


Disproportionality and Disparities among Sexual Minority Youth in Custody

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Abstract Research indicates that sexual minority youth are disproportionately criminalized in the U.S. and subjected to abusive treatment while in correctional facilities. However, the scope and extent of disparities based on sexual orientation remains largely overlooked in the juvenile justice literature. This study, based on a nationally representative federal agency survey conducted in 2012 ($N = 8785$; 9.9% girls), reveals that 39.4% of girls and 3.2% of boys in juvenile correctional facilities identified as lesbian, gay, or bisexual. These youth, particularly gay and bisexual boys, report higher rates of sexual victimization compared to their heterosexual peers. Sexual minority youth, defined as both lesbian, gay, and bisexual identified youth as well as youth who identified as straight and reported some same-sex attraction, were also 2–3 times more likely than heterosexual youth to report prior episodes of detention lasting a year or more. Implications for future research and public policy are discussed.

Keywords Juvenile justice · Detention · Sexual minorities · Sexual violence

Introduction

Recent scholarship and public policy reports have indicated that lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) youth, particularly LGBTQ youth of color, are overrepresented in the U.S. juvenile justice system and subjected to harsh and inequitable conditions of confinement (Center for American Progress and Movement Advancement Project [CAP and MAP] 2016; Dank et al. 2015; Feinstein et al. 2001; Hunt and Moodie-Mills 2012; Irvine and Canfield 2016; Majd et al. 2009). The introduction of explicit guidelines related to LGBT prisoners and detainees in the 2012 federal standards required under the Prison Rape Elimination Act (PREA) (2003) has signaled institutional awareness of the particular vulnerabilities of LGBT youth to sexual violence in detention. Despite increased attention, juvenile justice researchers and advocates for reform have largely overlooked the potential relevance of sexual orientation and gender identity in shaping patterns of criminalization and the subsequent consequences of correctional confinement.

Of the more than 54,000 young people living in juvenile detention facilities in 2013, the majority were reported as male (84%) and as racial/ethnic minorities (68%) (Hockenberry 2016). Trend analyses from the biennial Census of Juveniles in Residential Placement (CJRP) have indicated that the proportion of girls in custody is increasing, and when patterns were analyzed by race and gender (coded as male or female), Black girls emerged as the fastest growing group of incarcerated youth overall (Crenshaw et al. 2015). Drawing on data from the 2013 CJRP and general population estimates, the W. Hayward Burns Institute (2016) calculates that Black youth overall are 4.3 times, Native American youth are 3.7 times, and Latino/a youth are 1.6 times more likely than White youth to spend at least one

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night in detention, and that Black and Latino youth spend longer periods incarcerated than do White youth.

While research and policy reform efforts have focused principally reducing the disproportionate confinement of boys of color, and in formulating differing programmatic responses to address the unique needs of incarcerated girls, critical race and feminist scholars have called for greater precision in understanding factors influencing youth criminalization at the intersections of race and gender, as well as other identity-based categories of analysis (Nanda 2011; Crenshaw et al. 2015; Richie 2005). In order to establish a more complex view of patterns of criminalization at the intersections of race, gender, and sexual orientation, Richie proposes investigations into the rate of imprisonment and processes of criminalization of LGBTQ people. In particular, she argues that the experiences of Black lesbian adolescents could advance theoretical frameworks that “enable an analysis of race and class to work alongside heteronormative imperatives” (p 82).

Whether and how to construct and incorporate sexual orientation and gender identity as an analytic category into research and action in criminal justice is a matter of some debate among scholars and advocates (see, e.g., Ball 2014; Woods 2014; Mogul et al. 2011). This article investigates the rate of imprisonment and experiences of sexual minority youth by employing an intersectional framework that acknowledges “sexual orientation and gender identity differences are imbued with meanings that tangibly influence people’s lives, without relying on fixed notions of identity to assume that those differences either have universal meanings or create universal experiences.” (Woods 2014, p. 6). As previous studies suggest, sexual minority (i.e., lesbian, gay, bisexual and other non-heterosexual) and gender minority (i.e., transgender and gender nonconforming) youth are overlapping categories, but distinct subgroups among youth in detention (Irvine 2010). For the purposes of the current study, we focus only on the significance of sexual orientation, as the currently available national data present major methodological challenges to identifying transgender and other gender minority youth that warrant separate analysis and discussion (see, Herman et al. 2016).

Sexual Minority Youth and Disproportionate Juvenile Justice System Involvement

Current best estimates of the proportion of sexual minority youth and young adults in the general population range from 6–8% (Kann et al. 2016; Wilson and Kastanis 2015). These estimates generally include youth who identify with a sexual minority label, such as lesbian, gay, or bisexual (LGB), as well as those who report sexual or romantic attractions to those of the same-sex but do not identify as LGB. Initial reports from the NSYC-2 conducted by the

Bureau of Justice Statistics (BJS) indicated that 12.2% of youth in state-run and state contracted facilities self-reported as “gay, lesbian, bisexual or other sexual orientations” (Beck et al. 2013, p. 20) which we presume to mean non-heterosexual. Previous studies using non-probability sampling techniques have also identified the overrepresentation of sexual minority youth in detention, ranging from 11–20%, depending on whether gender minority youth were included in the estimate (Irvine 2010; Irvine and Canfield 2016).

