-drops-gay-adoption-case-so-floridas-ban-is-no-more/1129752>.

<sup>113</sup> See FLA. STAT. ANN. § 63.042 (West 2017).

In addition, in early 2017, the Florida State Department of Health, as a result of a lawsuit, agreed to include the names of both parents on birth certificates of children born to same-sex couples.<sup>114</sup> Until then, State Department Health Officials had recognized only the biological parent on birth certificates of children born to same-sex couples.<sup>115</sup> Even when a birth certificate names both parents, non-biological parents in Florida may choose to formalize legal rights to their children through second parent adoption since a birth certificate alone does not establish parentage.<sup>116</sup> A second parent adoption allows the non-biological/non-adoptive parent to adopt a child without affecting the biological/adoptive parent's rights.<sup>117</sup>

Despite these recent changes, same-sex couples may continue to face legal barriers to securing parental rights in Florida. Florida statutes regulating assistive reproductive technology (ART) contain gendered terms that assume that the intended parents of a child conceived through ART are members of a different-sex couple. For example, Florida law provides that a child born to a married couple and conceived through artificial insemination or donated eggs or pre-embryos is "presumed to be the child of the husband and wife."<sup>118</sup> Florida Supreme Court precedent indicates that this presumption will also apply to female same-sex couples where the biological mother donated an egg and her partner carried the child.<sup>119</sup> However, because this ruling was limited to the scenario considered by the court, non-biological parents in same-sex couples will still likely face barriers to establishing parental rights to children conceived through tissue donation.<sup>120</sup>

Florida law also allows the use of gestational agreements to streamline the legal process for adopting a child born to a surrogate.<sup>121</sup> However, same-sex couples may be unable to enter into gestational agreements with surrogates due to restrictive language in the statute. Florida's statute governing gestational agreements defines "commissioning couple" as the "intended mother and father"<sup>122</sup> and provides that a commissioning couple may only enter into a gestational surrogacy agreement when a physician has certified that the intended mother is unable to carry a child due

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<sup>114</sup> Dara Kam, *Florida Settles Federal Birth Certificate Suit, Agrees to Recognize Same-Sex Married Parents*, MIAMIHERALD.COM, Jan. 11, 2017, <http://www.miamiherald.com/news/local/community/gay-south-florida/article125929324.html>.

<sup>115</sup> *Id.*

<sup>116</sup> *Child Custody and Visitation Issues for Lesbian, Gay, Bisexual, and Transgender Parents in Florida* at 7, NAT'L CTR. FOR LESBIAN RIGHTS (2009), [http://www.nclrights.org/wp-content/uploads/2013/07/2007\\_10\\_02\\_FLCustodyPub.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/2007_10_02_FLCustodyPub.pdf)

<sup>117</sup> See Second Parent Adoption, Human Rights Campaign, <http://www.hrc.org/resources/second-parent-adoption> (last visited 7/10/2017)

<sup>118</sup> FLA. STAT. ANN. § 742.11 (West 2017).

<sup>119</sup> D.M.T. v. T.M.H., 129 So.3d 320 (Fla. 2013).

<sup>120</sup> In 2015, a Florida Court of Appeals refused to recognize parental rights of a non-biological mother who agreed to jointly parent children conceived through artificial insemination with her female same-sex partner. See Russell v. Pasik, 178 So. 3d 55, 57 (Fla. Dist. Ct. App. 2015).

<sup>121</sup> FLA. STAT. ANN. § 742.15-.16 (West 2017).

<sup>122</sup> *Id.* § 742.13(2).

to physical limitations or health risks.<sup>123</sup> If same-sex couples are unable to rely on gestational agreements in Florida, they must go through legal proceedings for termination of the surrogate's parental rights and adoption after the child's birth in order to establish a legal relationship with the child.<sup>124</sup>

Finally, as recently as 1995, a mother was denied custody of her child by a Florida court because she was living with her female partner.<sup>125</sup> The father was granted custody despite the fact that he had been convicted of murdering his first wife.<sup>126</sup> According to news reports at the time, the judge stated when making his decision that the "child should be given the opportunity and the option to live in a non-lesbian world."<sup>127</sup> The mother appealed the ruling and it was upheld.<sup>128</sup>

**Safe Schools and Youth.** Florida's anti-bullying law, the "Jeffrey Johnston Stand Up for All Students Act," requires that school districts adopt and enforce strict policies against bullying of students and employees.<sup>129</sup> Unlike many state anti-bullying laws, Florida's statute does not include an enumerated list of personal characteristics based on which students are likely to be bullied, such as race, sex, sexual orientation, or gender identity.<sup>130</sup>

**Gender Marker and Name Changes.** Florida allows individuals to change their gender marker and name on identification documents. In Florida, a legal name change can be obtained by petitioning the court.<sup>131</sup> All applicants must submit documentation regarding any criminal records and be fingerprinted.<sup>132</sup> Individuals in Florida may update their name on a driver's license or Florida identification card by submitting proof of the legal name change ordered by a court to the Florida Department of Highway Safety and Motor Vehicles along with supporting documentation.<sup>133</sup>

Individuals in Florida may change the gender marker on their driver's license or identity card by providing a physician's statement certifying that they are undergoing clinical treatment for

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<sup>123</sup> *Id.* § 742.15(2).

<sup>124</sup> *See* Same Sex Couples, Law Office of Karen Persis, <http://karenpersis.com/same-sex-adoption/> (last visited June 30, 2017); *See also* Same Sex Clients, Law Offices of Robert T. Terenzio, <http://robertterenzio.com/same-sex-couples/> (last visited July 10, 2017).

<sup>125</sup> *Ward v. Ward*, 742 So.2d 250, 252 (Fla. Dist. Ct. App. 1996).

<sup>126</sup> *Id.* at 255.

<sup>127</sup> Diane Hirth, *Who Would Be a Better Parent?*, SUN SENTINEL, July 25, 1996, [http://articles.sun-sentinel.com/1996-07-25/news/9607250043\\_1\\_custody-battle-cassey-lesbian](http://articles.sun-sentinel.com/1996-07-25/news/9607250043_1_custody-battle-cassey-lesbian).

<sup>128</sup> *Ward*, 742 So.2d at 252.

<sup>129</sup> Fla. Stat. Ann. § 1006.147 (West 2017).

<sup>130</sup> 18 states and the District of Columbia have enumerated anti-bullying laws that include sexual orientation and gender identity along with other personal characteristics. State Maps, GLSEN.ORG, <http://www.glsen.org/article/state-maps> (last visited July 5, 2017).

<sup>131</sup> FLA. STAT. ANN. § 68.07 (West 2017).

<sup>132</sup> *Id.*

<sup>133</sup> Name Changes, Fla. Dep't of Highway Safety and Motor Vehicles, <http://www.flhsmv.gov/ddl/namechange.html> (last visited July 5, 2017).

gender transition to the Florida Department of Highway Safety and Motor Vehicles.<sup>134</sup> Individuals are no longer required to provide proof of gender reassignment surgery in order to change the gender marker on their driver's license or identification card.<sup>135</sup> In order to change the gender marker on a birth certificate, individuals in Florida are required to provide "original, certified, or notarized supporting documentary evidence."<sup>136</sup> According to the National Center for Transgender Equality, this means an applicant must submit an application, an affidavit from a physician stating that the applicant completed sex reassignment in accordance with the appropriate medical procedures, and payment of an amendment fee.<sup>137</sup>

**Other protections.** Florida includes sexual orientation in its hate crimes law, providing for enhanced penalties for crimes committed because of the victim's sexual orientation.<sup>138</sup> In addition, Florida's Hate Crimes Reporting Act requires the Florida Department of Law Enforcement to collect and analyze data on hate crimes committed in the state, including crimes motivated by the victims' sexual orientation.<sup>139</sup> The laws do not include gender identity.

In addition, Florida has several laws regulating health care and health insurance that prohibit discrimination based on sexual orientation. Florida law requires that hospice facilities make services available without regard to patients' personal characteristics, including sexual orientation.<sup>140</sup> Additionally, providers of substance abuse services may not deny an individual access to care on the basis of sexual orientation.<sup>141</sup> Florida law also requires that for the application and purchase of insurance coverage with a Health Maintenance Organization, sexual orientation shall not be used in the underwriting process or in the determination of which subscribers or applicants should be tested for exposure to the HIV infection.<sup>142</sup> None of these laws include gender identity as a protected characteristic.

Florida lacks several other legal protections for LGBT people that have been enacted in other states, including, for example, a law that requires health insurance providers insurers to offer coverage for transition-specific medical care<sup>143</sup> and a ban on professional therapists engaging in efforts to change people's sexual orientation or gender identity.<sup>144</sup>

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<sup>134</sup> General Information Policy 034-2011, Gender Reassignment Requirements 047-2010 (Rev. 2011), *available at* <http://www.gulfcoasttransgenderalliance.com/florida-dmv-gender-marker-change-requirements.html>.

<sup>135</sup> *Id.*

<sup>136</sup> FLA. ADMIN. CODE ANN. r. 64V-1.003 (2004).

<sup>137</sup> *ID Documents Center: Florida*, NATIONAL CENTER FOR TRANSGENDER EQUALITY (Mar. 2, 2017, 5:15 PM), <http://www.transequality.org/documents/state/florida>.

<sup>138</sup> FLA. STAT. ANN. § 775.085 (West 2017).

<sup>139</sup> FLA. STAT. ANN. § 877.19 (West 2017).

<sup>140</sup> FLA. STAT. ANN. § 400.6095 (1) (West 2017).

<sup>141</sup> Fla. Stat. Ann. § 397.501(2)(a) (West 2017).

<sup>142</sup> Fla. Stat. Ann. § 627.429(4)(d); § 641.307(4)(d) (West 2017).

<sup>143</sup> At least 15 states and the District of Columbia have such laws (research on file with the authors).

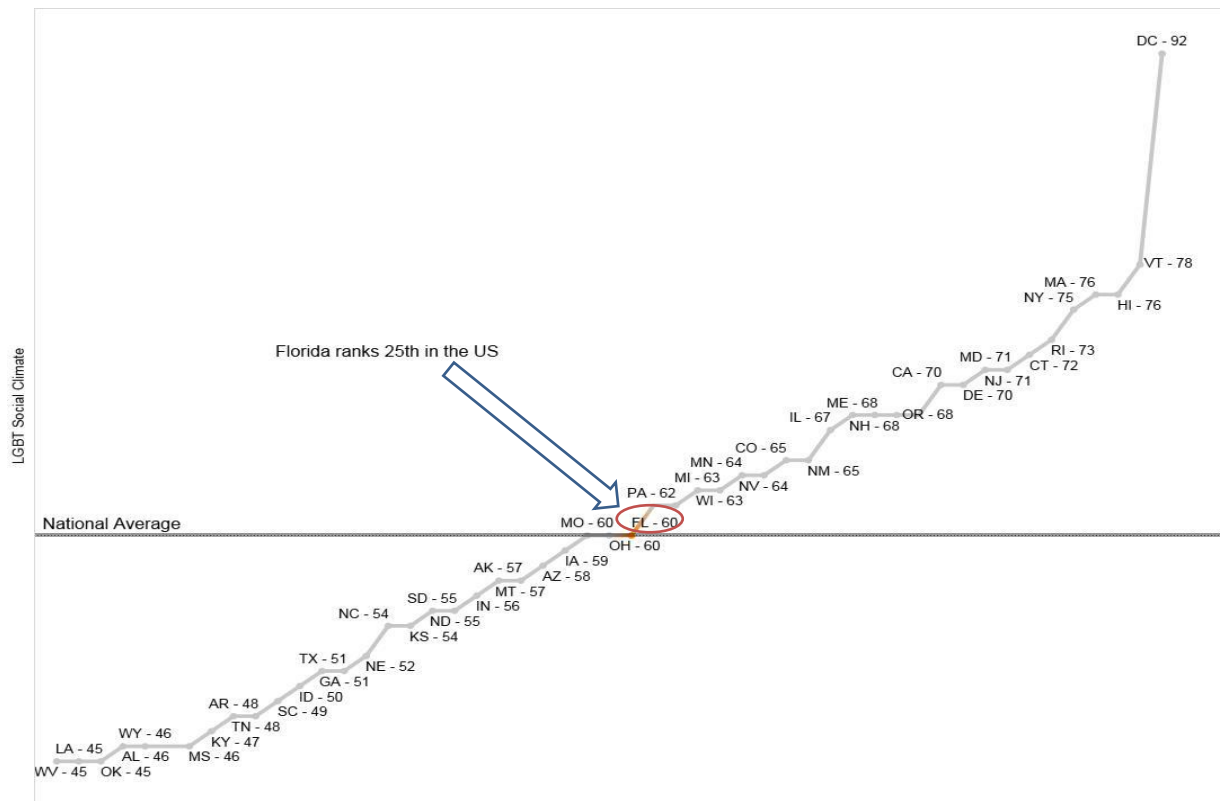
<sup>144</sup> Four states in the U.S. and the District of Columbia have such bans, which generally prohibit therapists and other medical professionals from trying to change a youth's sexual orientation or gender identity (research on file with the authors).



### C. Public Opinion

In 2014, Williams Institute scholars created the LGB Social and Political Climate Index to characterize the social environment in which LGB people reside.<sup>145</sup> The Index summarizes four items about acceptance of LGB people and attitudes toward LGB rights: 1) approval of marriage for same-sex couples; 2) approval of adoption rights for same-sex couples; 3) approval of laws that protect lesbians and gay men from employment discrimination; and 4) belief that homosexuality is a sin.<sup>146</sup> The Index provides climate scores for each state and the District of Columbia, denoting relative levels of social and political support for LGBT people across the U.S., with higher index scores indicating greater levels of social acceptance of LGB people and lower scores indicating lower acceptance. Out of all states, Florida ranks 25th in its level of support for LGBT people and issues. Of the sixteen states in the South, Florida has the second highest level of support for LGBT people and issues. Acceptance in Florida is about equivalent to the national average.

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

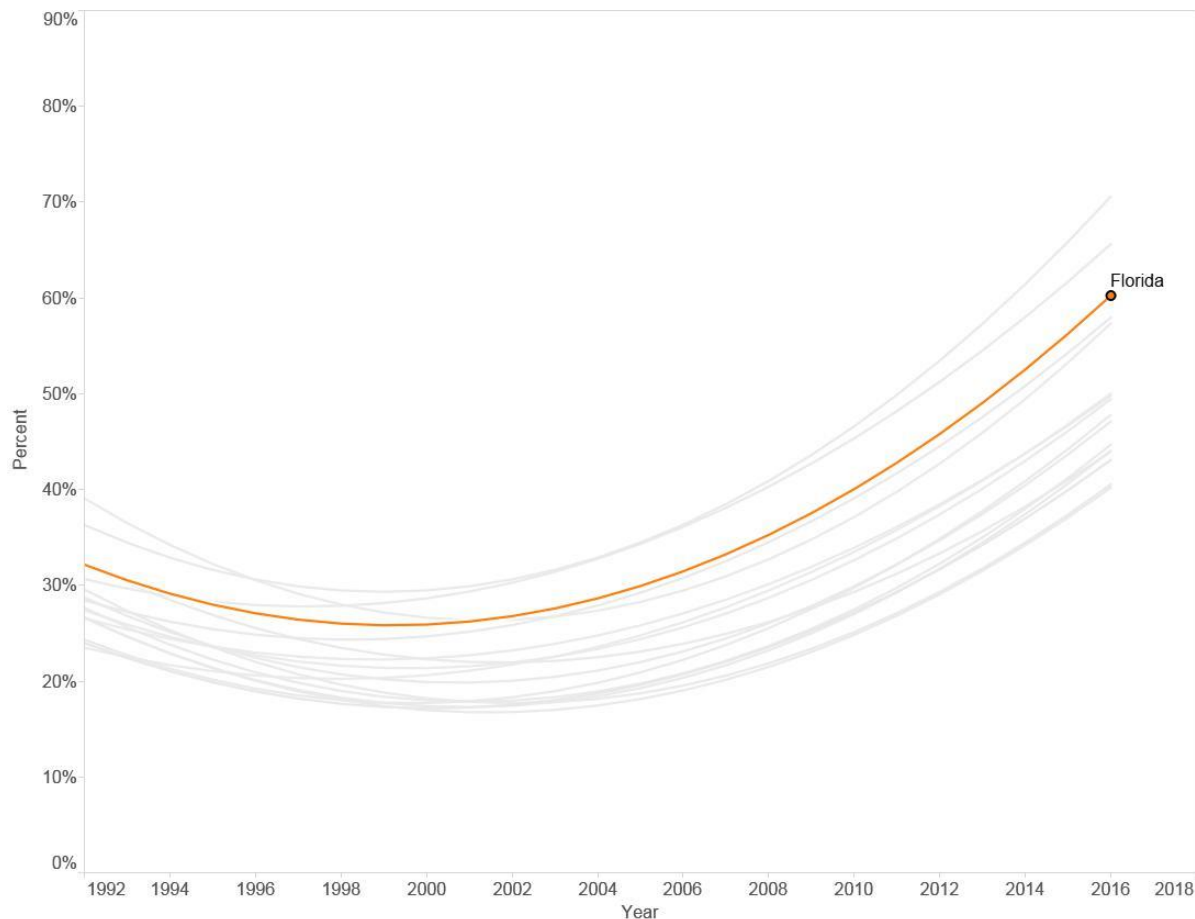


<sup>145</sup> AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST., THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES 5 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

<sup>146</sup> *Id.* at 6.

