

May 11, 2018

Jennifer Truman
Bureau of Justice Statistics
810 Seventh Street, NW
Washington, D.C. 20531
VIA EMAIL: Jennifer.Truman@ojp.usdoj.gov

RE: National Crime Victimization Survey (83 Fed. Reg. 15624)

Dear Ms. Truman,

The undersigned organizations write to oppose the Bureau of Justice Statistics' (BJS) proposal to remove sexual orientation and gender identity questions for 16- and 17-year-old respondents to the National Crime Victimization Survey (NCVS). Our organizations support policy and practices that promote the health and well-being of all youth, including youth who are lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ). The data generated by these questions are crucial to understanding the scope and nature of criminal victimization of LGBTQ youth, and developing informed, evidence-based public policy. Eliminating these questions would deprive the public and policy-makers of this critical information, and reinforce the invisibility, disempowerment, and vulnerability of LGBTQ youth.

Data Documenting the Vulnerability of LGBTQ Youth Has Led to Critical Policy and Practice Reforms

Research has documented bias directed at LGBTQ youth in multiple settings, and the resulting risks to their health and safety. Since 1999, the National School Climate Survey (NSCS) has documented high levels of harassment, mistreatment, and victimization of LGBT students, as well as a correlation between hostile school environments and poor educational and psychological outcomes.¹ LGBTQ youth have a 120% increased risk of experiencing homelessness than their non-LGBTQ peers.² LGBTQ youth constitute 19% of youth in the child welfare system, which is 1.5 to 2 times their estimated numbers in the general population.³ Compared with their non-LGBTQ peers, LGBTQ foster youth experience multiple obstacles to

¹ John G. Kosciw, Emily A. Greytak, Noreen M. Giga, Christian Villenas, & David J. Danischewski, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN (2016), <https://www.glsen.org/article/2015-national-school-climate-survey> [hereinafter "GLSEN"].

² Matthew Morton, A. Dworsky, & G. M. Samuels, *Missed opportunities: Youth homelessness in America*. CHAPIN HALL AT THE UNIVERSITY OF CHICAGO (2017), <https://www.chapinhall.org/wp-content/uploads/VoYC-LGBTQ-Brief-FINAL.pdf>.

³ Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.

obtaining permanent families, including a higher number of total placements while in care and higher likelihood of placement in group care.⁴ LGBTQ and gender nonconforming youth represent 20% of youth in juvenile detention nationally, and are twice as likely as their non-LGBTQ and gender conforming peers to have a history of homelessness and involvement in the child welfare system.⁵ Research conducted by the BJS shows that LGB youth confined in juvenile facilities are at significantly higher risk than their heterosexual peers for sexual assault by other youth.⁶ Research specific to the experiences of transgender youth in juvenile facilities is not available and the lack of this data demonstrates why comprehensive data collection, inclusive of sexual orientation, gender identity and gender expression, is so critical to understanding the needs and experiences of LGBTQ youth.

While these data demonstrate a disturbing pattern of risk and disparities across multiple settings, they have also raised awareness and informed critical changes in policy and practice aimed at decreasing risk and promoting the health and well-being of LGBTQ youth. The NSCS has documented the positive impact of supportive student clubs, LGBT inclusive curriculum, comprehensive anti-bullying policies, and supportive educators.⁷ The overrepresentation and vulnerability of LGBTQ youth in child welfare and juvenile justice systems has led to the adoption of national standards of care,⁸ state and local nondiscrimination policies,⁹ and training curricula for agency personnel, facility staff, and legal professionals.¹⁰ Data compiled by BJS pursuant to the Prison Rape Elimination Act (PREA) supported the adoption of federal regulations that extend specific protections aimed at ensuring the safety of LGBT and intersex youth confined in juvenile justice facilities.¹¹

The continued gathering of data about LGBTQ youth is essential to the development of sound public policy. Adoption of the proposal to remove sexual orientation and gender identity questions for 16- and 17-year-old respondents to the NCVS would deprive policymakers of information critical to understanding and responding to violence and other crimes against LGBTQ youth. These data are particularly important because the NCVS includes questions about unreported crime, and thus provide a fuller picture than other federal data sets. Maintaining collection of these data would support the creation of more effective, evidence-based policies

⁴ *Id.* at 6.

⁵ Angela Irvine & Aisha Canfield, *Reflections on New National Data on LGBQ/GNCT Youth in the Justice System*, 6 LGBTQ POLICY J. AT THE HARVARD KENNEDY SCHOOL 27 (2017).

⁶ Allen J. Beck, David Cantor, John Hartge, & Tim Smith, *Sexual Victimization in Juvenile Facilities Reported by Youth*, BUREAU OF JUSTICE STATS. (2013), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4656>.

⁷ GLSEN, *supra*, note 1.

⁸ *See, e.g.* Shannan Wilber, Caitlin Ryan & Jody Marksamer, *CWLA Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care* (2006); ANNIE E. CASEY FOUND., *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* (2015).

⁹ THE EQUITY PROJECT, <http://www.equityproject.org/type/policy/index.html> (last visited May 9, 2018).