Gender differences in adolescent sexual orientation are meaningful and may provide context for analyses of LGB populations in state institutions. Recent surveys by the Centers for Disease Control and Prevention (CDC) suggest that among high school students ages 14–17 years old, nearly 12% of girls compared to less than 4.5% of boys identify as LGB (Kann et al. 2016). However, gender differences appear much more pronounced in studies of youth in the juvenile justice system. A 2008–2009 study with youth in pre-trial detention in six counties ($N = 2100$) found that 8% of boys and 23% of girls were sexual minorities (indexed by identity labels, reported attractions, and experiences of discrimination) (Irvine 2010); a more recent study found that the percentage of girls who are LGB in detention may be closer to 40% (Irvine and Canfield 2016). Studies conducted in other jurisdictions have found a similarly disproportionate number of lesbian and bisexual-identified girls involved in the juvenile justice system. For example, a 1998–1999 Ohio study found that among incarcerated youth statewide, 27% of girls compared to 5.2% of boys identify as LGB (Belknap et al. 2012). A 2008–2009 study focused only on girls in probation or supervised diversion programs in two Nevada jurisdictions reached nearly the same figure with 27.1% of respondents identifying as lesbian or bisexual (Buttar et al. 2013). The composition of youth in custody by gender, sexual orientation, race, and other factors has not been systematically studied (Robinson 2017). Irvine (2010) reports some variability in the proportion of sexual minority youth across major racial/ethnic groups among youth in pre-trial detention; yet, Buttar and colleagues (2013) did not find significant sexual orientation differences by ethnic identity among girls on probation and supervised diversion.

Pathways to Confinement—Significance of Sexual Orientation

Juvenile detention is often portrayed as a last resort, reserved for the most serious and violent youth offenders. In reality, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) estimates that less than a quarter of youth in custody in 2013 were charged with a violent crime

index offense (Hockenberry 2016). For the majority, their highest level charge involved property (21%), drugs (6%), public order offenses (11%), or a technical violation of a court order (24%); some had not been charged with an offense at all. Girls (11%) were far more likely to be in custody for status offenses (e.g., running away, truancy) when compared to boys (4%), as well as for technical violations (24 vs. 16%). Girls are also, on average, younger than incarcerated boys and more likely to be held in a private facility, while boys are more likely to spend longer periods of time in custody (Hockenberry 2016).

Dominant discourses on gender-based disparities in sentencing tend to focus on the persistent application of stereotypes about behavioral and emotional differences between boys and girls. For instance, these theories note that the disproportionate leniency for girls who commit violent crime when compared to boys often relies upon essentialist assumptions that girls are more likely to correct future behavior than boys (Chesney-Lind and Shelden 2013). In contrast, dominant theories explaining the disproportionate confinement of youth of color have centered on analyses of race/ethnic differences in youth involvement in criminalized activity or structural biases that lead to differential treatment of youth by law enforcement, courts, and corrections (Piquero 2008). Emergent literature on LGBTQ youth has generally brought together these theoretical positions by drawing links between known social, educational, economic, and health disparities for sexual minority youth and rates for juvenile justice system involvement, as well as evidence of disproportionate discipline and punishment (e.g., CAP and MAP 2016; Hunt and Moodie-Mills 2012). In doing so, some analysts follow a feminist-informed “pathways perspective” in highlighting the “systemic links between patterns of marginalization, victimization, offending, and criminal justice experiences” (see, e.g., Pasko 2008).

A growing body of research shows that sexual and gender minorities report higher rates of physical and sexual violence in childhood and adolescence than their heterosexual and cisgender counterparts, and that sexual minority girls and gender non-conforming youth are particularly vulnerable (Alvy et al. 2013; Dank et al. 2014; Friedman et al. 2011; Kann et al. 2016; Roberts et al. 2012; Walters et al. 2013). In several studies of sexual minority youth, experiences of past victimization and family rejection have been linked to mental health symptoms, substance use, HIV status, and a host of other serious health and wellness disparities (Marshal et al. 2009, 2011; Ryan et al. 2009). Unmet health and social service needs, mental health symptoms, and past trauma, in addition to race/ethnicity and gender, have been found to be associated with young people’s contact with the juvenile justice system, as well as their length of involvement (Maschi et al. 2008).

The collection of research on disparities experienced by LGBTQ youth appear to point to the possibility of a complex cycle of involvement in inter-related state institutions and systems. Studies indicate that sexual minority youth are overrepresented among homeless youth (Corliss et al. 2011; Durso and Gates 2012) and in the child welfare system (Wilson and Kastanis 2015) where they may be particularly susceptible to further victimization (Cochran et al. 2002; Mitchell et al. 2015; Woronoff et al. 2006). Sexual minority youth in the juvenile justice system are more likely than their heterosexual peers to report histories of home removal, group home or foster care placements, and/or homelessness (Irvine 2010; Irvine and Canfield 2016), as well as past experiences of victimization and self-harm (Belknap et al. 2012), dating violence and suicide attempts (Buttar et al. 2013). They are also more likely than heterosexual youth to report having been detained for offenses commonly associated with survival strategies, such as running away, truancy, technical violations, or prostitution (Irvine 2010; Garnette et al. 2011). In a community-based survey of sexual and gender minority youth who had traded sex for survival, most of whom youth of color, nearly one-fifth reported having weekly or more frequent police contact (Dank et al. 2015). For LGBTQ youth who come in contact with law enforcement, these interactions are recurrent and negative, particularly for gender non-conforming youth and youth of color (Amnesty International 2005; Dank et al. 2015; Graham 2014; Majd et al. 2009; Mountz 2016).