Although Florida is below 24 states in terms of support for LGBT people in 2014, attitudes toward LGBT people in the state are improving over time. Figure I.d. shows an increase in acceptance of same-sex marriage in Florida, among other southern states, from 1992 to 2016.<sup>147</sup> In 1992, only 32% of Florida residents supported marriage equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise. A separate poll of Floridians conducted by the Cooperative Congressional Election Survey in November 2016 showed the state as decidedly in favor of marriage equality at 61%.<sup>148</sup>

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



In addition, recent public opinion surveys also indicate that a majority of Floridians support expanding non-discrimination protections to include LGBT people. The 2015 American Values

<sup>147</sup> Longitudinal changes in support for marriage equality are rooted in two causes: generational change and attitude change. ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST., TRENDS IN PUBLIC SUPPORT FOR MARRIAGE SAME-SEX COUPLES BY STATE (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Supportfor-Same-Sex-Marriage-2004-2014.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. Gregory B. Lewis and Charles W. Gossett, *Changing Public Opinion on Same-Sex Marriage: The Case of California*, 36 POLITICS & POLICY 4 (2008).

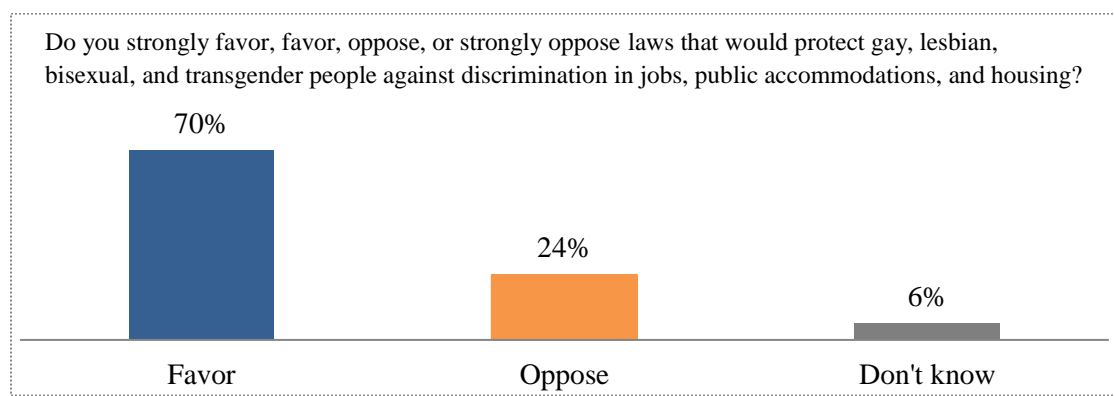
<sup>148</sup> Stephen Asolabehere & Brian F. Schaffner, CCS Common Content, doi: 10.7910/DVN/GDF6Z0, Harvard Dataverse V.1 (2017).



Survey, a representative survey of over 40,000 Americans across the United States, found that public attitudes in Florida are in favor of policies that would protect LGBT people from discrimination with 70% supporting such policies and 24% opposing them.<sup>149</sup> A majority (58%) of Floridians in the same survey also reported that they were opposed to policies that would allow small businesses to refuse service to lesbian and gay people for religious reasons. Estimates based on a 2011 survey of the American public found that 78% of Floridians are supportive of Congress passing federal laws to protect LGBT people from employment discrimination.<sup>150</sup>

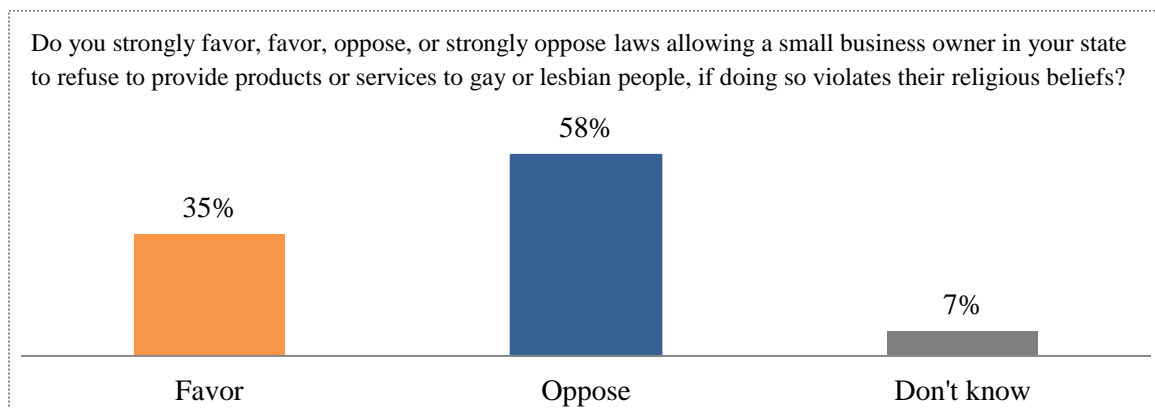
**Figure I.e. Support among Floridians for LGBT Inclusive Non-Discrimination Policies**

Source: American Values Survey, 2015



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

Source: American Values Survey, 2015



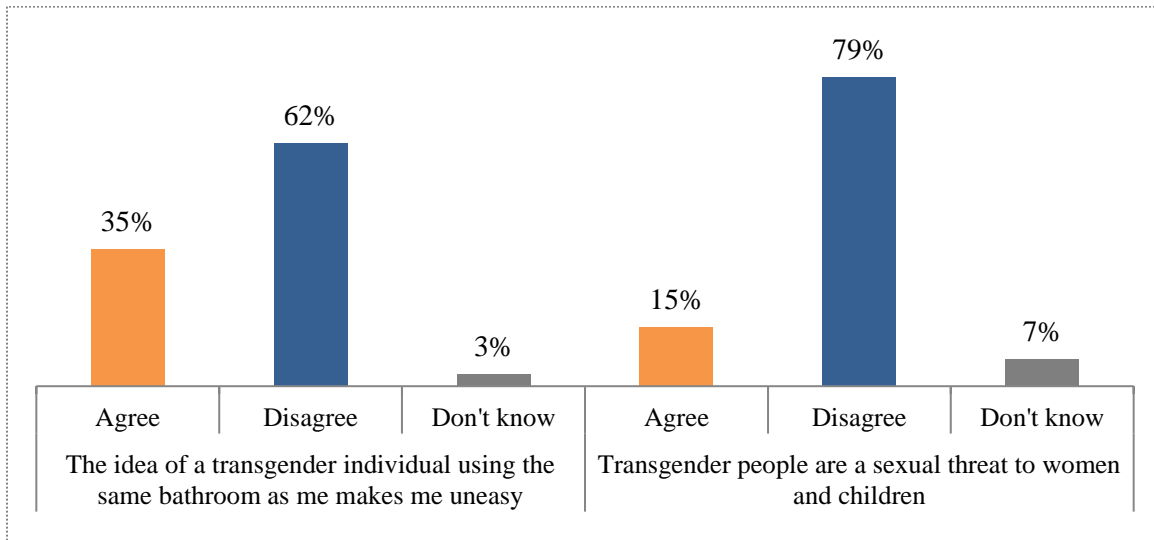
<sup>149</sup> 2,572 respondents to the survey were Florida residents. DANIEL COX, RACHEL LIENESCH & ROBERT P. JONES, BEYOND SAME-SEX MARRIAGE: ATTITUDES ON LGBT NONDISCRIMINATION LAWS AND RELIGIOUS EXEMPTIONS FROM THE 2015 AMERICAN VALUES ATLAS (2015), available at <https://www.prri.org/research/poll-same-sex-gay-marriage-lgbt-nondiscrimination-religious-liberty/>.

<sup>150</sup> Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, RESEARCH & POLITICS 1 (Oct.-Dec. 2015).

A March 2017 survey of Florida residents by the University of North Florida suggests that there is also majority support for non-discrimination protections for transgender people in the context of public accommodations.<sup>151</sup> In response to the poll, 62% of Floridians said they did not feel uneasy about sharing a restroom with a transgender person and 79% of respondents said that transgender people do not pose a sexual threat to women or children.<sup>152</sup>

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

Source: The UNF Public Opinion Research Laboratory, March 2017



A dividing line among Floridians is their political affiliation as shown in Figure I.h. Half of Republicans (50%) and half of Independents (50%) said that they do not feel uneasy about sharing a restroom with a transgender person.<sup>153</sup> Support among Democrats was higher at 73%.<sup>154</sup> The majority of each group said that transgender people are not a sexual threat to women or children, but support was higher among Democrats (84%) and Independents (84%) than Republicans (70%).<sup>155</sup>

<sup>151</sup> Press Release, Public Opinion Research Lab., U. N. Fla., New UNF Poll Shows Senator Bill Nelson Leading Governor Rick Scott in 2018 Senate Election (Mar. 6, 2017), available at [http://www.unf.edu/coas/porl/March\\_6\\_2017\\_-\\_New\\_UNF\\_Poll\\_Shows\\_Senator\\_Bill\\_Nelson\\_Leading\\_Governor\\_Rick\\_Scott\\_in\\_2018\\_Senate\\_Election.aspx](http://www.unf.edu/coas/porl/March_6_2017_-_New_UNF_Poll_Shows_Senator_Bill_Nelson_Leading_Governor_Rick_Scott_in_2018_Senate_Election.aspx).

<sup>152</sup> *Id.*

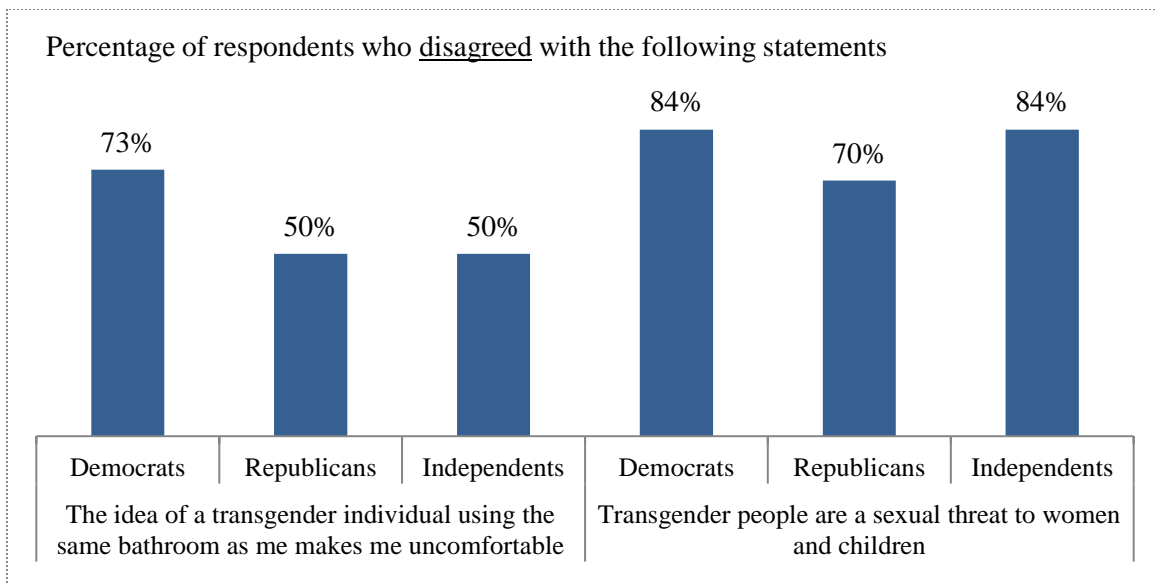
<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

**Figure I.h. Opinions of Floridians on Transgender People and Access to Public Restrooms, by Political Affiliation**

Source: The UNF Public Opinion Research Laboratory, March 2017



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

## SECTION II. STIGMA AND DISCRIMINATION AGAINST LGBT ADULTS AND YOUTH IN FLORIDA

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

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

#### **1. Employment Discrimination and Harassment**

Discrimination against LGBT workers in the U.S., as well as in Florida, has been widely documented. For example, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents reported having been treated unfairly by an employer in hiring, pay, or promotions.<sup>156</sup> The 2015 U.S. Transgender Survey report, based on the largest survey of transgender and gender non-conforming people in the U.S. to date, found that 27% of respondents reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 15% reported being verbally, physically, or sexually harassed at work in the year prior to the survey because of their gender identity.<sup>157</sup>

Surveys of LGBT individuals in Florida find similar levels of reported discrimination and harassment:

- A 2017 survey of faculty and staff at the University of West Florida found that 18.6% of LGBQ employees reported one or more experiences of derogatory treatment based on sexual orientation on campus in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (16.3%), unfair treatment (7.0%), exclusion (2.3%), and harassment/bullying

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<sup>156</sup> *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER (June 13, 2013), <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>157</sup> SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

(4.7%). LGBQ employees with these experiences rated the degree of impact of these experiences on their employment or personal activities as “quite a bit/extreme” (25.0%); “moderate” (12.5%), or “not at all/slight (62.5%).”<sup>158</sup>

A prior survey of faculty and staff at the University of West Florida conducted in 2013 found that 45.5% of LGBQ faculty and staff reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (45.5%), unfair treatment (13.6%), and exclusion (9.1%). LGBQ employees with these experiences rated the degree of impact of these experiences on their employment or personal activities as “quite a bit/extreme” (20.0%), “moderate” (20.0%), or “not at all/slight” (60%).<sup>159</sup>

- In response to a 2016 survey of over 200 LGBT people in Jacksonville, Florida, 28% of respondents reported experiencing discrimination at work and 13% reported experiencing discrimination in a job interview within the five years prior to the survey.<sup>160</sup>
- The 2011 National Transgender Discrimination Survey report found that 81% of the transgender respondents from Florida reported experiencing harassment or mistreatment on the job, 36% lost a job, 46% were not hired, and 29% were denied a promotion at some point in their lives because of their gender identity or expression.<sup>161</sup>
- A 2010 survey of faculty, staff, and students at the University of North Florida assessed the campus climate for LGBQ people. The survey found that nearly two-thirds (63%) of LGBQ faculty and staff reported that they had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity.<sup>162</sup> Incidents of bias and

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<sup>158</sup> Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2017 (on file with authors).

<sup>159</sup> Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2013 (on file with authors).

<sup>160</sup> The survey used a non-probability sampling method. Danielle Krusemark & Lynne Carroll, A Survey of LGBTQ Experiences, Discrimination, and Perceived Necessity for an LGBT-Inclusive Human Rights Ordinance in Jacksonville, Florida, Table 2 (unpublished report, Department of Psychology, University of North Florida 2016), [https://jaxequality.files.wordpress.com/2016/03/unf\\_jacksonville\\_lgbt\\_survey\\_2016.pdf](https://jaxequality.files.wordpress.com/2016/03/unf_jacksonville_lgbt_survey_2016.pdf). See also Jacksonville Coalition for Equality, *Discrimination Against the Jacksonville LGBT is Common* (Mar. 1, 2016), <http://www.jaxequality.org/discrimination-against-the-jacksonville-lgbt-is-common/>.

<sup>161</sup> The survey used a non-probability sampling method. THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: FLORIDA RESULTS, available at [http://www.endtransdiscrimination.org/PDFs/ntds\\_state\\_fl.pdf](http://www.endtransdiscrimination.org/PDFs/ntds_state_fl.pdf) (last visited July 5, 2017).