¹⁰ *See, e.g.*, EQUITY PROJECT, *Toward Equity Training Curriculum* (2015), http://www.equityproject.org/wp-content/uploads/2015/01/Equity_Curriculum_Complete.pdf.

¹¹ 28 C.F.R. Part 115.

and interventions aimed at reducing violence against LGBTQ youth and improving services to LGBTQ youth who are victimized.

The Purported Rationale Does Not Justify the Proposal

The sole justification offered for removing the sexual orientation and gender identity questions is “the potential sensitivity of these questions for adolescents.”¹² However, this rationale is undermined by the number of population-based surveys that have successfully collected these data from youth for many years—including surveys administered by BJS. The National Survey of Youth in Custody (NSYC) includes a measure of sexual orientation for youth over the age of 14,¹³ and has provided important information about disproportionate incarceration and sexual victimization of LGB youth in custody.¹⁴ The CDC’s National Youth Risk Behavior Risk Survey (YRBS) includes respondents as young as 13 and has included sexual orientation measures since 2015.¹⁵ In 2015, more than 15,500 youth from across the country filled out the YRBS survey on their own, anonymously at school.¹⁶ The National Survey of Family Growth, which includes respondents as young as 15, has included a sexual orientation behavior measure for many years.¹⁷ The California Health Interview Survey has asked youth about their gender expression since 2015.¹⁸ The data generated by these surveys demonstrate that youth are both able and willing to answer questions about sexual orientation and gender identity.

Based solely on the unsupported speculation that the questions are “potentially sensitive for adolescents,” BJS proposes to eliminate the questions altogether for youth respondents. BJS offers no indication that it has sought or received any feedback from youth or individuals who administer the survey about the questions or recommendations for addressing potential concerns. Nor does it explain why these specific questions are more sensitive than questions about forced or unwanted sexual activity (question 43), physical, mental, or emotional disability (question

¹² 83 Fed. Reg. 15634 (Apr. 11, 2018).

¹³ BUREAU OF JUSTICE STATS., DATA COLLECTION: NATIONAL SURVEY OF YOUTH IN CUSTODY (NSYC), <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=321> (2012).

¹⁴ Bianca D.M. Wilson et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. YOUTH & ADOLESCENCE 1547 (2017); Alan J. Beck, A. J. et al., *Facility-level and individual-level correlates of sexual victimization in juvenile facilities*, BUREAU OF JUSTICE STATS. (2012); Leanne Heaton, David Cantor, Carol Bruce, Wijia Ren, John Hartge, Allen J. Beck, *Facility-Level and Individual-Level Correlates of Sexual Victimization in Juvenile Facilities (NCJ Publication No. 249877)*, BUREAU OF JUSTICE STATS. (2016), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5663>.

¹⁵ Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9-12—United States and Selected Sites, 2015*, 65 MORBIDITY & MORTALITY WEEKLY REPORT 1, 11, 15 (Aug. 12, 2016), <https://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>.

¹⁶ *Id.* at 3-4.

¹⁷ See Anjani Chandra et al., *Sexual Behavior, Sexual Attraction, and Sexual Identity in the United States: Data From the 2006–2008 National Survey of Family Growth*, 36 NATIONAL HEALTH STATS. REPORTS 1 (Mar. 3, 2011), <https://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf>.

¹⁸ Bianca D.M. Wilson et al., *Characteristics and Mental Health of Gender Nonconforming Adolescents in California*, WILLIAMS INST. & UCLA CTR. FOR HEALTH POL’Y RES. (2017), <http://healthpolicy.ucla.edu/publications/Documents/PDF/2017/gncadolescents-factsheet-dec2017.pdf>.

170), or citizenship status (question 82). The current methodology gives youth the option of declining to answer questions about sexual orientation or gender identity, or choosing “don’t know,” “something else,” or “none of these.” Elimination of the questions for youth respondents would foreclose disclosure entirely, and deprive youth of the choice to decide for themselves whether and how to answer the questions. This result would reinforce the invisibility of LGBTQ youth, and prevent consideration of their experiences of criminal victimization. Given that BJS currently collects these data, the proposal to reverse the practice conveys a troubling message that LGBTQ youth are not a priority to BJS.

Conclusion

We urge BJS to continue to collect sexual orientation and gender identity data from youth respondents to the NCVS, and to adopt more effective and narrowly tailored solutions to remedy concerns about the sensitivity of the questions. We recommend that BJS solicit and consider the recommendations of youth, including LGBTQ youth, about the efficacy of the questions and proposals to create conditions that make it safer and more comfortable for youth to answer them.

Sincerely,



Shannan L. Wilber, JD
Youth Policy Director
National Center for Lesbian Rights



M. Currey Cook
Counsel and Youth in Out-of-Home Care Project Director
Lambda Legal

Center for Juvenile Justice Reform
Georgetown University

Child Welfare League of America

American Civil Liberties Union

Los Angeles LGBT Center

Equality California

Equality North Carolina

National Council of Jewish Women

The Trevor Project

Gender Spectrum

GLMA: Health Professionals Advancing LGBT Equality

CenterLink: The Community of LGBT Centers

National LGBTQ Task Force

Transgender Law Center

Voice for Adoption

Whitman Walker Health