Drawing on the substantial literature on racial disparities in school punishment, scholars and advocates argue that a combination of racialized discipline and anti-LGBTQ hostility and violence in schools may disproportionately direct LGBTQ youth of color into the school-to-prison pipeline (Burdge et al. 2014; Meiners 2011; Mitchum and Moodie-Mills 2014; Snapp et al. 2015). LGBTQ middle and high school students have reported routine incidents of bias-based harassment, mistreatment, and physical and sexual violence in schools, enacted by both peers and staff (Kosciw et al. 2011). LGBTQ students further reported being blamed for their own victimization, being disciplined for acting in self-defense, and experiencing heightened scrutiny related to behavioral rules, such as displays of affection and dress codes (Burdge et al. 2014; Snapp et al. 2015). An analysis of the nationally representative National Longitudinal Study of Adolescent Health (Add Health), Himmelstein and Brückner (2011) found that non-heterosexual respondents were 1.25 to 3 times more likely than their heterosexual peers to report having been criminally sanctioned in adolescence, including police stops, arrests, and juvenile convictions. Interestingly, sexual minority respondents were not more likely to report higher rates of school expulsion than their heterosexual peers (ibid). However, a more recent cross-sectional analysis of the Dane County

Youth Survey (Wisconsin) found that LGBQ youth were more likely to report school suspensions, as well as juvenile justice system involvement (Poteat et al. 2016). In both studies, the differences in criminal sanctioning were particularly disparate between sexual minority and majority girls, and these differences were not sufficiently explained by differences in behavior. While both studies controlled for race in their statistical models, the likely intersecting effects of race, sex, and sexual orientation on disproportionate discipline and punishment remain under-examined (Richie 2005).

Dangers Related to Incarceration—Significance of Sexual Minority Status

There is a high prevalence of traumatic stress, depression, suicidal ideation, and substance use among youth in custody, which is frequently correlated with, but not completely explained by, past experiences of physical and sexual victimization (Abram et al. 2004; Ford et al. 2008; Saar et al. 2015; Sedlak et al. 2013). Correctional facilities and programs, which vary widely, are frequently misaligned with the system's own rehabilitative and public safety ideals and the needs of traumatized young people (see e.g., Abrams et al. 2005; Fagan and Kupchik 2011; Mendel 2010; Holman and Ziedenberg 2006). A report commissioned by OJJDP noted that correctional conditions frequently fail to meet several best practice guidelines (Sedlak and McPherson 2010). Other studies point to the deleterious consequences of adolescent incarceration on a range of health, education, and economic outcomes (Dierkhising et al. 2014; Holman and Ziedenberg 2006; Stokes et al. 2015; Teplin et al. 2012).

In addition to the myriad forms of violence and isolation that youth in custody experience, sexual minority youth may be particular targets for sexualized violence and administrative punishment while incarcerated. Studies with juvenile justice practitioners document widespread misperceptions and negative attitudes toward sexual minority youth that produce and enable inequitable treatment, neglect of health and medical issues, excessive use of force, sexual and physical victimization, and unwillingness to offer protection (Estrada and Marksamer 2006; Feinstein et al. 2001; Holsinger and Hodge 2014; Marksamer 2008; Majd et al. 2009; Pasko 2010). Further, scholars suggest that staff stereotypes of lesbian and bisexual girls as sexually predatory and aggressive may result in inequitable administrative sanctioning and further criminalization (Holsinger and Hodge 2014; Pasko 2010).

To date, there has been limited national data that assesses incarcerated youth's victimization and treatment inside juvenile correctional facilities (Robinson 2017). Findings from the 2003 Survey of Youth in Residential Placement

(SYRP), the first national anonymous survey of youth in custody, indicated that 29% of youth had been assaulted or threatened with assault while detained, with the vast majority indicating multiple incidents (Sedlak et al. 2013). Studies with samples of previously incarcerated young adults have indicated that the rates of victimization in custody may even be much higher (Dierkhising et al. 2014). However, existing studies have not collected information on sexual orientation and therefore do not contribute to the field's understanding of how sexual minority status affects youth experiences of multiple forms of victimization while in custody.

The NSYC-2 presents an important mechanism for gathering information from youth in custody anonymously, particularly concerning reports of sexual victimization. BJS analysis of the NSYC-2 published in 2016 indicated that 7.6% of youth in custody report staff sexual misconduct and 2.5% report youth-on-youth victimization (Beck et al. 2016) in the last 12 months (or since being detained). Beck and colleagues (2016) further found that sexual minority youth are far more likely to report sexual victimization by peers while incarcerated. However, their analysis did not further disaggregate victimization rates by gender, nor did it examine models in which sexual orientation is a predictor of multiple characteristics and outcomes, controlling for a range of covariates. The current study builds on the BJS research by using the NSYC-2 to examine the combined role of gender and sexual minority status in rates of victimization and overrepresentation in custody settings. It further expands on current knowledge about incarcerated sexual minority youth by exploring key demographic characteristics of sexual minority in custody, including race/ethnicity, age, and education level, alongside prolonged periods of incarceration and rates of sexual victimization.