<sup>162</sup> The survey used a non-probability sampling method. UNIVERSITY OF NORTH FLORIDA COMMISSION ON DIVERSITY: COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUITY, UNIVERSITY OF NORTH FLORIDA CAMPUS CLIMATE SURVEY FOR SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION 24 (June 2011), <http://www.unf.edu/uploadedFiles/sa/lgbt/CampusClimateJune2011.pdf>.

harassment included a range of experiences such as hearing anti-LGBT jokes, being threatened or having property vandalized, being sexually or verbally harassed, and having employment problems.<sup>163</sup> For example, 16% of LGBQ faculty and staff reported experiencing verbal harassment, 5% reported experiencing sexual harassment, and 8% reported experiencing employment problems at the university because of their sexual orientation or gender identity.<sup>164</sup> A similar percentage of LGBQ faculty and staff (68%) reported that they observed incidents of bias and harassment experienced by other LGBQ people.<sup>165</sup>

Several faculty and staff members described specific incidents of harassment and discrimination. For example, a professor stated: “I was explicitly asked by UNF faculty to change my research agenda as a result of the fact that I wished to focus on ‘gay’ issues,” and a staff member stated: “Due to an earring associated with my sexual orientation, I was told by my supervisor that I should consider accommodating the ‘traditional’ values at the institution as to avoid damaging my credibility.”<sup>166</sup>

In addition, 48% of LGBQ respondents said that they believed being openly LGBT would harm a faculty or staff member’s chances of promotion at the university.<sup>167</sup>

- A survey of nearly 1,700 participants conducted between 2009 and 2014 examined attitudes toward LGBT people across a range of human service occupations in South Florida and found that 81% of respondents reported hearing anti-gay slurs at work and 40% reported physical harassment and bullying of LGBT people in their workplace within the year prior to the survey.<sup>168</sup>
- A public opinion poll conducted in 2016 found that 57% of Florida residents thought that gay and lesbian people experience a lot of discrimination in the U.S. and 58% of Florida residents thought that transgender people experience a lot of discrimination in the U.S.<sup>169</sup>

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

<sup>164</sup> *Id.* at 26.

<sup>165</sup> *Id.* at 31.

<sup>166</sup> *Id.* at 29.

<sup>167</sup> *Id.* at 38.

<sup>168</sup> The survey used a non-probability sampling method. Daniel Sheridan, Joseph Zolobczuk, Kiet Huynh and Debbie Liu L. Lee, *Workplace Harassment and Attitudes Towards LGBT People: Differences Across Human Service Occupations in South Florida*, 14 FLA. PUB. HEALTH REV. 1, 2-5 (2017), available at [http://www.ut.edu/uploadedFiles/Academics/CNHS/Health\\_Sciences\\_and\\_Human\\_Performance/Public\\_Health/Florida\\_Public\\_Health\\_Review/FPHR2017Huynh1-12.pdf](http://www.ut.edu/uploadedFiles/Academics/CNHS/Health_Sciences_and_Human_Performance/Public_Health/Florida_Public_Health_Review/FPHR2017Huynh1-12.pdf).

<sup>169</sup> PRRI, American Values Atlas: Florida, <http://ava.prri.org/#discrimination/2016/States/blkdis/m/US-FL> (under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes;” under dropdown menu for “Year” select “2016”).

- Analysis of aggregated public opinion data collected from 2011 through 2013 indicates that 80% of Florida residents, non-LGBT and LGBT, thought that LGBT people experience discrimination in the state.<sup>170</sup>

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

- In 2017, a former employee of a senior living facility filed a lawsuit against the facility, alleging that she had been harassed and discriminated against because of her sexual orientation. According to the employee, the facility failed to address the behavior of a resident who was hostile towards her because she is a lesbian. Instead, the facility terminated the employee for not walking away from an incident between the employee and the resident, where the resident grabbed a key card from the employee and told her she was “a piece of crap.”<sup>171</sup> The case is ongoing.<sup>172</sup>
- Between 2013 and 2016, four openly-gay police officers resigned from the 51-member Wilton Manors Police Department citing a culture of abuse and homophobia within the department. According to reports, mistreatment of LGBT officers included the use of derogatory terms like “homo” and “faggot” at police headquarters, superiors in unmarked cars following LGBT officers to intimidate them, qualified LGBT officers saying they were passed over for promotions, and reports of superiors inspiring fear in LGBT subordinates. In response to complaints from LGBT officers, the Broward Sheriff’s Office was called in to investigate, but concluded that department policy had not been violated.<sup>173</sup>
- In 2015, a Florida eye clinic settled a lawsuit filed against it by the U.S. Equal Opportunity Commission (EEOC) alleging discrimination against a transgender employee. According to the suit, the employee was fired after notifying the clinic that she was transgender. The EEOC’s complaint stated that discrimination against the transgender employee was a form of discrimination based on sex as prohibited by Title VII of the Civil Rights Act of 1964. Under the terms of the settlement, the clinic agreed

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<sup>170</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with authors).

<sup>171</sup> Jade Isaacs, *Lesbian Employee Says Nursing Home Tolerated Anti-Gay Discrimination*, SAINTPETERSBLOG (Jan. 11, 2017), <http://saintpetersblog.com/lesbian-employee-says-nursing-home-tolerated-anti-gay-discrimination/>.

<sup>172</sup> Complaint, *Del Valle v. Inspired Living Validus Senior Living*, No. 8:17-cv-00039 (M.D. Fla. Jan. 4, 2017).

<sup>173</sup> Jess Swanson, *Wilton Manors Police Department Faces Discrimination Claims*, NEW TIMES BROWARD-PALM BEACH (Sept. 7, 2016), <http://www.browardpalmbeach.com/news/wilton-manors-police-department-faces-discrimination-claims-8061843>.

to pay \$150,000 and to incorporate gender identity in its non-discrimination policy and provide training to managers and employees.<sup>174</sup>

- In 2015, an editorial piece in the Florida Times-Union documented several instances of discrimination against LGBT people in Jacksonville, including the story of a man who was terminated from his sales job “after clients complained that they did not want to work with a gay sales rep.”<sup>175</sup>
- In 2013, a college administrator filed a lawsuit against her former employer, the College of Central Florida, alleging that her contract was not renewed because of her sexual orientation.<sup>176</sup> The woman stated that she received above-average evaluations for her work, but was demoted after she married her same-sex partner.<sup>177</sup> Following the demotion, the woman filed a discrimination complaint with the Florida Commission on Human Relations and was fired one month after the complaint was resolved in favor of the college.<sup>178</sup> The woman then filed a complaint in court alleging discrimination based on religion, sex stereotyping, and marital status.<sup>179</sup> In granting summary judgment to the college, the court stated that the woman’s religious discrimination claim “was based solely on [the college’s] alleged religious disapproval of her sexual orientation” and that her sex stereotyping claim “was merely a repackaged claim for discrimination based on sexual orientation.”<sup>180</sup>
- In 2013, a registered nurse filed a lawsuit against her former employer, the University of Miami, alleging discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964. According to the nurse, a co-worker consistently made negative comments about LGBT people including that “they should all be tied at the stake, set on fire and burn in hell.” The harassment escalated after the nurse filed a complaint with the human resources department, and the nurse continued to report the incidents to the Hospital Administrator and other supervisors. After several years of employment with the university, the nurse was called into a meeting with the Director of Equality Administration, where she reported that she wanted to file a formal complaint against her co-worker. Shortly thereafter, the nurse was terminated by the human resources department for “making disparaging remarks against another employee.” The nurse filed

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<sup>174</sup> Press Release, U.S. Equal Employment Opportunity Commission Lakeland Eye Clinic Will Pay \$150,000 to Resolve Transgender / Sex Discrimination Lawsuit (Apr. 13, 2015), <https://www.eeoc.gov/eeoc/newsroom/release/4-13-15.cfm>.

<sup>175</sup> Times-Union Editorial, *It’s a Myth to Claim Jacksonville’s LGBT Residents Aren’t Experiencing Discrimination*, THE FLORIDA TIMES-UNION (Mar. 3, 2015), <http://jacksonville.com/opinion/editorials/2015-03-03/story/its-myth-claim-jacksonvilles-lgbt-residents-arent-experiencing>.

<sup>176</sup> *Burrows v. College of Central Fla.*, No. 5:14-cv-197-Oc-30PRL (M.D. Fla. Dec. 17, 2014).

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

<sup>178</sup> *Id.*

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

<sup>180</sup> *Id.*; *Burrows v. College of Central Fla.*, No. 5:14-cv-197-Oc-30PRL (M.D. Fla. Sept. 5, 2015).



suit alleging that she was harassed and terminated because of her failure to conform to gender stereotypes. The court dismissed the complaint. The court acknowledged that the nurse “clearly set forth incidents of harassment based on sexual orientation,” but concluded that she failed to establish discrimination based on gender stereotypes as the court believed was required by the law. In so holding, the court stated that the nurse did not allege facts showing that she “suffered discrimination because she did not act like a woman, or that she was insufficiently feminine.”<sup>181</sup>

- In 2013 and 2014, an employee of a greyhound racetrack in Florida was harassed by a co-worker who perceived him to be gay. According to the employee, his co-worker called him disparaging names such as “queer,” “homosexual,” “faggot,” and “dick licker” in front of other employees and a supervisor. After months of continued verbal harassment, the co-worker wrote “faggot” on the employee’s locker. The employee reported the incident to the superintendent and the co-worker apologized, but continued to joke about the incident to a supervisor. The employee then quit his job, and filed for unemployment benefits. His request was initially denied because the referee found that the employee voluntarily left his job without good cause. The decision was reversed by the Reemployment Assistance Appeals Commission, which determined that the harassment and bullying and the employer’s failure to enforce its own anti-harassment policy constituted good cause for quitting the job.<sup>182</sup>

## **2. Discrimination in Housing and Public Accommodations**

Discrimination against LGBT people in Florida has also been observed in housing and public accommodations. For example, in response to the 2011 National Transgender Discrimination Survey report, 14% of respondents from Florida reported that they had been denied a home or apartment and 12% reported that they had been evicted at some point in their lives because of their gender identity or expression.<sup>183</sup> Further, 16% of respondents said they had become homeless at some point in their lives due to discrimination based on their gender identity.<sup>184</sup> Nearly half (47%) of Florida respondents to the National Transgender Discrimination Survey said they had been discriminated against or harassed at a place of public accommodation, and 26% said they had been refused medical care at some point in their lives because of their gender identity or expression.<sup>185</sup> In addition, LGBT people in Jacksonville reported experiencing discrimination in housing and public accommodations in response to a 2016 survey: 23% of respondents said they had experienced discrimination at a restaurant, club, or bar, 11% said they

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<sup>181</sup> Candina v. University of Miami, 185 F. Supp. 3d 1343, 1352 (S.D. Fla. 2015).

<sup>182</sup> Fla. Reemployment Assistance Appeals Comm’n, Order No. 15-01033 (June 8, 2015), [http://www.floridajobs.org/finalorders/raac\\_finalorders/15-01033.pdf](http://www.floridajobs.org/finalorders/raac_finalorders/15-01033.pdf).

<sup>183</sup> THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, *supra* note 161 at 1.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 2.

had experienced discrimination by their physician's office, and 9% said they had experienced discrimination in adoption services within the five years prior to the survey.<sup>186</sup> Seven percent of respondents also said they had experienced housing discrimination within the five years prior to the survey.<sup>187</sup>

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

Documented examples include:

- A widowed woman suffering from Alzheimer's was refused admittance to four assisted living facilities after she told them she had recently lost her wife.<sup>188</sup>
- A female same-sex couple in Florida was refused a loan by Bank of America because they were not married. They filed a discrimination complaint with the U.S. Department of Housing and Urban Development, which was settled for \$7,500.<sup>189</sup>
- In the early 2000s, an apartment complex in Boca Raton refused to rent to a male same-sex couple because of its policy of only renting to married couples. The men had been together for 16 years, but were barred under then-existing state laws from receiving a marriage license. A complaint was filed against the apartment complex under Palm Beach County's non-discrimination ordinance which prohibited discrimination based on sexual orientation and marital status. The complex settled the complaint for \$75,000 in damages and legal fees and agreed to post a non-discrimination statement in its office.<sup>190</sup>
- A Jacksonville civil rights attorney reported that she has been harassed in bathrooms and has been kicked out of Jacksonville, Florida restaurants because she is a lesbian.<sup>191</sup>
- The president of the Jacksonville Area National Organization for Women stated that she has spoken with several LGBT residents who had been asked to leave Jacksonville restaurants because of their sexual orientation or gender identity and with a lesbian couple that was asked to remove their preschool children from daycare because of their sexual orientation.<sup>192</sup>

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<sup>186</sup> Danielle Krusemark & Lynne Carroll, *supra* note 160.

<sup>187</sup> *Id.*

<sup>188</sup> Christopher Moffatt, "Uptight" Straight Republican: How a Lesbian Couple Opened My Eyes to Discrimination, *MIAMI HERALD* (Oct. 4, 2016), <http://www.miamiherald.com/news/local/community/gay-south-florida/article105918977.html>.

<sup>189</sup> Lester Graham, *Few Protections for LGBT in Housing Discrimination*, *MICHIGAN RADIO* (Apr. 30, 2013), <http://michiganradio.org/post/few-protections-lgbt-housing-discrimination>.

<sup>190</sup> Press Release, Lambda Legal, Lambda Legal Declares Victory in Housing Discrimination Case on Behalf of Two Gay Men in Florida (Sept. 30, 2003), [http://www.lambdalegal.org/news/fl\\_20030930\\_lambda-declares-victory-housing-discrimination-case](http://www.lambdalegal.org/news/fl_20030930_lambda-declares-victory-housing-discrimination-case).

<sup>191</sup> Times-Union Editorial, *supra* note 175.

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

- In 2010, a hospital in Miami reportedly denied a lesbian woman access to her dying partner of 18 years, refusing to accept information from her regarding her partner's medical history and informing her she was in an "antigay city and state."<sup>193</sup>

## ***B. Bullying and Family Rejection of LGBT Youth and Young Adults***

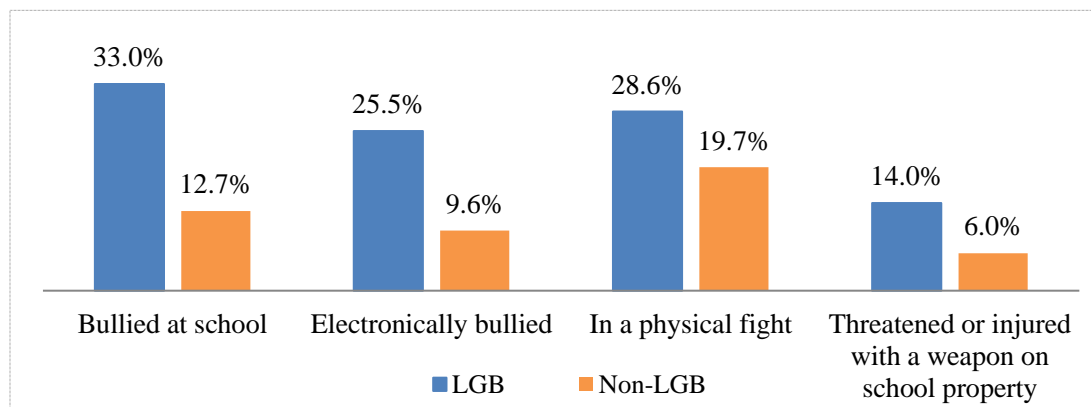
### **1. Bullying and Harassment of LGBT Youth Documented in Surveys**

#### **a. Middle School and High School**

Data indicate that LGBT youth in Florida face harassment, bullying, and exclusion in secondary and post-secondary schools. The Centers for Disease Control and Prevention (CDC) recently published an analysis of 2015 Youth Risk Behavior Survey (YRBS) data on LGB youth from multiple states and certain large urban school districts, including the state of Florida and Broward, Duval, Miami-Dade, Orange, and Palm Beach Counties in Florida, which included a measure of sexual orientation on their surveys.<sup>194</sup> This analysis compared LGB to non-LGB 9<sup>th</sup> through 12<sup>th</sup> graders on a variety of indicators of health and wellbeing.<sup>195</sup> The 2015 YRBS data indicate that LGB youth in Florida experience higher rates of being bullied and threatened with violence than non-LGB youth.

**Figure II.a. 12-month Experiences of Bullying and Violence among High School Students in Florida, by Sexual Orientation**

Source: Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9 – 12, United States and Selected Sites, 2015, 2016*



<sup>193</sup> Waymon Hudson, *Florida Hospital Changes LGBT Policies After Denying Lesbian the Right to Visit Her Dying Partner*, THE BILERICO PROJECT (Apr. 13, 2010), <http://bilerico.lgbtqnation.com/2010/04/florida-hospital-changes-lgbt-policies-after-denying.php>.

<sup>194</sup> Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83 (2016).

<sup>195</sup> The study also compared students who said they were “not sure” of their sexual orientation to LGB and non-LGB students. We have not included the “not sure” students in our analysis and focus only on students who identified as LGB or non-LGB.

LGB students in Florida were more than twice as likely to report being bullied at school (33.0% v. 12.7%)<sup>196</sup> and electronically bullied (25.5% v. 9.6%)<sup>197</sup> in the 12 months prior to the survey than non-LGB students. In addition, LGB students were more likely to report being in a physical fight in the 12 months prior to the survey (28.6% v. 19.7%)<sup>198</sup> and were more than twice as likely to report being threatened or injured with a weapon on school property (14.0% v. 6.0%).<sup>199</sup> Not surprisingly, LGB students were more than twice as likely as non-LGB students to report missing school because they felt unsafe at least once in the month prior to the survey (15.8% v. 6.6%).<sup>200</sup>

Findings from the 2015 Florida YRBS are consistent with YRBS findings from 24 other states and 14 other large urban school districts.<sup>201</sup> In addition, a 2011 CDC meta-analysis of YRBS data collected from 2001 through 2009 found that, nationally, LGB students were more likely to experience bullying and violence at school than non-LGB students, confirming that bullying is a disproportionate problem for LGB students.<sup>202</sup>

Bullying and harassment of LGBT youth in Florida has also been documented in other sources. For instance, the 2015 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 73% of respondents from Florida said they had experienced verbal harassment based on their sexual orientation at school, and 56% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.<sup>203</sup> Many students also reported experiencing physical harassment based on their sexual orientation (28%) or gender identity (22%) at school in the year prior to the survey.<sup>204</sup> In addition, 14% of respondents reported that they had experienced physical assault at school because of their sexual orientation and 9% of respondents said they had experienced physical assault because of their gender identity at school in the year prior to the survey.<sup>205</sup>

Further, 62% of transgender student respondents from Florida reported that they were unable to use the bathroom or locker room at school that aligns with their gender identity, and 63% were prevented from using their preferred name or pronouns in school.<sup>206</sup> Only half of the students reported having access to a Gay-Straight Alliance or similar club in school.<sup>207</sup>

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<sup>196</sup> *Id.* at 103.

<sup>197</sup> *Id.* at 104.

<sup>198</sup> *Id.* at 99.

<sup>199</sup> *Id.* at 98.

<sup>200</sup> *Id.* at 102.

<sup>201</sup> *Id.*

<sup>202</sup> Laura Kann et al., *supra* note 194 at 11.

<sup>203</sup> GLSEN, SCHOOL CLIMATE IN FLORIDA 1 (2017), <https://www.glsen.org/sites/default/files/Florida%20State%20Snapshot%20-%20NSCS.pdf>. The survey included 559 respondents from Florida.

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

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

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

<sup>207</sup> *Id.* at 2.

Of LGBT students who were bullied or harassed at school, only 43% of students reported the incident to school staff.<sup>208</sup> Less than one third (30%) of those who reported bullying or harassment to staff said that it resulted in effective intervention.<sup>209</sup>

Additionally, in response to the 2011 National Transgender Discrimination Survey, 78% of survey respondents from Florida who were perceived to be transgender while in grades K-12 experienced verbal harassment, 41% experienced physical assault, and 10% experienced sexual violence while in school.<sup>210</sup> Further, 14% of respondents said the harassment was so severe that they had to leave school.<sup>211</sup>

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

- In 2016, federal authorities were reportedly investigating 35 cases of discrimination against transgender students in the U.S. One of the cases involved a transgender student in Volusia County who was failing gym class because he was late or improperly dressed as a result of not being able to use the boys' locker room when other students were present. Another case involved a Florida student who was required to change clothes for gym class in the media center, which was a long walk away from the gym.<sup>212</sup>
- Hours after the 2016 Orlando massacre, the head of a high school in Pinellas Park posted a comment on Facebook, quoting Bible verses stating that two men who have sex "must both be put to death" for the "detestable sin" of homosexuality.<sup>213</sup>
- In 2015, two transgender students reported to their high school that a teacher told students that he was against gays and lesbians and attempted to give one of them a book titled *Gay No More*.<sup>214</sup> In response to the complaint, the school board voted to suspend the teacher pending administrative review.<sup>215</sup> An administrative law judge ruled that the teacher should be disciplined but not fired, and the recommendation was adopted by the school board.<sup>216</sup>

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<sup>208</sup> *Id.* at 1.

<sup>209</sup> *Id.*

<sup>210</sup> The survey used a non-probability sampling method. THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, *supra* note 161.

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

<sup>212</sup> Letitia Stein, *U.S. School an Antidote to Transgender Discrimination Complaints*, REUTERS (Dec. 19, 2016), <http://www.reuters.com/article/us-lgbt-education-idUSKBN14817D>.

<sup>213</sup> Cyd Zeigler, *Florida School Principal Posts Gay People Must 'be Put to Death' in Wake of Orlando Shooting*, OUT SPORTS (Jul. 20, 2016), <http://www.outsports.com/2016/7/20/12155544/orlando-principal-gay-bible>. The quoted Bible verses were Leviticus 18:22 and 20:13.

<sup>214</sup> *Two Transgender Students Claim Teacher Harassment*, WPTV WEST PALM BEACH (Sept. 16, 2016, 2:41 p.m.), <http://www.wptv.com/news/state/two-transgender-students-claim-teacher-harassment>.

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

<sup>216</sup> Pamela McCabe, *Board Approves Bonitas High Principal, Brings Back JROTC Teacher*, USA TODAY (Feb. 6, 2017), <https://www.usatoday.com/story/news/education/chalkboard/2017/02/06/board-approves-bonitas-principal-brings-back-jrotc-teacher/97573484/>.

- In 2014, a state representative reportedly claimed the company hired to design a new standardized test for Florida schools was attempting to “attract every one of your children to become as homosexual as they possibly can.”<sup>217</sup>
- From 2008 to 2011, a gay high school student in Flagler County was physically and verbally harassed because of his sexual orientation. According to the student, other students would call him a “fag” and “cocksucker” on the bus and harass him for being gay during class. One student allegedly attacked the student after following him home and then continued to torment him at school, including once telling him, “I will kill your ass and make sure I will drag your ass out of school in a body bag.” According to the student, school officials reportedly took no action to protect him and even contributed to the harassment. When the student avoided school out of fear, school officials allegedly threatened to report him for truancy.<sup>218</sup>
- In 2011, the Lake County School Board refused to allow the formation of a Gay-Straight Alliance club at Carver Middle School, and, when this decision was challenged in court, the School Board spent years in the court system defending its position. The Eleventh Circuit Court of Appeals ruled that the Equal Access Act required the school to permit students to form the club.<sup>219</sup>

## **b. Higher Education**

A 2017 survey of students at the University of West Florida found that 28.2% of LGBTQ students reported one or more experiences of derogatory treatment on the basis of sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (27.6%), unfair treatment (9.4%), exclusion (5.5%), harassment/bullying (10.5%), and threats of violence (2.2%). LGBTQ students with these experiences rated the degree of impact of these experiences on their educational or personal activities as “not at all/slight” (68.6%), “moderate” (17.6%), or “quite a bit/extreme” (13.7%).<sup>220</sup>

A prior survey of students at the University of West Florida conducted in 2013 found that 38.8% of LGBTQ students reported one or more experiences of derogatory treatment on the basis of

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<sup>217</sup> Dave Elias, *FL State Rep: School Tests Designed to Turn Students Gay*, NBC 2 (May 20, 2014), <http://www.nbc-2.com/story/25568931/fl-state-rep-school-tests-designed-to-turn-students-gay>.

<sup>218</sup> Scott Rose, *The Office of Civil Rights lets Gay-bashing Flagler, Florida School Administrators Off the Hook*, SHADOW PROOF (Apr. 22, 2012), <https://shadowproof.com/2012/04/22/the-office-of-civil-rights-lets-gay-bashing-flagler-florida-school-administrators-off-the-hook/>.

<sup>219</sup> Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida, 842 F.3d 1324 (11th Cir. 2016). *See also*, Press Release, American Civil Liberties Union of Florida, Federal Appeals Court Upholds Students’ Rights in Gay-Straight Alliance Case (Dec. 6, 2016), <https://aclufl.org/2016/12/06/federal-appeals-court-upholds-students-rights-in-gay-straight-alliance-case/>.

<sup>220</sup> Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2013 (on file with authors).



sexual orientation in the prior year. Incidents of derogatory treatment included a range of experiences, such as insensitive or demeaning verbal or written comments (32.7%), unfair treatment (7.8%), exclusion (12.1%), harassment/bullying (12.1%), and threats of violence (2.6%). LGBQ students with these experiences rated the degree of impact of these experiences on their educational or personal activities as “quite a bit/extreme” (11.6%), “moderate” (20.9%), “not at all/slight” (67.5%).<sup>221</sup>

A 2010 survey of the campus climate for LGBQ faculty, staff, and students at the University of North Florida found that LGBT students experience stigma and discrimination on campus. The survey found that nearly half (49%) of LGBQ students had experienced at least one incident of bias or harassment because of their sexual orientation or gender identity.<sup>222</sup> Incidents of bias and harassment included a range of experiences such as hearing anti-LGBT jokes, being threatened or having property vandalized, being sexually or verbally harassed, and having employment problems.<sup>223</sup> For example, 44% of LGBQ students had experienced verbal harassment, 17% felt pressured to hide their sexual orientation or gender identity, and 2% had been pressured to leave campus housing because of their sexual orientation or gender identity.<sup>224</sup> A similar percentage of LGBQ students (54%) reported that they observed incidents of bias and harassment experienced by LGBQ people.<sup>225</sup>

Several students described specific incidents of harassment and discrimination. A number of students reported being called derogatory names including “bull dyke,” “carpet muncher,” “fag/faggot,” “homo,” “man-hating dyke,” and “queer.” Students also reported that faculty did not intervene when they overheard anti-gay jokes. According to one report, a “student said those homos need to get off their ass and get a job. This was during an accounting course. The instructor made no comment.”<sup>226</sup>

In addition, 12% of LGBQ student respondents said they felt that harassment on campus was serious enough to cause LGBT people to fear for their safety on campus.<sup>227</sup>

## **2. Family Rejection**

For many youth, the challenges that they face at school are compounded by unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT

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<sup>221</sup> Unpublished data from campus diversity climate survey gathered by Susan E. Walch and colleagues in 2017 (on file with authors).

<sup>222</sup> UNIVERSITY OF NORTH FLORIDA COMMISSION ON DIVERSITY, COMMITTEE ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUITY. UNIVERSITY OF NORTH FLORIDA, CAMPUS CLIMATE SURVEY FOR SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION 24 (June 2011), <http://www.unf.edu/uploadedFiles/sa/lgbt/CampusClimateJune2011.pdf>.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 26.

<sup>225</sup> *Id.* at 31.

<sup>226</sup> *Id.* at 27.

<sup>227</sup> *Id.* at 38.

youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.<sup>228</sup> For example, in one study about the challenges that youth face, LGBT youth ranked non-accepting families as the most important problem in their lives (26%), followed by school and bullying problems (21%), and fear of being open about being LGBT (18%).<sup>229</sup> In contrast, non-LGBT youth ranked classes/exams/grades (25%), college/career (14%), and financial pressures related to college or job (11%) as the most important problems in their lives.<sup>230</sup>

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<sup>228</sup> E.g., Darrel Higa, Marilyn J. Hoppe, Taryn Lindhorst, Shawn Mincer, Blair Beadnell, Diane M. Morrison, Elizabeth A. Wells, Avry Todd & Sarah Mountz, *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 YOUTH SOC'Y 1, 8 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 788 (2006); Anthony R. D'Augelli, Arnold H. Grossman & Michael T. Starks, *Parents' Awareness of Lesbian, Gay, and Bisexual Youths' Sexual Orientation*, 67 J. MARRIAGE & FAMILY 474 (2005); Les Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RESEARCH 329 (2004); Brian N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 733 (2002); Bryan E. Robinson, Lynda Henley Walters & Patsy Skeen, *Responses of Parents to Learning that their Child is Homosexual and Concern over AIDS: A National Survey*, 1 J. HOMOSEXUALITY 59, 67 (1989); CHRISTY MALLORY, BRAD SEARS, AMIRA HASENBUSH & ALEXANDRA SUSMAN, WILLIAMS INST., ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

<sup>229</sup> HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS 2 (2012), [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America\\_Report.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf).

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



### SECTION III. IMPACT OF STIGMA AND DISCRIMINATION ON LGBT INDIVIDUALS

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

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

#### A. *Economic Instability*

##### 1. Wage Gaps for LGBT People

Wage gap analysis has been a traditional method used by economists to measure employment discrimination against women, people of color, and LGBT people. In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all studies found an earnings penalty for gay men, with an average of -11%.<sup>231</sup> For lesbians, only a few studies found an earnings penalty as compared to heterosexual women and most found a significant earnings premium, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.<sup>232</sup> Klawitter concluded that her analysis "shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians."<sup>233</sup> However, it is important to keep in mind that most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.<sup>234</sup> A simple comparison<sup>235</sup> of median incomes in Florida also suggests that men in same-sex couples also may face a wage gap.

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<sup>231</sup> Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUST. REL. 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

<sup>232</sup> *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

<sup>233</sup> *Id.* at 21.

<sup>234</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

<sup>235</sup> Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

An analysis of Census 2000 data found that the median income of men in same-sex couples in the state was 10% lower than the median income of men in different-sex marriages.<sup>236</sup>

Klawitter posited several reasons to explain why gay men may face more discrimination in the workplace, including that straight men in the U.S. have less positive attitudes towards gay men than lesbians, and that straight men are more likely to be in wage-determining senior positions than women.<sup>237</sup> Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.<sup>238</sup> She also noted that other research reviews have found that lesbians who do not fit the norms for femininity have a harder time securing employment.<sup>239</sup>

In addition, a forthcoming study, based on representative data from 27 states, finds “clear evidence that self-identified transgender individuals have significantly lower employment rates and household incomes and significantly higher poverty rates than non-transgender individuals.”<sup>240</sup> The study concludes that transgender adults experience a “household income penalty” equivalent to 12% of annual household income.<sup>241</sup>

A growing body of research supports that, for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2015 study found that the overall wage gap for men of color in same-sex couples was greater than what the sum of the race and sexual orientation wage gaps separately would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers.”<sup>242</sup>

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with a sexual orientation non-discrimination law, men and women in same-sex couples had a wage premium (3% and 2% respectively) over states without such a law and they earned approximately 0.3% more for each year the policy was in

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<sup>236</sup> The median income of women in same-sex couples in Florida is higher than that of women in different-sex marriages, but lower than the median income of men with either same-sex or different-sex partners. ADAM P. ROMERO, AMANDA BAUMLE, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: FLORIDA 2 (2007), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/FloridaCensus2000Snapshot.pdf>.

<sup>237</sup> Klawitter, *supra* note 231 at 21-22. Klawitter also notes that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in more highly regulated government sector jobs, but this pattern is not observed for lesbians—who have significant earnings premiums in the private and non-profit sectors, but none in government employment.

<sup>238</sup> *Id.* at 22.

<sup>239</sup> LOTTA SAMELIUS & ERIK WÅGBERG, SIDA, SEXUAL ORIENTATION AND GENDER IDENTITY ISSUES IN DEVELOPMENT (2005), [http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development\\_718.pdf](http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development_718.pdf).

<sup>240</sup> Carpenter et al., *Transgender Status, Employment, and Income* (forthcoming 2017) (on file with authors).

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

<sup>242</sup> Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUST. REL. 59, 96 (2015).

effect.<sup>243</sup> Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings<sup>244</sup> and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men -- especially in private-sector jobs.<sup>245</sup> Furthermore, a 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and employment by 2% for gay men.<sup>246</sup>

## 2. Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have higher household incomes, those averages can mask that LGBT people are also disproportionately poor<sup>247</sup> and that poverty is concentrated in certain groups within the LGBT community such as female same-sex couples, people of color, transgender people, youth, and the elderly. For example, key findings from a 2013 study on poverty in the LGBT community include:

- 7.6% of lesbian couples are in poverty, compared to 5.7% of married different-sex couples;
- Over 1 in 5 children of same-sex couples are in poverty, compared to 12.1% of children of married different-sex couples;
- African American same-sex couples have poverty rates more than twice that of married different-sex African American couples; and
- Female same-sex couples who live in rural areas are much more likely to be poor (14.1%), compared to lesbian couples in large cities (4.5%).<sup>248</sup>

Similarly, research on the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they

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<sup>243</sup> Gary J. Gates, *The Impact of Sexual Orientation Anti-Discrimination Policies on the Wages of Lesbians and Gay Men* (Cal. Center for Pop. Research, 2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>244</sup> Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011).

<sup>245</sup> Marieka M. Klawitter, *Multilevel Analysis of the Effects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J. POL. ANALYSIS & MGMT. 334 (2011). See also Marieka M. Klawitter & Victor B. Flatt, *The Effects of State and Local Anti-Discrimination Policies on Earnings for Gays and Lesbians*, 17 J. POL. ANALYSIS & MGMT. 658 (1998).