Current Study

In this article, we seek to advance knowledge about sexual minority youth confined in U.S. juvenile correctional facilities. We focus on sexual minority youth in the 2012 National Survey of Youth in Custody-2 (NSYC-2), a nationally representative sample of juvenile correctional facilities which includes an indicator of sexual orientation. The current study's primary aims are to: (a) examine the proportion and characteristics of sexual minority youth in custody; and (b) assess the relationship between sexual orientation and custody-related experiences (i.e., victimization experiences and time in custody), and whether these relationships differed by gender. We assess the proportion of LGB identified youth in correctional facilities as compared with the estimated proportion of LGB identified youth

in the general population. We then conduct comparisons between incarcerated sexual minority youth and those that identified as heterosexual/straight, describing their demographic characteristics, including age, race, education and gender, and assessing their risks for prolonged periods of incarceration and sexual victimization while in custody. Gender analyses for the current article were limited to the “male” or “female” response categories, as presented in the NSYC-2 dataset. (In a separate article we discuss issues related to how gender was measured and the conflation of gender with sex assigned at birth, and review the data on incarcerated transgender youth and adults, as well as some of the methodological challenges in studying incarcerated transgender individuals using the available PREA datasets—see, Herman et al. 2016).

We hypothesized that sexual minority youth will be disproportionately represented among youth in custody compared to existing estimates of sexual minority youth in the general population and that sexual minority youth, particularly girls, will experience higher rates of victimization by staff and peers. We further hypothesized that sexual minority youth will experience disparities in custody outcomes, measured by time in custody.

Methods

Respondents to the second National Survey of Youth in Custody (NSYC-2) include 8707 adjudicated youth in custody in 326 juvenile correctional facilities in all 50 U.S. states. The NSYC is one of the mandated data collection efforts as part of the Prison Rape Elimination Act of 2003. Facilities that house youth detainees were sampled using a multistage stratified sample design and included state-owned and operated facilities, as well as locally or privately contracted facilities in 15 states where contracted facilities held at least 20% of all state adjudicated youth, or where fewer than 80 completed interviews were expected from youth held in state facilities. All facilities in the frame with 20 or more adjudicated youth were sampled; facilities with 10 to 19 adjudicated youth were sampled with probability proportional to size.

Youth received one of two questionnaires based on their age: youth aged 14 and younger received a questionnaire with less explicit sexual questions than youth over 14 years old. Consent was obtained either by the facility (i.e., in loco parentis) or by parental/guardian consent, with approximately 26% of potential youth respondents not participating due to lack of consent. Additionally, 8% of youth refused to complete the interview and 6% were non-respondent (e.g., not present, failed to complete, facility denied access). The survey was administered through touch-screen-audio-assisted-computer-self-interviewing (TACASI). Due to sampling

and consent procedures, the selected sample in the NSYC was older and had a tendency to have been adjudicated for more serious crimes compared to the 2006 Census of Juveniles in Residential Placement. The sample was weighted to account for the probability of selection and non-response. Replicate weights were used to correctly estimate standard errors accounting for the multistage stratified sample design of the NSYC-2.

According to analyses conducted by Beck et al. (2016), the majority of youth surveyed in the NSYC-2 were male (91%) and identified as Black (41.4%), white (36.2%), Hispanic (17.2%), “other” (3.2%) or two or more races (2%). Nearly a third (32.2%) were 18 or older, with the remaining being 17-years-old (28.3%), 16-years-old (22.2%), 15-years-old (11.3%) or 14-years-old and younger (5.8%).

Measures

Sexual orientation

Respondents’ sexual orientation was assessed with one question. Youth were asked: “Which of these best fits how you think of yourself? 1. Totally straight (heterosexual); 2. Mostly straight but kind of attracted to people of your own sex; 3. Bisexual—that is attracted to males and females equally; 4. Mostly gay (homosexual) but kind of attracted to people of the opposite sex; 5. Totally gay (homosexual); 6. Not sexually attracted to either males or females; or Don’t know.” The majority of respondents selected 1, and in the results of this study are denoted as “Straight.” Youth who selected 3, 4, and 5 are categorized here together as lesbian, gay, or bisexual (LGB). Youth who selected 2 are denoted as “mostly straight” based on previous research that indicates the unique identity formation and experiences of this group (e.g., Thompson and Morgan 2008). When referring to both LGB and mostly straight youth together, we use the encompassing term “sexual minorities” given that both categories represent transgressions against heteronormativity. Youth who selected 6, “Don’t know”, or refused to answer (.67% of sample) are not included in the analyses.

Gender

Youth were asked one question relating to sex or gender: “Do you think of yourself as: male, female, something else, or don’t know?” In this study, we used the data for those who indicated male or female and we refer to the construct as “gender”, rather than sex, because the question asked how respondents think of themselves and implied current gender identification. Though some youth included in this sample are over the age of 18, we refer to the participants as girls or

boys given their status in juvenile correctional facilities. An additional 51 respondents refused to report or reported “don’t know” which we leave out of the following analysis.

Race/ethnicity

Two questions were used to ascertain race/ethnicity: “Which of these describes your race? White, Black, Asian, American Indian Alaska Native, Native Hawaiian Other Pacific, Multiple Races.” And: “Which of these [Hispanic, Latino, or Spanish] categories describe you? Mexican American, Mexican, Cuban, Puerto Rican or Other Caribbean, Central or South American Spanish, Spanish, Multi Hispanic race.” In this study, non-Hispanic white youth are the reference category. All youth who identified as Hispanic, Latino, or Spanish are categorized as Hispanic/Latino. Youth who identified as non-Hispanic Black are categorized as Black. Due to the comparatively smaller number of LGB youth respondents who identified as Asian American Indian Alaska Native, and Native Hawaiian Other Pacific, or Multiple Races, these respondents are grouped together as “other race/ethnicity” in the descriptive analyses.