<sup>246</sup> Ian Burn, *Legal Differences in Non-Discrimination Laws and the Effect of Employment Protections for Gay Men* (Feb. 2015) (unpublished manuscript available at the Princeton University repository). The study also found that state non-discrimination laws with stronger damages, statutes of limitations, and attorney's fees increase the positive impact on gay men's wages. *Id.*

<sup>247</sup> M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBBAUM, WILLIAMS INST., *NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

<sup>248</sup> *Id.* at 1-3.

did not have enough money to feed themselves or their family, and nearly half of LGB adults aged 18-44 who are raising children (46%) received food stamps.<sup>249</sup>

The 2011 National Transgender Discrimination Survey found that, nationally, one-third of respondents were living at or near the federal poverty line, which is twice the rate of poverty in the U.S. general population (29% v. 14%).<sup>250</sup> Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of Black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of White transgender respondents.<sup>251</sup>

In a 2013 study on poverty, Badgett et al. suggested that social climate and policy are linked determinants of LGB poverty: “LGB people who live in non-coastal regions of the U.S. or rural communities are more likely than those in urban and coastal regions to be in poverty. These geographic areas are more likely to have social climates that are less accepting of LGB identities, increasing the stress and discrimination that LGB people face. These locales may also be less likely to offer legal protections that would guard against major life events, such as job loss or health issues that often contribute to poverty.”<sup>252</sup>

Building from that thesis, a 2014 report by the Williams Institute linked greater socio-economic disparities for LGBT people to region, a lack of legal protections, and a poor social climate.<sup>253</sup> The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination, and in regions of the country such as the South, with a poorer social climate and fewer legal protections.<sup>254</sup> For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in the states with protective laws states to \$11,000 in states like Florida that lack such laws.<sup>255</sup>

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<sup>249</sup> Taylor N.T. Brown, Adam P. Romero & Gary J. Gates, WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

<sup>250</sup> JAMES ET AL., *supra* note 157 at 144.

<sup>251</sup> *Id.*

<sup>252</sup> BADGETT, DURSO & SCHNEEBAUM, *supra* note 247 at 25.

<sup>253</sup> HASENBUSH ET AL., *supra* note 1.

<sup>254</sup> Press Release, Williams Inst., LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: “It’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.”

<sup>255</sup> HASENBUSH ET AL., *supra* note 1.

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

- Twenty-eight percent of LGBT adults in Florida report that they do not have enough money for food compared to 19% of non-LGBT adults.<sup>256</sup>
- Similarly, 26% of LGBT adults in Florida report not having enough money to meet their health care needs compared to 20% of non-LGBT adults.<sup>257</sup>
- The median household income of same-sex couples with children under age 18 in the home is \$12,300 lower than the median annual household income of married different-sex couples with children (\$72,800 v. \$85,100).<sup>258</sup>

The 2011 National Transgender Discrimination Survey found that 9% of respondents in Florida were unemployed, and 12% had an annual household income of \$10,000 or less.<sup>259</sup> In addition, 16% of respondents in Florida reported having become homeless at some point in their lives because of their gender identity or expression.<sup>260</sup>

## ***B. Health Disparities for LGBT People***

### **1. Health Disparities for LGBT Adults**

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climates, have been shown to contribute to health disparities for LGBT people. Substantial research has documented that LGBT people experience disparities on a range of health outcomes, and health-related risk factors, compared to their non-LGBT counterparts. Research shows that mood<sup>261</sup> and anxiety disorders,<sup>262</sup> attempted suicide,<sup>263</sup> and self-harm<sup>264</sup> are more common among sexual minorities (LGBs) than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender

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<sup>256</sup> *Id.* at 40.

<sup>257</sup> *Id.* at 41.

<sup>258</sup> Brief of Scholars who Study Same-Sex Couples and Their Families, as Amici Curiae Supporting Respondents, *Pidgeon v. Turner*, No. 15-06988 (Tex. filed Sept. 10, 2015).

<sup>259</sup> NATN'L CENTER FOR TRANSGENDER EQUALITY & NATN'L GAY & LESBIAN TASK FORCE, *supra* note 161 at 1.

<sup>260</sup> *Id.*

<sup>261</sup> Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005).

<sup>262</sup> King et al., *supra* note 261; Wendy B. Bostwick, Carol J. Boyd, Tonda L. Hughes & Sean Esteban McCabe, *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010).

<sup>263</sup> King et al., *supra* note 261; Susan D. Cochran & Vickie M. Mays, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 J. EPIDEMIOLOGY 516 (2000).

<sup>264</sup> Balsam et al., *supra* note 261. 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).

people.<sup>265</sup> In addition, LGB people are more likely to report tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.<sup>266</sup> As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in Florida indicate that LGB<sup>267</sup> adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

#### **a. Health Disparities for LGB Adults in Florida**

One source for assessing health disparities between LGB and non-LGB people in Florida is the Florida Behavioral Risk Factor Surveillance System (BRFSS).<sup>268</sup> In 2012, Florida included a sexual orientation measure on its BRFSS.<sup>269</sup> We present our analysis of data from the Florida 2012 BRFSS below, noting where our results are similar or dissimilar to patterns observed in the general population.

We assessed the health of LGB and non-LGB adults on three health outcomes that are widely viewed as stress-coping responses<sup>270</sup> and which have been specifically linked to LGB stigma and discrimination in prior research: depression, smoking, and binge drinking; as well as two other population health indicators (the number of days respondents experienced poor mental health during the month prior to the survey and respondents' experiences of feeling limited in their usual activities because of poor health). In our analyses we include individuals who identified as lesbian, gay, or bisexual (LGB) and those who identified as heterosexual/straight and not transgender (non-LGB).

The proportion of LGB ( $n = 123$ ) and non-LGB ( $n = 5,221$ ) people in Florida who reported each health outcome are shown in Figure III.a. below. The proportions are weighted to reflect the

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<sup>265</sup> See INSTITUTE OF MEDICINE, *supra* note 264 at 193-97.

<sup>266</sup> Cochran & Mays, *supra* note 263; AMERICAN LUNG ASSOC., *SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY* (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012).

<sup>267</sup> We are deliberate when using LGBT and LGB in this section. If we are using just LGB, it is because the underlying survey only had a measure of sexual orientation, and did not ask about gender identity.

<sup>268</sup> *About BRFSS*, U.S. CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/brfss/about/index.htm> (last visited Feb. 2, 2017); *Behavioral Risk Factor Surveillance System*, FLORIDA DEP'T OF HEALTH, <http://www.floridahealth.gov/statistics-and-data/survey-data/behavioral-risk-factor-surveillance-system/index.html> (last visited Mar. 3, 2017). Administered jointly by the CDC and Florida Department of Health, the Florida BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices.

<sup>269</sup> Sexual orientation identity was assessed with the following item: "Do you consider yourself to be (1) heterosexual, that is, straight, (2) homosexual, that is gay or lesbian, (3) bisexual, (4) other." FLORIDA DEPARTMENT OF HEALTH, 2012 BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM QUESTIONNAIRE (2012) (on file with authors).

<sup>270</sup> See, e.g., Richard T. Liu & Lauren B. Alloy, *Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study*, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud, Carol A. Paronis, *Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking*, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, *The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse*, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

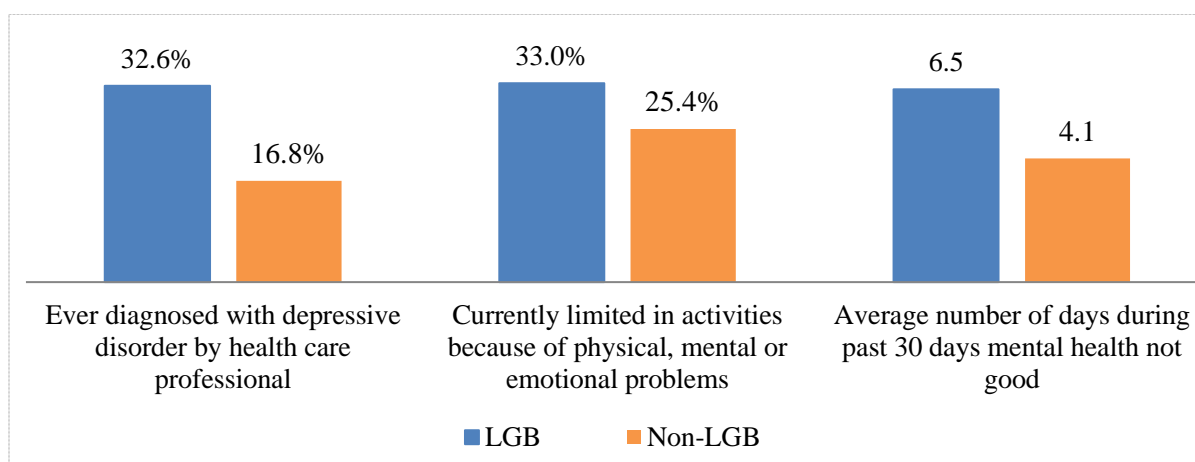


population of Florida, as is recommended by the Centers for Disease Control and Prevention when analyzing these data.<sup>271</sup>

**Mental Health.** LGB adults in the 2012 BRFSS were significantly more likely to have ever been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when compared to non-LGB adults in Florida (32.6% v. 16.8%).<sup>272</sup> They reported, on average, more days of being in poor mental health in the month prior to the survey than non-LGB respondents (6.5 days v. 4.1 days).<sup>273</sup> Also, more LGB than non-LGB respondents reported being limited in their activities because of mental, physical, or emotional problems (33.0% v. 25.4%).<sup>274</sup> LGB respondents, on average, also reported that poor physical or mental health kept them from doing their usual activities for one day more in the prior month than non-LGB respondents (6.6 days v. 5.6 days).<sup>275</sup>

**Figure III.a. Health Characteristics of Adults in Florida, by Sexual Orientation**

Source: Florida BRFSS, 2012



**Smoking.** LGB adults in Florida were significantly more likely to smoke than non-LGB adults. One in three LGB adults in Florida (34.3%) were current smokers, compared to 15.1% of non-LGBT adults.<sup>276</sup> LGB adults were also more likely to be smokers generally (57.0% v. 48.5%),<sup>277</sup> current or former, than non-LGB adults, though this difference is not statistically significant.

<sup>271</sup> Behavioral Risk Factor Surveillance System Weighting BRFSS Data: BRFSS 2015, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, [http://www.cdc.gov/brfss/annual\\_data/2015/pdf/weighting\\_the\\_data\\_webpage\\_content.pdf](http://www.cdc.gov/brfss/annual_data/2015/pdf/weighting_the_data_webpage_content.pdf) (last visited Dec. 12, 2015). LGB survey respondents in Florida were younger than the heterosexual/straight survey respondents. In order to make “fair” comparisons between sexual orientation groups, we use statistical controls to make the two groups comparable on age.

<sup>272</sup> AOR (95% CI) = 3.08 (1.39, 4.38).

<sup>273</sup> Adjusted b = 2.06, p = 0.090.

<sup>274</sup> AOR (95% CI) = 1.80 (1.04, 3.12).

<sup>275</sup> Adjusted b = 1.60, p=0.248.

<sup>276</sup> AOR (95% CI) = 1.44 (0.84, 2.45).

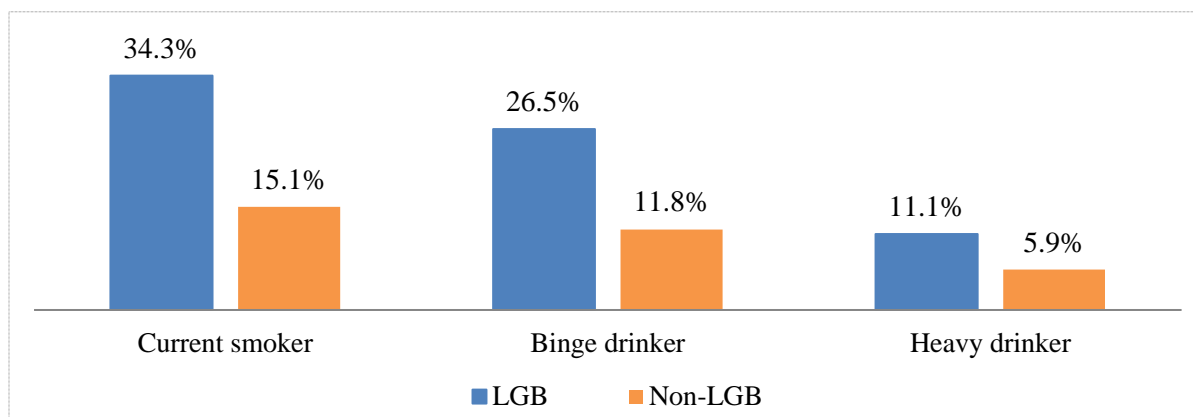
<sup>277</sup> AOR (95% CI) = 1.64 (0.91, 2.93)



**Drinking.** LGB adults in Florida were significantly more likely than non-LGB adults to binge drink in the past month (26.5% v. 11.8%).<sup>278</sup> Binge drinking is defined as five or more drinks on at least one occasion in the past month for men and four or more drinks for women.<sup>279</sup> LGB adults also reported being heavy drinkers at a higher rate than non-LGB adults (11.1% v. 5.9%),<sup>280</sup> defined as having more than 15 drinks per week for men and more than eight drinks per week for women.<sup>281</sup>

**Figure III.b. Substance Abuse among Adults in Florida, by Sexual Orientation**

Source: Florida BRFSS, 2012



Our findings are generally consistent with analyses of BRFSS data collected in other states and with analyses of National Health Interview Survey data. For example, an analysis of BRFSS data collected in 10 states<sup>282</sup> in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts, and gay and bisexual men had higher rates of mental distress and life dissatisfaction than heterosexual men.<sup>283</sup> Two studies analyzing BRFSS data from Massachusetts<sup>284</sup> and Washington State<sup>285</sup> similarly found disparities across a range of health outcomes and behaviors for LGB respondents, including poor physical and mental health, activity limitation, tension or worry, smoking, excessive drinking, and drug use. An analysis of data from the 2013 National Health Interview Survey found that LGB adults aged 18-64 in the

<sup>278</sup> AOR (95% CI) = 2.12 (1.13, 3.97).

<sup>279</sup> *Data and Maps: Excessive Drinking*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/alcohol/data-stats.htm> (last visited July 11, 2017).

<sup>280</sup> AOR (95% CI) = 1.91 (0.83, 4.37).

<sup>281</sup> U.S. Centers for Disease Control and Prevention, *supra* note 279.

<sup>282</sup> In 2010, 12 states had added a question about sexual orientation to their BRFSS surveys (Alaska, Arizona, California, Colorado, Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Washington, and Wisconsin), but data two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the study was based on data collected in the remaining 10 states. John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 AM. J. PREV. MED. 337, 338 (2014).

<sup>283</sup> *Id.* at 340.

<sup>284</sup> Kerith J. Conron, Matthew J. Mimiaga, Stewart J. Landers, *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUBLIC HEALTH 1953 (2010).

<sup>285</sup> Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUBLIC HEALTH 460 (2010).

U.S. were more likely to be current smokers (27.2 LG v. 29.5% bisexual v. 19.6% non-LGB). They were also more likely to binge drink than their non-LGB counterparts.<sup>286</sup> In addition, bisexual respondents were significantly more likely to report experiencing severe psychological distress in the 30 days prior to the survey than respondents who identified as straight (11.0% v. 3.9%).<sup>287</sup>

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

Empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to anti-LGBT policies and unsupportive social climates. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*<sup>288</sup> and the Institute of Medicine of the National Academies.<sup>289</sup> Research also suggests that stigmatizing campaigns around the passage of anti-LGBT policies, or negative media messaging that draws attention to unsupportive social climates, may exacerbate these disparities.

The *minority stress model* suggests that unsupportive social climates, created by anti-LGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for sexual minorities and transgender individuals compared with heterosexuals.<sup>290</sup> Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.<sup>291</sup> This research has demonstrated that both interpersonal experiences of stigma and discrimination, such as being fired from a job for being LGBT, and structural stigma, such as living in a state without LGBT-supportive laws, contribute to minority stress.<sup>292</sup>

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<sup>286</sup>Brian W. Ward et al., *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey, 2013*, 77 NATIONAL HEALTH STATS. REPORT 1, 4 (2015), available at <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

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

<sup>288</sup> *Healthy People 2020*, DEP'T OF HEALTH AND HUMAN SERV., [https://www.healthypeople.gov/sites/default/files/HP2020\\_brochure\\_with\\_LHI\\_508\\_FNL.pdf](https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf) (last visited Jan. 3, 2016). *Healthy People 2010* identified the gay and lesbian population among groups targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." DEPT. OF HEALTH AND HUMAN SERVICES, OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

<sup>289</sup> INSTITUTE OF MEDICINE, *supra* note 264 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

<sup>290</sup> Ian H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674 (2009); INSTITUTE OF MEDICINE, *supra* note 264.

<sup>291</sup> *Id.*; AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

<sup>292</sup> See Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

A number of studies have found evidence of links between minority stressors and negative mental health outcomes in LGB people, including a higher prevalence of psychiatric disorders,<sup>293</sup> including depression<sup>294</sup> and psychological distress,<sup>295</sup> as well as loneliness, suicidal intention,<sup>296</sup> deliberate self-harm,<sup>297</sup> and low self-esteem.<sup>298</sup> Studies have also linked minority stress in LGB people to an increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders.<sup>299</sup>

For example, a 2016 study by the American Psychological Association based on a nationally representative sample linked experiences of discrimination to increased stress and poorer health for LGBT people.<sup>300</sup> The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% v. 23%) in the prior 30 days than adults who were non-LGBT.<sup>301</sup> Job stability was a current source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults.<sup>302</sup> The study also found that many LGBT respondents had experienced discrimination.<sup>303</sup> Nearly one-

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<sup>293</sup> E.g., Katie A. McLaughlin, Mark L. Hatzenbuehler & Katherine M. Keyes, *Responses to Discrimination and Psychiatric Disorders among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals*, 100 AM. J. PUBLIC HEALTH 1477 (2010); Ellen D.B. Riggle, Sharon S. Rostosky & Sharon G. Horne, *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 SEXUALITY RESEARCH & SOCIAL POLICY 80 (2009).

<sup>294</sup> E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. OF COUNSELING PSYCHOL. 302 (2006).

<sup>295</sup> E.g., Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001); David M. Heubner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?*, 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. OF HEALTH & SOC. BEHAV. 38 (1995).

<sup>296</sup> David M. Huebner, Gregory M. Rebchook & Susan M. Kegeles, *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men*, 94 AM. J. OF PUB. HEALTH 1200 (2004).

<sup>297</sup> James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRITISH J. OF PSYCHIATRY 479 (2004).

<sup>298</sup> E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being among HIV-positive Latino Gay Men*, 27 HISP. J. OF BEHAV. SCI. 101 (2005).

<sup>299</sup> E.g., Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, Wendy B. Bostwick, Tonda L. Hughes, Brady T. West & Carol J. Boyd, *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUBLIC HEALTH 1946 (2010); Mark L. Hatzenbuehler, Katie A. McLaughlin, Katherine M. Keyes & Deborah S. Hasin, *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUBLIC HEALTH 452 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

<sup>300</sup> AM. PSYCH. ASSOC., *supra* note 291.

<sup>301</sup> *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% v. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% v. 20%).

<sup>302</sup> *Id.*

<sup>303</sup> The percentage of respondents who were reported as having experienced discrimination said that they had either experienced “at least one of the five day-to-day stressors ‘less than once a year’ or more often; or ever experienced one of nine major forms of discrimination.” The five day-to-day stressors included: 1. You are treated with less courtesy or respect than other people; 2. You receive poorer service than other people at restaurants or stores; 3.

fourth (23%) of the LGBT adults reported that they had ever been unfairly stopped, searched, questioned, physically threatened or abused by the police; nearly one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to continue their education; and one-third (33%) reported being unfairly not hired for a job.<sup>304</sup>

Studies have also linked a lack of legal protections and a poor state social climate to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGB people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws.<sup>305</sup> A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional ban on marriage for same-sex couples, and rates were unchanged in states that did not pass bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”<sup>306</sup> Drawing on these findings and prior research, Hatzenbuehler concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”<sup>307</sup>

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

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People act as if they think you are not smart; 4. People act as if they are afraid of you; 5. You are threatened or harassed.” The nine major forms of discrimination included: 1. Have you ever been unfairly fired from a job? 2. Have you ever been unfairly denied a promotion? 3. For unfair reasons, have you ever been not hired for a job? 4. Have you ever been unfairly stopped, searched, questioned, physically threatened or abused by the police? 5. Have you ever been unfairly discouraged by a teacher or advisor from continuing your education? 6. Have you ever been unfairly prevented from moving into a neighborhood because the landlord or a realtor refused to sell or rent you a house or apartment? 7. Have you ever moved into a neighborhood where neighbors made life difficult for you or your family? 8. Have you ever been treated unfairly when receiving health care? 9. Have you ever been treated unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.)? Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology, <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Dec. 5, 2016) (see Measurement with Experience with Discrimination).

<sup>304</sup> AM. PSYCH. ASSOC., *supra* note 291 at 6-7.

<sup>305</sup> Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUBLIC HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. *Id.* at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. *Id.* at 2277.

<sup>306</sup> Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 299 at 456. See also, Ben Lennox Kail, Katie L. Acosta & Eric R. Wright, *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUBLIC HEALTH 1101 (2015).

<sup>307</sup> Mark L. Hatzenbuehler, *The Health Consequences of Hate*, COLUMBIA UNIV. (Apr. 26, 2016), <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthful social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.<sup>308</sup>

Additionally, research indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, and can put them in danger of verbal and physical harassment. For example, a 2008 survey of transgender and gender non-conforming people in Washington, D.C. found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney related problems.<sup>309</sup> Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom.<sup>310</sup>

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health which would heighten observed disparities in less accepting places.<sup>311</sup> Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, likely contribute to LGBT health disparities in Florida.

## **2. Health Disparities for LGBT Youth**

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC analysis of 2015 YRBS data from 25 states and 19 large urban school districts reported disproportionately high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,<sup>312</sup> that disfavor LGB youth.<sup>313</sup> Analyses of YRBS data from 2001-2009 also indicated sexual

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<sup>308</sup> Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities*, 106 AM. J. PUB. HEALTH 98 (2014).

<sup>309</sup> Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives*, 19 J. PUBLIC MANAGEMENT & SOCIAL POL'Y. 65, 75 (2013).

<sup>310</sup> *Id.* at 71, 76.

<sup>311</sup> Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 299 at 452.

<sup>312</sup> *See, e.g.,* Liu & Alloy, *supra* note 270; Kassel et al., *supra* note 270; Brady & Sonne, *supra* note 270.

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

orientation disparities in mental health and health risk behaviors, suggesting that intervention efforts to date have been insufficient.<sup>314</sup> Finally, a 2011 meta-analysis of 18 studies found that compared to non-LGB youth, LGB youth were more likely to report depression and more than twice as likely to think about suicide, over three times as likely to report that they had attempted suicide, and more than four times as likely to have attempted suicide such that they needed medical attention.<sup>315</sup>

Other studies have linked health disparities and risk behaviors among LGB youth to discrimination and unsupportive environments. For example, a 2017 study found that marriage equality at the state level was associated with a statistically significant decline (14%) in the proportion of LGB youth reporting that they attempted suicide in the past year.<sup>316</sup> Similarly, a 2011 study of youth in Oregon found that, in general, LGB youth were more likely to have attempted suicide than heterosexual youth, and that LGB youth in unsupportive school environments were at a 20% greater risk of attempting suicide than were LGB youth in supportive school environments.<sup>317</sup> High levels of school-based victimization have been associated with higher levels of illicit drug use and risky sexual behavior.<sup>318</sup> Research has also linked unsupportive family environments to depression and suicidality,<sup>319</sup> high levels of stress,<sup>320</sup> tobacco use,<sup>321</sup> and illicit drug use<sup>322</sup> in LGB youth and young adults.

Studies of transgender youth have also found evidence of associations between discrimination, abuse, and poorer health. For example, a 2010 study found that transgender respondents who had experienced gender-related abuse in their youth reported significantly higher rates of major

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<sup>314</sup> See, e.g., Laura Kann et al., *supra* note 194.

<sup>315</sup> Michael P. Marshal, Laura J. Dietz, Mark S. Friedman, Ron Stall, Helen Smith, James McGinley, Brian C. Thoma, Pamela J. Murray, Anthony D'Augelli & David A. Brent, *Suicide and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

<sup>316</sup> Julia Raifman et al., *Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 JAMA PEDIATRICS 350 (2017) [doi: 10.1001/jamapediatrics.2016.4529].

<sup>317</sup> Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896 (2011).

<sup>318</sup> Daniel E. Bontempo & Anthony D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 30 J. ADOL. HEALTH 362 (2002); Kann et al., *supra* note 194 at 11.

<sup>319</sup> Another study found that LGBT youth who were rejected by their families in adolescence were 5.9 times more likely to report high levels of depression and 8.4 times more likely to have attempted suicide than LGBT youth who had not been rejected. Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

<sup>320</sup> Mark L. Hatzenbuehler & Katie A. McLaughlin, *Structural Stigma and Hypothalamic-Pituitary-Adrenocortical Axis Reactivity in Lesbian, Gay, and Bisexual Young Adults*, 47 ANN. BEHAV. MED. 39 (2014).

<sup>321</sup> Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

<sup>322</sup> Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Sexual Orientation Disparities in Adolescent Drug Use*, 46 ADDICTIVE BEHAVIORS 14 (2015).

depression and suicidality during that period of their lives than those who had not had such experiences.<sup>323</sup>

### a. Health Disparities for LGBT Youth in Florida

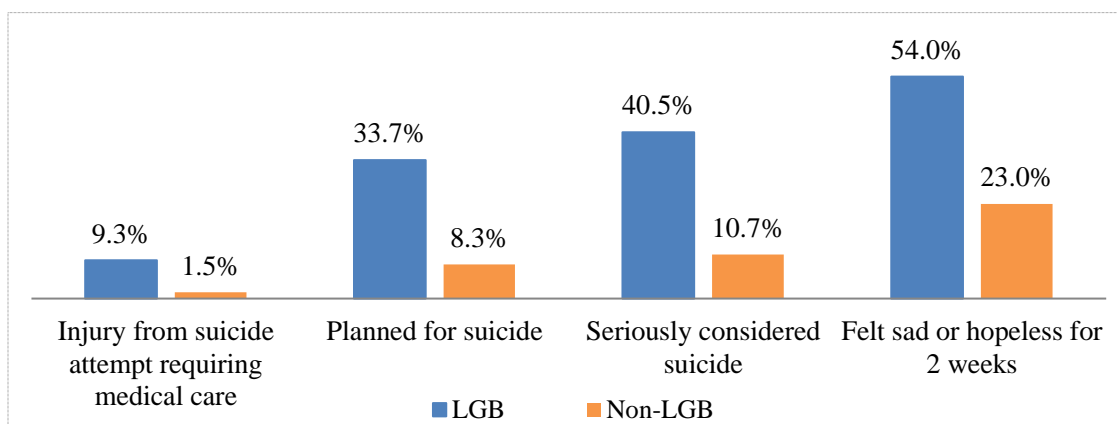
#### i. Depression and Suicidality

Data from the 2015 Florida YRBS suggest that sexual orientation disparities in mental health and substance use observed elsewhere in the U.S. also persist in Florida.

As shown in Figure III.d., larger proportions of LGB high school students in Florida reported feeling isolated, depressed, and suicidal than non-LGB students. During the 12 months prior to the survey, the majority of LGB students in Florida (54.0%) reported feeling so sad or hopeless every day for over two weeks that they stopped doing some of their usual activities.<sup>324</sup> This was over double the rate of non-LGB students who reported the same (23.0%). An affirmative answer to this question is part of the diagnostic definition of major depressive disorder.<sup>325</sup>

**Figure III.d. 12-month Depression and Suicidality among High School Students in Florida, by Sexual Orientation**

Source: Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9–12, United States and Selected Sites, 2015*



LGB high school students in Florida were almost four times as likely to have seriously considered suicide in the year prior to the survey compared to non-LGB students (40.5% v. 10.7%).<sup>326</sup> In addition, one-third of LGB students (33.7%)<sup>327</sup> reported making a plan for how to

<sup>323</sup> Larry Nuttbrock, Sel Hwahng, Walter Bockting, Andrew Rosenblum, Mona Mason, Monica Macri & Jeffrey Becker, *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

<sup>324</sup> Laura Kann et al., *supra* note 194 at 108.

<sup>325</sup> See *Diagnostic Criteria for Major Depressive Disorder and Depressive Episodes*, PSNPALTO.COM, <http://www.psnpalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> (last visited May 4, 2016).

<sup>326</sup> Laura Kann et al., *supra* note 194 at 109.

<sup>327</sup> *Id.* at 109.



attempt suicide and 9.3% reported being injured from a suicide attempt in a way that had to be treated by a doctor or a nurse in the 12 months prior to the survey.<sup>328</sup> By comparison, 8.3% of non-LGB students in Florida reported making a plan for how to attempt suicide<sup>329</sup> and 1.5% reported being injured from a suicide attempt that had to be treated by a doctor or a nurse.<sup>330</sup>

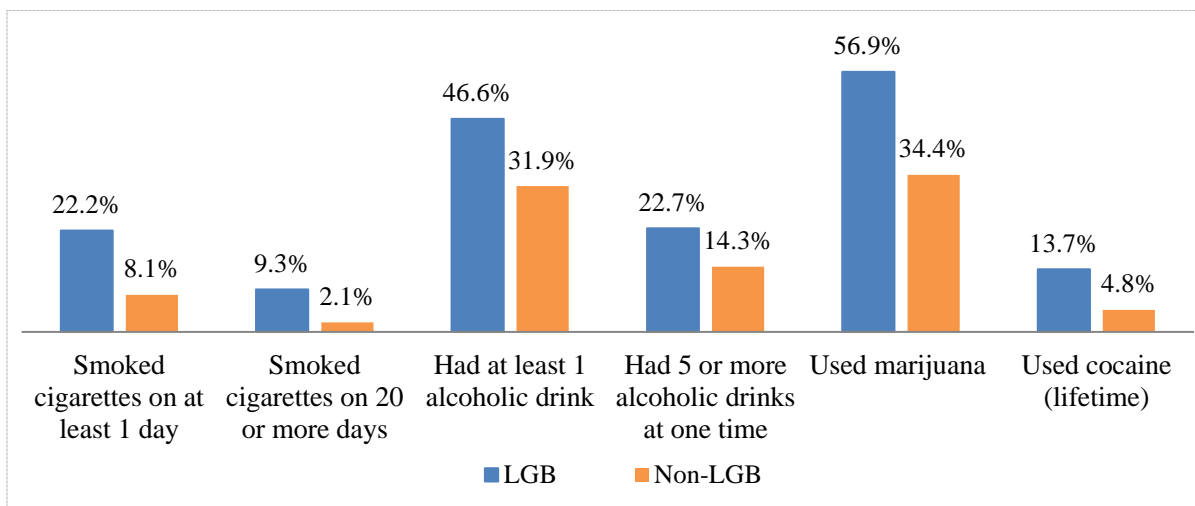
## ii. Substance Use

LGB high school students in Florida were also more likely to report drinking, smoking, and other substance abuse than non-LGB students.

LGB students in Florida were more than twice as likely to report having smoked cigarettes on one or more days in the month prior to the survey (22.2% v. 8.1%)<sup>331</sup> and were also more likely to report that they had smoked cigarettes on 20 or more days in the month prior to the survey (9.3% v. 2.1%) than non-LGB students.<sup>332</sup>

LGB students were also more likely to have had at least one drink in the month prior to the survey than non-LGB students (46.6% v. 31.9%)<sup>333</sup> and more likely to have had five or more drinks in a row, or within a couple of hours, in the month prior to the survey (22.7% v. 14.3%) than non-LGB students.<sup>334</sup>

**Figure III.e. 30-Day Substance Use among High School Students Florida, by Sexual Orientation**  
Source: Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9–12, United States and Selected Sites, 2015*



<sup>328</sup> *Id.* at 112.

<sup>329</sup> *Id.* at 110.

<sup>330</sup> *Id.* at 112.

<sup>331</sup> *Id.* at 115.

<sup>332</sup> *Id.* at 116.

<sup>333</sup> *Id.* at 131.

<sup>334</sup> *Id.* at 133.

LGB high school students were also more likely to report illicit drug use than non-LGB students in the state of Florida. LGB students were more likely to report having used marijuana (56.9% v. 34.4%)<sup>335</sup> in the month prior to the survey, and were over twice as likely as non-LGB students to report ever having used cocaine (13.7% v. 4.8%).<sup>336</sup>

These findings are consistent with the 2015 YRBS data collected in 24 other states and 18 other large urban school districts. In terms of mental health, like LGB youth in the Florida counties, LGB youth in the national YRBS sample were more likely to report that they felt so sad or hopeless that they stopped doing their usual activities for a period of time,<sup>337</sup> that they had seriously considered suicide,<sup>338</sup> that they had made a suicide plan,<sup>339</sup> and that they had made a suicide attempt that resulted in an injury that had to be treated by a doctor or nurse.<sup>340</sup> In terms of substance use, LGB youth in the national sample, similarly to LGB youth in the Florida counties, reported higher rates of smoking cigarettes,<sup>341</sup> drinking alcohol,<sup>342</sup> binge drinking,<sup>343</sup> marijuana use,<sup>344</sup> and cocaine use.<sup>345</sup>

The YRBS findings for high school students are also consistent with findings from a 2008 survey of college students at the University of West Florida. The data were collected by the American College Health Association through the National College Health Assessment survey, which randomly sampled LGBT and non-LGBT students. The survey found that rates of self-reported depression, anxiety, and binge drinking were higher for LGBTQ students (20.0%, 38.2%, and 7.3% respectively) than non-LGBTQ students (13.8%, 21.7%, and 3.3% respectively). Suicidal ideation was 2.3 times more likely to be reported in the previous year by LGBTQ students (20.0%) than non-LGBTQ students (8.5%) and suicide attempts were more than nine times more likely to be reported by LGBTQ students (5.6%) than non-LGBTQ students (0.6%).<sup>346</sup>

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<sup>335</sup> *Id.* at 137.