Age

Respondents reported their age at the time of the interview.

Education

Education was ascertained using two questions. Youth were asked: “As of today, what is the highest grade in school that you attended? 6th grade or less, 7th grade, 8th grade, 9th grade, 10th grade, 11th grade, 12th grade, some college or bachelor or higher, Don’t know.” They were then asked: “Did you complete that (grade/degree)?” We categorize grade level as whether the respondent had completed 8th grade or less, 9th grade, 10th grade, 11th grade, or 12th grade or more.

Length of previous incarceration

Two indicators were available to assess previous periods of incarceration. Youth were asked: “Before you came here, had the police or the court ever sent you to a place where you had to stay for at least one night?” Respondents who answered “yes,” were asked: “Before you came here, how much time had you been in places like that? 1. Less than 6 months; 2. 6 months to a year; 3. More than a year; or Don’t Know.” We categorized length of past incarceration as either less than 6 months, 6 months-to-one-year, or 1 year or more.

Victimization

Respondents received a male or female version of questionnaires to assess sexual victimization. Fifty-four questions relating to sexual behavior that were designed to disaggregate self-reports of consensual and non-consensual (e.g., forced, coerced) sexual activity with another youth in custody, as well as any sexual contact between the respondent and adult staff (all considered nonconsensual). For example, female questionnaires had a series of items such as “You put your mouth on someone’s vagina (or someone put their mouth on your vagina)” to which respondents answered “yes” or “no.” Then, respondents were asked a series of follow up questions regarding whether or not the behaviors occurred with staff or other youth, and whether or not force was involved. An example of a question indicating force is: “Did (this/any of these) ever happen because a youth at this facility used physical force or threat of physical force?” We examined differences in reported sexual victimization by staff and other youth, as well as injuries reported in the context of sexual victimization by staff and youth. All of the victimization variables are dichotomized to indicate whether a respondent reported victimization or not.

Analytic Strategy

Data were weighted to account for probability of selection, non-response, and post-stratified to reflect a facility’s population by inmate age, sex, race, time since admission, and sentence length. We report all results stratified by gender. We report proportions (percent and standard errors) by the sexual orientation analytic groups (LGB vs. mostly straight vs. straight), which are weighted and adjusted for the complex sampling procedure of the NSYC-2. We further report odds ratios from logistic regressions that adjust for demographics and, as indicated, the length of time in the facility when length of time in the facility could affect the risk for the dependent variable. For example, the risk for a youth to be sexually victimized may increase the more time he or she spends in a facility. We report on four variables related to victimization: any staff victimization; assault by other youth using force; and, among those who were assaulted: staff assault with injury and youth assault with injury. We did this for both boys and girls, resulting in 8 regressions and 16 hypothesis tests (because we analyzed LGB identity and mostly straight youth compared to straight youth). All regression models account for the complex survey design and incorporate the sampling and replicate weights supplied in the NSYC-2.

Results

Sexual Orientation

Among all respondents for the NSYC-2, the majority of respondents were boys who identified as straight (84.4%, SE = 0.5). The remaining subgroups were straight girls (3.8%, SE = 0.2), lesbian, gay, bisexual girls (3.6%, SE = 0.2), mostly straight boys (3.6%, SE = 0.3), gay, bisexual boys (2.9%, SE = 0.2), and mostly straight girls (1.7%, SE = 0.2). In all, 6.5% of youth in custody were LGB, and 11.8% were sexual minorities when grouping together youth who were LGB and mostly straight. Regarding the intersection of gender and sexual minority status, 39.4% of girls identified as LGB and another 18.5% indicated that they were mostly straight, and 3.2% of boys identified as GB with another 3.9% indicating that they were mostly straight.

Other Demographic Characteristics

Descriptive demographic characteristics of LGB, mostly straight, and straight respondents (age, race/ethnicity, and education) are presented separately for boys and girls (Table 1). Table 3 reports the odds ratios with 95% confidence intervals from logistic regression models testing differences between straight and sexual minority youth. Sexual minority boys were more likely to identify as white than black or Hispanic/Latino. When compared to their

straight peers, sexual minority boys had lower odds of identifying as Black vs. White (OR = 0.22 and 0.25, respectively for LGB and mostly straight respondents; and Hispanic (OR = 0.54 and 0.51, respectively for LGB and mostly straight respondents). There were not significant differences in racial identity among sexual minority and straight girls, with the exception that LGB girls were approximately 2 times more likely to identify as Hispanic/Latina than white (OR = 2.16). There was no relationship between LGB identity and education, except that mostly straight boys were approximately 2 times more likely to have achieved at least 11th or 12 grade education, compared to straight boys (OR = 1.93, 2.15, for 11th and 12th grade respectively). The significance of this relationship held after controlling for age and race.

Experiences in Custody

The majority of youth, regardless of sexual orientation and gender, were in custody for 12 months or less (Table 2) but more sexual minority than straight youth had been in custody 1 year or more. The odds of being in custody for 1 year or more was 2–3 times higher for LGB and mostly straight youth as compared to straight youth (Table 3).

Reports of sexual victimization by staff were lower for girls than boys and varied from 2.2% for straight girls to 15.1% for gay/bisexual boys. Youth-perpetrated sexual assaults and injury were the most commonly victimization experienced across all population subgroups. Sexual

Table 1 Sample characteristics by gender and sexual orientation of youth prisoners in 2012 (NSYC-2): Weighted percent (and standard errors)

	Boys				Girls			
	GB	MS	Straight	N ^a	LGB	MS	Straight	N ^a
Age								
Under 16	19.4 (3.0)	17.7 (2.7)	16.0 (0.5)	1231	18.9 (2.4)	25.9 (5.2)	23.5 (2.5)	183
16.00	19.3 (3.1)	23.4 (3.7)	21.6 (0.6)	1639	26.5 (2.8)	24.6 (3.8)	25.2 (2.5)	233
17.00	26.2 (3.3)	23.6 (2.8)	28.9 (0.7)	2146	25.7 (2.9)	24.5 (3.9)	29.2 (2.9)	226
18 or older	35.1 (3.5)	35.3 (3.1)	33.5 (0.7)	2898	28.9 (2.7)	25.0 (3.8)	22.1 (2.4)	229
Race/Ethnicity								
White	57.7 (4.2)	55.0 (4.0)	32.6 (0.7)	2406	36.3 (3.6)	48.6 (5.1)	49.2 (3.5)	288
Black	18.0 (3.2)	19.5 (3.5)	45.7 (0.8)	2713	34.4 (3.4)	20.9 (4.3)	30.5 (3.1)	202
Hispanic/Latino	17.1 (3.1)	15.2 (2.5)	17.8 (0.7)	1044	25.1 (3.0)	22.4 (4.2)	15.0 (2.2)	148
Other	7.2 (2.3)	10.4 (3.3)	3.9 (0.3)	255	4.2 (1.1)	8.2 (3.3)	5.2 (1.6)	33
Education								
8th grade or less	13.0 (2.5)	9.6 (2.3)	13.1 (0.5)	960	16.3 (2.9)	12.2 (3.2)	16.0 (2.1)	139
9th grade	20.3 (3.0)	21.8 (3.0)	25.0 (0.6)	1920	25.4 (2.9)	23.3 (3.8)	26.1 (2.6)	222
10th grade	19.0 (3.0)	21.7 (3.1)	23.7 (0.6)	1827	21.4 (2.5)	29.1 (5.0)	23.2 (2.6)	197
11th grade	17.8 (3.2)	19.7 (2.8)	17.9 (0.6)	1405	18.4 (2.7)	15.0 (3.0)	16.6 (2.2)	146
12th grades or more	29.9 (3.3)	27.3 (2.9)	20.4 (0.6)	1780	18.4 (2.3)	20.5 (3.6)	18.1 (2.6)	166

LGB gay, mostly gay, or bisexual, MS mostly straight, Straight entirely straight

^a Unweighted sample sizes

Table 2 Custody experience characteristics by gender and sexual orientation of youth prisoners in 2012 (NSYC-2): Weighted percent (and standard errors)

	Boys			N ^a	Girls			N ^a
	GB	MS	Straight		LGB	MS	Straight	
Time in custody								
Less than 6 months	45.1 (3.8)	45.1 (3.6)	54.2 (0.7)	4190	48.0 (3.1)	57.7 (5.0)	64.5 (3.0)	501
6–12 months	21.3 (3.0)	24.2 (2.8)	26.3 (0.6)	2086	35.0 (3.1)	25.6 (4.8)	26.4 (2.9)	246
1 year or more	33.6 (3.5)	30.7 (3.3)	19.5 (0.6)	1638	17.0 (2.4)	16.7 (3.6)	9.1 (1.6)	124
Victimization in custody								
Any staff ^b	15.1 (2.9)	10.2 (2.6)	8.9(0.4)	7816	4.6 (1.3)	2.2 (1.0)	2.2 (0.7)	867
Force by other youth	20.6 (3.0)	11.0 (2.6)	1.9 (0.2)	7806	6.7 (1.5)	13.2 (4.9)	4.1 (1.1)	865
Staff assault injury	4.3 (2.4)	1.6 (0.8)	0.7 (0.1)	7797	0.6 (0.4)	1.5 (0.9)	0.4 (0.3)	863
Youth assault injury	5.4 (1.7)	3.3 (1.1)	0.6 (0.1)	7802	1.2 (0.6)	8.7 (4.7)	0.6 (0.4)	865

LGB gay, mostly gay, or bisexual, *MS* Mostly straight, *Straight* entirely straight

^a Unweighted sample sizes

^b “Any Staff” refers to any sexual contact with staff

victimization by other youth using force varied from 1.9% for straight boys to 20.6% for gay/bisexual boys. Table 3 shows that sexual minority boys were significantly more likely than straight boys to experience sexual victimization (OR = 10.76 and 5.14, for GB and mostly straight boys, respectively). Mostly straight, but not LGB, girls were significantly more likely than straight girls to experience sexual victimization by other youth (OR = 3.13, and 1.80 [not significant]), respectively, Table 3). There were no significant differences in assaults by staff or injurious assaults by staff or youth among the sexual orientation groups (Table 3).