<sup>336</sup> *Id.* at 141.

<sup>337</sup> *Id.* at 108.

<sup>338</sup> *Id.* at 109.

<sup>339</sup> *Id.* at 110.

<sup>340</sup> *Id.* at 112.

<sup>341</sup> *Id.* at 115-16.

<sup>342</sup> *Id.* at 131-32.

<sup>343</sup> *Id.* at 133.

<sup>344</sup> *Id.* at 137.

<sup>345</sup> *Id.* at 141.

<sup>346</sup> Unpublished data on University of West Florida students from the 2008 National College Health Assessment survey analyzed by Susan E. Walch and colleagues (on file with authors).

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

In 2014, USAID and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look to three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape and social climate on Florida's economy: 1) discrimination and harassment in the workplace and other settings; 2) health disparities experienced by LGBT people; and 3) bullying and harassment of youth.<sup>347</sup> In our analysis, we draw on data specific to Florida, 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 Florida.

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

In a 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.<sup>348</sup> In the micro-level analysis, the authors considered five types of discrimination against LGBT people and explained how they might be linked to harmful economic outcomes:

- 1) Police abuse and over-incarceration;
- 2) Higher rates of violence;
- 3) Workplace harassment and discrimination;
- 4) Discrimination and bullying of LGBT students in schools; and
- 5) Health disparities.<sup>349</sup>

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<sup>347</sup> The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on effects of such stigma and discrimination against LGBT people in Florida.

<sup>348</sup> M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST., *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and the defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

<sup>349</sup> *Id.*

After considering these, the authors concluded that “human rights violations experienced by LGBT people diminish economic output and capacity at the micro-level. When LGBT people are targets of violence, denied equal access to education, stigmatized in communities, and discouraged from pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy.”<sup>350</sup>

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender identity minorities and economic development in emerging economies, measured by per capita GDP.<sup>351</sup> Notably, they found that non-discrimination laws in particular “have an especially strong correlation with GDP per capita. The importance of nondiscrimination laws could be related to their stronger connection to the treatment of LGBT people in the workplace and other settings that have direct economic relevance.”<sup>352</sup>

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

Before we turn to the analysis, five important points:

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

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

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

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<sup>350</sup> *Id.* at 6.

<sup>351</sup> *Id.* at 10.

<sup>352</sup> *Id.* at 3.

Fourth, focusing on LGBT stigma and discrimination alone will not address all negative outcomes experienced by LGBT people. LGBT people have a minority sexual orientation and/or gender identity, but also have other identities including race, ethnicity, age, disability, and gender. While a singular focus on LGBT stigma will not entirely eliminate the disparities we discuss, an approach that embraces eliminating disparities for diverse LGBT people, no matter what their cause, will improve the lives of many non-LGBT people as well. For example, eliminating gender and racial-ethnic wage gaps in the U.S. would both eliminate the poverty gap between same-sex and different sex-couples, as well as lift many non-LGBT people out of poverty.<sup>353</sup>

Finally, as the authors of the USAID and Williams Institute study emphasize, to move this analysis beyond this framework and the illustrations of economic impact below, we need more complete and better data on LGBT populations.<sup>354</sup> In particular, the routine inclusion of sexual orientation and gender identity measures on large population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of three data sets specific to LGBT people in Florida that were unavailable just a few years ago—data from the Youth Risk Behavior Survey (YRBS) and the Behavioral Risk Factor Surveillance System (BRFSS). We also need more research about the lived experiences of LGBT people and the effectiveness of legal protections to further assess the impact of LGBT supportive laws and climates on LGBT people.<sup>355</sup>

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

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

To the extent that Florida’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

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<sup>353</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

<sup>354</sup> See, e.g., MARIELLA ARRENDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), available at <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

<sup>355</sup> BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 348 at 49.

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

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

## **1. The Business Case for Diversity**

Over the past two decades, many employers have adopted non-discrimination policies to protect LGBT employees and created more inclusive workplace environments, even when not legally required to do so.<sup>356</sup> In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part, because the companies perceive that the policies will have a positive impact on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination and 75% included gender identity.<sup>357</sup> Further, 64% offered domestic partner benefits and 40% had transgender-inclusive benefits policies.<sup>358</sup>

Of the 17 Fortune 500 companies headquartered in Florida,<sup>359</sup> all include sexual orientation in their non-discrimination policies, and at least 14 also include gender identity:<sup>360</sup> Publix Super Markets, World Fuel Services, Tech Data, AutoNation (sexual orientation only), Jabil Circuit (sexual orientation only), NextEra Energy, WellCare Health Plans, Office Depot, CSX, Lennar, Fidelity National Financial, Hertz Global Holdings, Fidelity National Information Services (sexual orientation only), Harris, Darden Restaurants, Ryder System, Raymond James Financial.

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<sup>356</sup> M.V. LEE BADGETT, *MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN* (2001); NICOLE C. RAEBURN, *CHANGING CORPORATE AMERICA FROM INSIDE OUT: LESBIAN AND GAY WORKPLACE RIGHTS* (2004).

<sup>357</sup> DARYL HERRSCHAFT ET AL., HUMAN RIGHTS CAMPAIGN, *DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT PEOPLE* 5 (2009), [https://issuu.com/hrcworkplace/docs/hrc\\_degrees\\_of\\_equality\\_2009](https://issuu.com/hrcworkplace/docs/hrc_degrees_of_equality_2009); DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, *CORPORATE EQUALITY INDEX 2016: RATING AMERICA'S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY* 7 (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

<sup>358</sup> DEENA FIDAS & LIZ COOPER, *supra* note 357.

<sup>359</sup> Sherri London, *17 Florida Companies Make Fortune 500 2017 List*, PATCH.COM (June 8, 2017), <https://patch.com/florida/lakeland/17-florida-companies-make-fortune-500-s-2017-list>.

<sup>360</sup> Unless otherwise noted, the information about individual companies' policies is from the Human Rights Campaign report, *Corporate Equality Index 2016: Rating America's Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*. DEENA FIDAS & LIZ COOPER, *supra* note 357.

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,<sup>361</sup> the business case for diversity is clear:

Today, diversity and inclusion are a given. They are among the core principles of amici in the conduct of their businesses. The value of diversity and inclusion in the workplace has been well-documented following rigorous analyses. Amici and others recognize that diversity is crucial to innovation and marketplace success. Members of the lesbian, gay, bisexual, and transgender (“LGBT”) community are one source of that diversity.<sup>362</sup>

In fact, a 2011 study found that when enacting non-discrimination policies, 92% of the leading companies in the U.S. did so based on a general argument that diversity is good for business, and 53% made that link specifically to LGBT-supportive policies and practices.<sup>363</sup> Similarly, a 2013 Williams Institute study found that over 60% of corporate respondents that offered transition-related health care coverage to their employees did so because of the business benefits.<sup>364</sup> Some of the specific business-related outcomes that have motivated employers to adopt LGBT-supportive policies include: recruiting and retaining talented employees, sparking new ideas and innovations, attracting and serving a diverse customer base, and enhancing employee productivity.<sup>365</sup>

Academic research conducted over the past two decades supports the business case for LGBT inclusion. In 2013, the Williams Institute reviewed 36 academic studies examining the effects of LGBT-supportive policies, and concluded that the research supports the existence of many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers (Figure IV.a.).<sup>366</sup>

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<sup>361</sup> 135 S. Ct. 2584 (2015).

<sup>362</sup> Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571, 14-574), available at [http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556\\_379\\_Employers\\_and\\_Organizations\\_Representing\\_Employers.pdf](http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf).

<sup>363</sup> BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

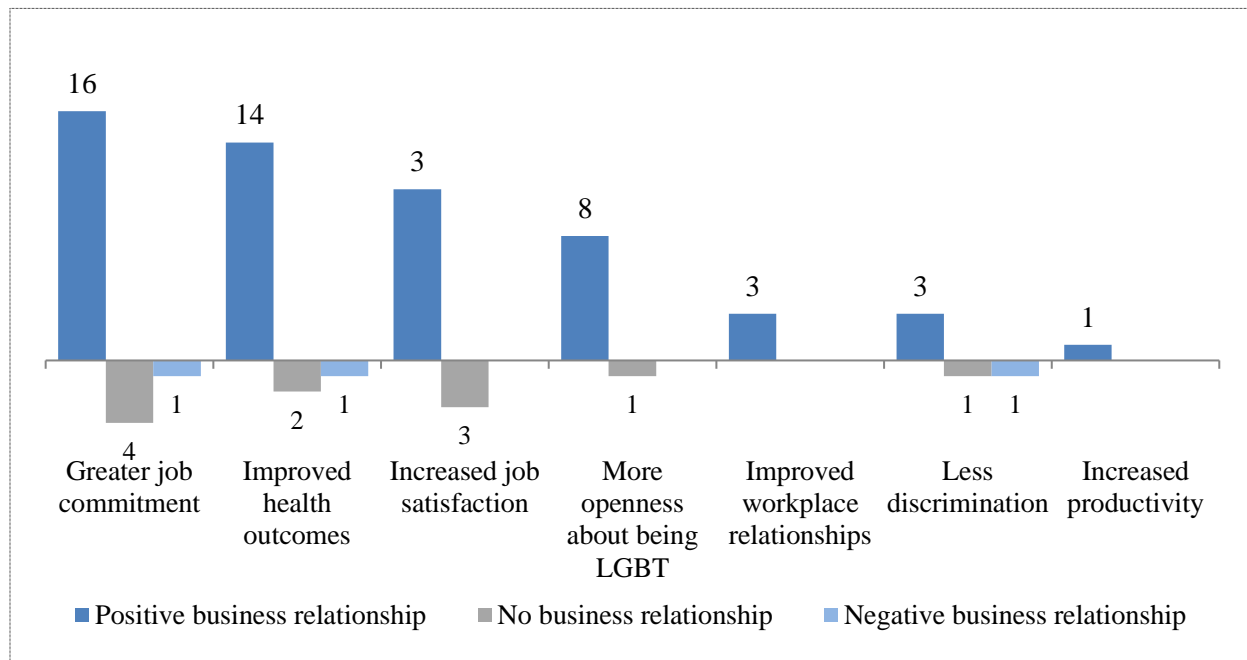
<sup>364</sup> JODY L. HERMAN, WILLIAMS INST., COSTS AND BENEFITS OF PROVIDING TRANSITION-RELATED HEALTH CARE COVERAGE IN EMPLOYEE HEALTH BENEFIT PLANS: FINDINGS FROM A SURVEY OF EMPLOYERS 3 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

<sup>365</sup> *Id.*; SEARS & MALLORY, *supra* note 363.

<sup>366</sup> M.V. LEE BADGETT, LAURA DURSO, ANGELIKI KASTANIS, & CHRISTY MALLORY, WILLIAMS INST., THE BUSINESS IMPACT OF LGBT SUPPORTIVE WORKPLACE POLICIES (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-May-2013.pdf>.



**Figure IV.a. Number of Studies Conducted Prior to 2013 Showing Relationship between LGBT-Supportive Policies or Workplace Climates and Individual-Level Outcomes**



A 2014 literature review of academic studies similarly concluded that LGBT-supportive policies have positive effects on LGBT employees in terms of mental health, workplace relationships, and job satisfaction.<sup>367</sup> Many of the underlying studies included in the 2013 and 2014 literature reviews focused on three specific areas of the case for business diversity: employee recruitment, productivity/engagement, and retention. Studies focused on these outcomes have shown that:

#### *Recruitment*

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.<sup>368</sup>
- LGBT employees prefer to work in states with more supportive laws and social environments.<sup>369</sup>

<sup>367</sup> Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

<sup>368</sup> Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM (Oct. 4, 2010), <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>; SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, *THE POWER OF “OUT” 2.0: LGBT IN THE WORKPLACE* 29 (2013).

<sup>369</sup> Out & Equal et al., *Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, HARRIS POLL (Oct. 30, 2014), [http://media.theharrisroll.com/documents/FINAL\\_2014\\_Out\\_Equal\\_Workplace\\_Survey\\_Release\\_10.30.2014.pdf](http://media.theharrisroll.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.<sup>370</sup>
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,<sup>371</sup> particularly younger and more highly educated workers.<sup>372</sup>

### *Productivity/Engagement*

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, increased productivity, and job satisfaction.<sup>373</sup>
- When LGBT employees are open about their sexual orientation or gender identity at work, teams that include both LGBT and non-LGBT workers may be more productive and more competent.<sup>374</sup>

### *Retention*

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.<sup>375</sup>
- LGBT employees in unsupportive environments feel less committed to their jobs.<sup>376</sup>

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<sup>370</sup> Russell Shrader, *Broadening Partner Benefits to Improve Recruitment and Retention among LGBT Employees in United States Institutions of Higher Education*, 40 PUBLIC ADMIN. Q. 180 (2016).

<sup>371</sup> SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 20 (2016); Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWswire.COM (Oct. 4, 2010), <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>.

<sup>372</sup> Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact* 3 POLITICS, GROUPS, AND IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994); *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

<sup>373</sup> Yuan-Hui Tsai, Sheng-Wuu Joe, Wei-Te Liu, Chieh-Peng Lin, Chou-Kang Chiu & Chaio-Chih Tang, *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 REV. MANAG. SCI. 197 (2015); SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 20 (2016); BADGETT ET AL., *supra* note 366.

<sup>374</sup> Benjamin A. Everly, Margaret J. Shih & Geoffrey C. Ho, *Don't Ask, Don't Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 J. EXPERIMENTAL SOCIAL PSYCH. 407, 409 (2012).; SYLVIA ANN HEWLETT & KENJI YOSHINO, OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 22, 63 (2016).

<sup>375</sup> HEWLETT & YOSHINO, *supra* note 374 at 20.

<sup>376</sup> Belle R. Ragins, Romila Singh, John M. Cornwell, *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 J. APPLIED PSYCHOL. 1103, 1114 (2007); Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); IAN JOHNSON & DARREN COOPER, OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 4, 47 (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, THE POWER OF OUT (2011); DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, HUMAN RIGHTS CAMPAIGN, THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION 22 (2014), [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost\\_of\\_the\\_Closet\\_May2014.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf); Janell L. Blazovich, Kristin A.

- When a worker leaves a job, costs include a loss in productivity due to the unfilled position, the costs of hiring and training a new employee, and lower initial rates of productivity of the new employee.<sup>377</sup> A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.<sup>378</sup> This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs – up to 213% of annual salary.<sup>379</sup> Based on the average annual mean wage in Florida,<sup>380</sup> public and private employers are at risk of losing approximately \$8,810, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people.<sup>381</sup>

In addition, several studies have linked LGBT-supportive policies and workplace environments to bottom line gains, including improved productivity, profitability, and stock prices when compared to firms without such policies.<sup>382</sup>

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

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Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 4 (Apr. 2013) (unpublished manuscript, available online).

<sup>377</sup> HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

<sup>378</sup> *Id.*

<sup>379</sup> *Id.*

<sup>380</sup> The annual mean wage in Florida is \$44,050. May 2016 State Occupational Employment and Wage Estimates: Texas, Bureau of Labor Stats, [https://www.bls.gov/oes/current/oes\\_fl.htm](https://www.bls.gov/oes/current/oes_fl.htm) (last visited July 12, 2017).

<sup>381</sup> Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Florida. *Id.*; BOUSHEY & GLYNN, *supra* note 377.

<sup>382</sup> CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic profit generation, and that stocks of companies who have LGBT people in senior roles outperform those who do not); Feng Li and Venky Nagar, *Diversity and Performance*, 59 MGMT. SCI. 529 (2013) (finding improved operating returns on assets (ROA) after companies adopt domestic partner benefits for same-sex couples); Blazovich, Cook, Huston & Strawser, *supra* note 376 at 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which ... increase the investor perception of the firm as proxied by stock price movements.”). *See also* BADGETT ET AL., *supra* note 366 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).