Discussion

Our findings suggest the significance of the intersection of sexual minority status, gender, and race/ethnicity in the characteristics and experiences of youth in custody. Sexual minority youth were disproportionately represented in juvenile detention, more likely to have been in custody for more than a year, and were more likely to report being sexually assaulted by other youth compared to straight youth. In this nationally representative sample of youth in custody, approximately 12% of the youth were sexual minorities. Overall, the finding that sexual minority are overrepresented is consistent with previous research conducted in urban pre-trial detention settings (Irvine 2010), while the number of sexual minority girls in detention exceeds prior estimates. As in the general population of youth, a greater proportion of girls than boys in detention were sexual minorities. However, this pattern was exacerbated within the custody setting, with 39.4% of girls identified as LGB. When the proportion of LGB girls are examined in combination with girls described as Mostly

Straight, almost 58% of girls were categorized as sexual minorities. This indicates that LGB-identified girls are disproportionately represented in correctional residential placements more than 3.3 times when compared to current estimates of 11.8% for girls in the general population (Kann et al. 2016). Conversely, 3.2% of boys identified as GB and when combined with boys described as Mostly Straight, 7% were sexual minorities. This suggests that GB boys may be nearly proportionately represented compared to general population estimates of 4.4% (Kann et al. 2016). While available estimates do not indicate significant racial/ethnic differences among sexual minority youth in the general population, our findings suggest that among youth in custody, sexual minority girls were more likely than their heterosexual peers to be Latina and sexual minority boys were more likely than their heterosexual peers to be White.

Explaining Overrepresentation of Sexual Minority Youth

The highly disproportionate representation of sexual minority girls, the majority of whom are girls of color, highlights the urgency for explanatory theories, as well as policy and practices, that move beyond unidimensional “LGBT vs. straight” frameworks for analyzing juvenile justice disparities. Importantly, these findings mirror those found among adults incarcerated in jails and prisons, which shows that sexual minority women are disproportionately incarcerated, especially sexual minority women of color (Meyer et al. 2017). The similar findings among girls and women may reflect similar experiences and structural biases across the lifespan leading to incarceration, or that juvenile detention represents an influential pathway to adult incarceration pathways, or both.

Table 3 Relationships between sexual orientation and custody characteristics, by gender (*N* = 8785)

DV	Sexual orientation	Gender			
		Boys		Girls	
		OR	95% CI	OR	95%CI
Age (ref = young)	LGB	1.00	0.71, 1.42	1.37	0.98, 1.92
	MS	0.96	0.72, 1.29	0.98	0.63, 1.52
Race (ref = white)					
Black	LGB	0.22**	0.14, 0.34	1.56	0.98, 2.49
	MS	0.25**	0.16, 0.39	0.68	0.38, 1.24
Hispanic/Latino	LGB	0.54**	0.34, 0.86	2.16**	1.28, 3.63
	MS	0.51**	0.34, 0.76	1.48	0.80, 2.76
Other	LGB	1.05	0.51, 2.15	1.02	0.42, 2.51
	MS	1.59	0.77, 3.28	1.56	0.53, 4.62
Education (ref = 8th grade or less)					
9th Grade	LGB	0.90	0.49, 1.64	0.80	0.42, 1.52
	MS	1.34	0.75, 2.37	1.97	0.77, 5.04
10th Grade	LGB	0.78	0.41, 1.47	0.58	0.29, 1.17
	MS	1.19	0.66, 2.14	2.23	0.85, 5.80
11th Grade	LGB	1.11	0.57, 2.17	0.94	0.42, 2.09
	MS	1.93**	1.03, 3.63	2.20	0.79, 6.15
12th Grade +	LGB	1.53	0.81, 2.90	0.75	0.34, 1.66
	MS	2.15**	1.15, 4.03	2.86	0.96, 8.49
Time in custody (ref = less than 6 months)					
6–12 months	LGB	1.10	0.73, 1.68	1.87**	1.19, 2.95
	MS	1.24	0.86, 1.80	0.86	0.48, 1.53
1 year or more	LGB	2.11**	1.39, 3.18	2.72**	1.33, 5.56
	MS	2.26**	1.47, 3.48	2.69**	1.26, 5.75
Sexual victimization (ref = no victimization)					
Any staff victimization	LGB	1.44	0.90, 2.31	2.02	0.73, 5.60
	MS	1.38	0.74, 2.59	0.92	0.18, 4.65
Force by other youth	LGB	10.76**	6.41, 18.04	1.80	0.69, 4.70
	MS	5.14**	2.50, 10.57	3.13**	1.17, 8.32
Staff assault injury	LGB	3.07	0.97, 9.70	N/A	N/A
	MS	1.74	0.52, 5.79	N/A	N/A
Youth assault injury	LGB	1.01	0.37, 2.70	1.41	0.10, 19.31
	MS	1.57	0.44, 5.68	9.85	0.74, 131.41

OR odds ratio, CI confidence interval, LGB gay, mostly gay, or bisexual, MS mostly straight, young 14 and under

***p* < 0.05

The literature on sexual minority youth suggests plausible, yet largely untested pathways explaining rates of LGB youth in custody. While our study contributes to the literature by providing empirical support for claims of sexual minority overrepresentation among girls, further research is needed to determine the root causes of this disproportionality. Some research suggests that sexual minority stress and discrimination leads to greater behavioral problems among LGB compared to heterosexual youth, which may explain overrepresentation in correctional facilities (Conover-Williams 2014). Regarding the observed gender

differences, studies using Add Health data suggest that lesbian and bisexual girls are more likely to participate in criminalized behaviors (ranging from assault to “acting rowdy”), whereas gay boys are less likely than bisexual and heterosexual boys to participate in such behavior (Beaver et al. 2016). But this may not sufficiently explain the overrepresentation we found among girls, and indicates a needed complexity in our understanding of detention among sexual minority boys. Future research is needed that assesses whether gay, bisexual and mostly straight boys are overrepresented in custody once rates of delinquent behavior are

taken into account, which may be the case if sexual minority boys are less likely to exhibit such behavior and yet are as likely to be sentenced to detention as heterosexual boys.