### C. *Economic Impact of LGBT Health Disparities*

Poor health “can affect people’s ability to be productive at work, reduce labor force participation when people cannot work, and burden public health care funds when individuals rely on emergency care rather than regular or preventative care.”<sup>383</sup> For these reasons, poor health, in general, imposes costs on employers and governments.<sup>384</sup> When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.<sup>385</sup>

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

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

In this report, we used CUISR’s method to estimate the costs associated with higher prevalence of three health outcomes – major depressive disorder, smoking, and binge drinking – in LGBT adults in Florida. To the extent possible, we used data on these health outcomes and related costs specific to Florida. Where we could not find reliable cost data for these health outcomes at the state-level, we used national data as a proxy. Given the limited data we have about health outcomes for transgender people nationally or in Florida, we assume for purposes of our analysis that transgender people have the same rates of the health conditions described below as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.<sup>386</sup>

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of Florida 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

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<sup>383</sup> M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, *supra* note 348.

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> E.g., George R. Brown & Kenneth T. Jones, *Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study*, 3 LGBT HEALTH 122 (2016).

disparities for LGB people related to mood and alcohol use disorder were lower in states with more supportive laws, but were still present.<sup>387</sup>

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

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

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

In order to best estimate the annual costs associated with MDD, we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004-2005 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.<sup>388</sup> Given the limited data about MDD among transgender people, we assume for purposes of our analysis that transgender people have the same rate of MDD as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.<sup>389</sup>

Applying the percentage of excess prevalence of MDD among LGB people ( $18.0\% - 8.1\% = 9.9\%$ ) to Florida's adult LGBT population (an estimated 663,000 adults)<sup>390</sup> indicates that there are approximately 65,600 more LGBT adults who have major depressive disorder in Florida than would be expected in the general population. As shown in Table V.a. below, we further estimate that if 25% to 33.3% of the sexual orientation and gender identity disparity were reduced by

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<sup>387</sup> Hatzenbuehler, Keyes & Hasin, *supra* note 305 at 2277.

<sup>388</sup> *Id.* at 2279. For an explanation of how major depressive disorder is determined on the NESARC see U.S. ALCOHOL EPIDEMIOLOGIC DATA REFERENCE MANUAL, ALCOHOL USE AND ALCOHOL USE DISORDERS IN THE UNITED STATES, A 3-YEAR FOLLOW-UP: MAIN FINDINGS FROM THE 2004-2005 WAVE 2 NATIONAL EPIDEMIOLOGIC SURVEY ON ALCOHOL AND RELATED CONDITIONS (NESARC), 19 (2010), [https://pubs.niaaa.nih.gov/publications/NESARC\\_DRM2/NESARC2DRM.pdf](https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf).

<sup>389</sup> E.g., George R. Brown & Kenneth T. Jones, *Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study*, 3 LGBT HEALTH 122 (2016).

<sup>390</sup> See Section I.A.1, *supra*.

improving the social climate for LGBT people, there would be between 16,400 and 21,800 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)*.<sup>391</sup> The study found that the annual total cost of MDD, nationwide, in 2010 was \$210.5 billion. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with MDD, we divided the total cost by the number of adults with the condition in 2010.<sup>392</sup> Next, we adjusted the cost per person with MDD in 2010 for inflation.<sup>393</sup> In inflation-adjusted dollars, the 2017 cost per person with MDD was \$15,179.72.<sup>394</sup>

For the reasons described above, we estimate that Florida 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 Florida of approximately \$248.9 to \$330.9 million.

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

| Reduction in disparity between LGBT and Non-LGBT Floridians | LGBT individuals impacted | Annual reduction in costs (millions) |
|---|---------------------------|--------------------------------------|
| 25%   | 16,400                    | \$248.9                              |
| 33.3%   | 21,800                    | \$330.9                              |

## 2. Excess Costs Associated with LGBT Smoking

Our analysis of Florida's 2012 BRFSS data found that 34.3% of LGB respondents were current smokers, compared to 15.1% of non-LGB respondents. Applying the percentage (19.2%) of excess prevalence of smoking among LGB people in Florida to the state's LGBT population

<sup>391</sup> Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLIN. PSYCHIATRY 155 (2015). Greenberg et al. used data from the National Survey on Drug Use and Health to identify people who met the diagnostic criteria for a major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with major depressive disorder (and compared to a control group). Similarly, the prevalence of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

<sup>392</sup> The study found that, in 2010, 15,446,771 adults in the U.S. suffered from major depressive disorder. *Id.* Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

<sup>393</sup> To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at CPI Inflation Calculator, U.S. Bureau of Labor Stats., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 28, 2016).

<sup>394</sup> We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).



(663,000 adults)<sup>395</sup> indicates that there are approximately 127,300 more people who currently smoke in Florida than would be expected in the general population.

A 2010 study estimated the annual costs per current smoker in Florida to be \$6,260.83.<sup>396</sup> The total included costs from workplace productivity losses (\$1,029.60), medical care costs (\$2,502.13), and premature death (\$2,729.10).<sup>397</sup> We adjusted for inflation<sup>398</sup> to estimate that the 2017 cost per current smoker in Florida is \$7,071.18.

For the reasons described above, we estimate that Florida 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 Florida of approximately \$224.9 to \$299.8 million.

**Table IV.b. Reduction in Costs Associated with Smoking in Florida if LGBT Disparity Were Reduced or Eliminated**

| Reduction in disparity between LGBT and Non-LGBT Floridians | LGBT individuals impacted | Annual reduction in costs (millions) |
|---|---------------------------|--------------------------------------|
| 25%   | 31,800                    | \$224.9                              |
| 33.3%   | 42,400                    | \$299.8                              |

### 3. Excess Costs Associated with LGBT Binge Drinking

Our analysis of Florida's 2012 BRFSS data found that 26.5% of LGBT respondents were binge drinkers, compared to 11.8% of non-LGBT respondents. Applying the percentage (15.3%) of excess prevalence of binge drinking among LGB people in Florida to the state's LGBT population (663,000 adults)<sup>399</sup> indicates that there are approximately 101,400 more LGBT adults who currently binge drink in Florida 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 Florida.<sup>400</sup> The study found that the annual total cost of binge drinking in Florida in 2010 was \$11.854 billion.<sup>401</sup> Associated costs included loss in productivity in the workplace, health care costs, and other losses such as costs to the criminal

<sup>395</sup> See Section I.A. *supra*.

<sup>396</sup> JILL S. RUMBERGER, CHRISTOPHER S. HOLLENBEAK, & DAVID KLINE, POTENTIAL COSTS OF SMOKING CESSATION: AN OVERVIEW OF THE APPROACH TO STATE SPECIFIC ANALYSIS (2010), available at <http://www.lung.org/assets/documents/tobacco/economic-benefits.pdf>.

<sup>397</sup> *Id.* at 168-69.

<sup>398</sup> To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Nov. 23, 2016).

<sup>399</sup> See Section I.A.1. *supra*.

<sup>400</sup> Jeffrey J. Sacks, Katherine R. Gonzales, Ellen E. Bouchery, Laura E. Tomedi, & Robert D. Brewer, 2010 *National and State Costs of Excessive Alcohol Consumption*, 29 AM. J. PUBLIC HEALTH 73 (2015).

<sup>401</sup> *Id.* at 77.



justice system related to binge drinking.<sup>402</sup> We adjusted the cost per binge drinker for inflation<sup>403</sup> for an estimated cost per binge drinker in Florida in 2017 of \$5,342.10.<sup>404</sup>

For the reasons described above, we estimate that Florida 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 Florida of approximately \$135.7 to \$180.6 million.

**Table IV.c. Reduction in Costs Associated with Binge Drinking in Florida if LGBT Disparity Were Reduced**

| Reduction in disparity between LGBT and Non-LGBT Floridians | LGBT individuals impacted | Annual reduction in costs (millions) |
|---|---------------------------|--------------------------------------|
| 25%   | 25,400                    | \$135.7                              |
| 33.3%   | 33,800                    | \$180.6                              |

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

<sup>402</sup> *Id.* at 75.

<sup>403</sup> To adjust for inflation, we used the U.S. Bureau of Labor Statistics' inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited July 11, 2017).

<sup>404</sup> In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in Florida in 2009 (data from 2010 were not available). According to the 2009 Florida BRFSS, 13.3% of the respondents were binge drinkers. BUREAU OF EPIDEMIOLOGY, FLA. DEP'T OF HEALTH, RESULTS FROM THE 2000 TO 2009 FLORIDA BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM (BRFSS) 3, [http://www.floridahealth.gov/statistics-and-data/survey-data/behavioral-risk-factor-surveillance-system/reports/\\_documents/flbrf.pdf](http://www.floridahealth.gov/statistics-and-data/survey-data/behavioral-risk-factor-surveillance-system/reports/_documents/flbrf.pdf) (last visited July 11, 2017). Applying this percentage to Florida's adult population in 2010 (18,843,326) (data from 2010 American Community Survey) indicates that 2,506,162 people in Florida were binge drinkers in 2010. Dividing the total cost (\$11,854,000,000) by the number of binge drinkers (2,506,162) indicates that the cost per binge drinker in Florida was \$4,729.94 in 2010. We assume that the costs associated with binge drinking would be the same in 2017 as they were in 2010 (adjusted for inflation).

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

School-based bullying of LGBT youth is pervasive<sup>405</sup> and associated with an increased likelihood of school dropout,<sup>406</sup> poverty,<sup>407</sup> and suicide.<sup>408</sup> Educational attainment, especially high school completion, is a significant determinant of economic status and health across the life course.<sup>409</sup> As a result, early experiences of harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."<sup>410</sup>

Laws in Florida do not adequately protect LGBT youth from bullying in schools.<sup>411</sup> To the extent the state's legal landscape and social climate foster an environment that is not inclusive of LGBT youth, the state is likely to experience losses in human capital, as well as costs associated with an overrepresentation of LGBT youth in foster care, the juvenile justice system, and among the homeless. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

### 1. School Outcomes

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

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<sup>405</sup> See, e.g., Kate L. Collier, Gabriël van Beusekom, Henny M.W. Bos & Theo G.M. Sandfort, *Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychological and Health Outcomes*, 50 J. SEX ROLES 299 (2013); Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 J. ADOLESCENT HEALTH 366 (2010); Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth Risk Behavior Surveillance, Selected Sites, United States, 2001–2009*, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 11 (2011); JOSEPH G. KOSCIW ET AL., GLSEN, *THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS* (2015), available at

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

<sup>406</sup> Jorge Sraibstein & Thomas Piazza, *Public Health, Safety and Educational Risks Associated with Bullying Behaviors in American Adolescents*, 20 INT. J. ADOLESCENT MED. HEALTH 223 (2008).

<sup>407</sup> Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 ECONOMICS EDUC. REV. 387 (2008).

<sup>408</sup> Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 INT. J. ADOLESCENT MED. HEALTH 133 (2008).

<sup>409</sup> John Lynch & George Kaplan, *Socioeconomic Factors*, in SOCIAL EPIDEMIOLOGY 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

<sup>410</sup> M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, *supra* note 348 at 26.

<sup>411</sup> See Section I.B., *supra*.

According to 2015 YRBS data, LGB students in Florida were more than twice as likely as non-LGB students to report skipping school because they felt unsafe (15.8% v. 6.6%).<sup>412</sup> Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB<sup>413</sup> high school students reported significantly higher rates of skipping school because they felt unsafe.<sup>414</sup> And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGBQ students were almost three times as likely to report not going to school because of safety concerns as their non-LGBQ counterparts.<sup>415</sup>

Studies based on convenience samples also indicate that many LGBT youth skip school due to bullying and harassment. A 2009 report by the National Education Association found that, nationwide, approximately half of LGBT students who said that they experienced frequent or severe verbal harassment because of their sexual orientation or gender identity missed school at least once a month, and around 70% who said they experienced frequent or severe physical harassment missed school more than once a month.<sup>416</sup> The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.<sup>417</sup> In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 14% said the harassment was so severe that they had to leave school as a result.<sup>418</sup> Other studies have found that bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism.<sup>419</sup>

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<sup>412</sup> Kann et al., *supra* note 194.

<sup>413</sup> The study defined LGB students as those students who reported in response to the survey that they had sexual contact with others of the same-sex or both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 AM. J. PUBLIC HEALTH, 255, 256 (2014).

<sup>414</sup> *Id.*

<sup>415</sup> Kann et al., *supra* note 194 at 12.

<sup>416</sup> ROBERT KIM, NATIONAL EDUC. ASSN., REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEPPING OUT OF THE CLOSET, INTO THE LIGHT 30 (2009), <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

<sup>417</sup> *Id.*

<sup>418</sup> THE NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, *supra* note 161.

<sup>419</sup> E.g., Joseph P. Robinson & Dorothy L. Espelage, *Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice*, 41 EDUC. RESEARCHER 309 (2012); Alicia L. Fedewa & Soyeon Ahn, *The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature*, 7 J. GLBT FAMILY STUDIES 398 (2011); Shelley L. Craig & Mark S. Smith, *The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth*, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>; MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <http://www.mass.gov/cgly/YRBS09Factsheet.pdf> (last visited May 3, 2016); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 SOC. PROBLEMS 523 (2007); Stephen T. Russell, Hinda Seif & Nhan L. Truong, *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 J. ADOL. 111 (2001).

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

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

In addition to the human toll, there are direct costs to the government and social service systems created by the overrepresentation of LGBT youth in these systems.<sup>420</sup> LGBT youth are overrepresented in the foster care system; 19% of youth in foster care in Los Angeles County are LGBT, 2-3 times their proportion of the general youth and young adult population.<sup>421</sup> Research suggests that LGBT youth are more likely to experience housing instability while in foster care than non-LGBT youth.<sup>422</sup> And, while some of those who age out of foster care transition successfully into adulthood, many do not.

Of those who age out of foster care: more than 1 in 5 will become homeless after age 18; 1 in 4 will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19 year olds); fewer than 3% will earn a college degree by age 25 (compared to 28% all 25 year olds); and at the age of 24, only half will be employed.<sup>423</sup>

In response to surveys conducted in 2012 and 2015, homeless youth service providers across the U.S. estimated that between 20% and 40% of their clients were LGBT.<sup>424</sup> A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth in public high school, were homeless, compared to 3% of heterosexual youth.<sup>425</sup>

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<sup>420</sup> For an example of costs to the foster care system due to the overrepresentation of LGBT youth in foster care, and their increased likelihood of having multiple placements and being in congregate care, see BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST., SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES 41 (2014).

<sup>421</sup> *Id.* at 6.

<sup>422</sup> *Id.* (finding that LGBTQ youth in foster care have a higher total number of placements, are more likely to be in congregate care, and are more likely to have experienced homelessness).

<sup>423</sup> JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF: COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE 5 (2013), [http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief\\_EMBARGOED%20until%20May%206.pdf](http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%206.pdf).

<sup>424</sup> LAURA DURSO & GARY J. GATES, WILLIAMS INST., SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICES PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS 3 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; SOON KYU CHOI, BIANCA D.M. WILSON, JAMA SHELTON & GARY J. GATES, WILLIAMS INST., SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH EXPERIENCING HOMELESSNESS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. See also WILSON ET AL., *supra* note 420.

<sup>425</sup> Heather L. Corliss, Carol S. Goodenow, Lauren Nichols & S. Bryn Austin, *High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample*, 9 AM. J. PUB. HEALTH 1683 (2011).

Similarly, a 2015 survey of homeless youth in Atlanta, Georgia, found that 28.2% of the respondents identified as LGBT.<sup>426</sup>

Data from the National Survey of Youth in Custody indicates that 12.2% of youth in custody identify as LGBT.<sup>427</sup> Another study found that LGBT youth made up 15% of detained youth.<sup>428</sup> Studies have shown that LGBTQ youth are more likely to be detained for offenses such as running away, truancy, curfew violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.<sup>429</sup> Research also shows that in some instances, LGBT youth have been punished for defending themselves against their harassers,<sup>430</sup> and there is evidence of selective enforcement against LGBT youth.<sup>431</sup>

Collectively, school-based harassment and family rejection contribute to significant “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”<sup>432</sup> For example, nationally, the Jim Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year. The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual cohort.

## CONCLUSION

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

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<sup>426</sup> AYCNA 2016 Key Findings, Atlanta Youth Count, <http://atlantayouthcount.weebly.com/2016-key-findings.html> (last visited Nov. 29, 2016).

<sup>427</sup> ALLEN J. BECK & DAVID CANTOR, BUREAU OF JUSTICE STATS., U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2012 at 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

<sup>428</sup> Laura Garnette et al., *Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth and the Juvenile Justice System*, in JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE 162 (Francine T. Sherman & Francine H. Jacobs eds., 2011).

<sup>429</sup> 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](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>.

<sup>430</sup> MAJD ET AL., *supra* note 429 at 77.

<sup>431</sup> Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

<sup>432</sup> *Id.*