Risk-taking behavioral differences rooted in survival strategies, together with law enforcement bias, may be simultaneously explanatory and further influenced by gender, race, and other factors. Studies have interrogated how a young person's race, gender, and age can influence judicial decision-making, including out-of-home placements and length of sentencing, controlling for factors such as crime severity and criminal history (e.g., Bishop et al. 2010; Bridges and Steen 1998; Cochran and Mears 2014; Fader et al. 2014; Guevara et al. 2006). While the disproportionate number of sexual minority girls in juvenile justice system may be in part the result of the explicit and implicit bias of decision-makers, more research is needed to understand the extent to which sexual orientation is salient in juvenile justice processing, and how this relates to other youth characteristics (e.g., gender expression, race, history of mental health problems) and contextual factors (e.g., family support, homelessness history). Other explanations for the overrepresentation of sexual minority girls may also be relevant, including the hyper-sexualization and pathologization of sexual minority youth—all areas worthy of further research.

Gender conformity may also be a relevant factor to consider in developing intersectional explanatory models. To the extent that sexual minority girls are perceived to violate the societal norms of femininity (being weak, docile, and harmless), individual authorities and institutions might stereotype them as more aggressive, dangerous, and threatening, and thus deserving of punishment (Freedman 1996). Inequitable treatment may be particularly true for sexual minority girls who are gender nonconforming or who present as masculine in appearance or identity (e.g., stud, butch, or aggressive identified) (Eliason et al. 1992; Wilkinson 2008). Girls, especially Black and Latina girls, who appear more masculine in presentation may additionally be targets for gender-specific racism in which adolescent and young adult Black and Brown masculinities are targeted by law enforcement (Richardson and Goff 2014; Steffensmeier et al. 1998). However, while a number of LGB girls in custody may view themselves as gender non-conforming, many of these girls do not (e.g., see Irvine 2010). It is possible that self-perception of gender conformity is less important than others' perceptions and that girls of color who view themselves as gender-conforming may still be associated with masculine stereotypes within a dominant white European standard that operates within the U.S. (Perry 2011). Additional empirical research is needed to examine whether theorized connections between sexual minority status, gender conformity, and interactions with law enforcement among girls has merit.

Scholars and advocates have critiqued programs aimed at addressing racial disparities in the criminal justice system or the needs of criminalized girls as failing to attend to the specific experiences of girls of color (e.g., Crenshaw et al. 2015). Understanding and addressing disparities at the intersections of race, gender, and sexuality presents new challenges and opportunities. For example, the findings showing that sexual minority boys were far more likely to be White raises questions about the ways in which "queerness" may become a signifier for deviance from social and masculinity norms for a group of youth who have otherwise been protected by White and male privilege (Wilson et al. 2010). Further, similar to what we see among girls, the high rates of incarceration of boys of color in juvenile detention, disproportionate to their numbers in the general population, warrants continued analysis of biases and oppression experienced among Black and Latino boys and how this may or may not look different across sexual orientation groups with regard to surveillance by law enforcement. But like theories about the disproportionality of sexual minority youth generally, more empirical work needs to be conducted to understand how racialized and heteronormative gender stereotypes, discrimination, structural racism and sexism, and minority stress manifest to affect rates of criminalization among youth.

Sexual Victimization of Youth in Custody

Rates of sexual victimization by staff were high, ranging from 2–15% across respondent subgroups. Though victimization at the hands of facility staff were similar across sexual orientation groups, sexual victimization using force by other youth in custody was more commonly reported by sexual minority youth. These differences may be best understood within correctional environments in which staff biases, disciplinary cultures, and highly gendered programming may endorse or condone homophobic targeting while repressing consensual sexual expression. Reports of victimization by peers were especially high for GB boys. While this finding is not further examined in this study, research suggests that boys and men who are not perceived as adequately performing masculine stereotypes might be disproportionately targeted for sexual victimization (Javaid 2015; Weiss 2008). The literature on adult inmates indicates that gay men who are disproportionately targeted for abuse may be feminized by their abusers, and expected to take on a submissive or victimized role in sexual interactions among prisoners (Weiss 2008). It is unclear whether a similar dynamic may be occurring among sexual minority boys (and also transgender girls and gender non-conforming youth who are placed in facilities for boys). More research is needed to understand the mechanisms behind these observed differences. Given the supposed therapeutic and

rehabilitative goals of the juvenile justice system, it is particularly alarming to see high rates of sexual victimization for all youth in custody who are disproportionately youth of color and sexual minorities. This finding contributes to the increasing volume of scholars and advocates calling for massive reforms or abolition of the contemporary juvenile corrections systems (e.g., Dowd 2015; McCarthy et al. 2016; Meiners 2011; Mendel 2010).

Study Limitations

The data from the NSYC are primarily descriptive and do not allow us to assess important causal models such as the theoretical models discussed for overrepresentation of sexual minority youth in custody. For example, we cannot test hypotheses about the intersections of sexuality, race, and gender with respect to disproportionate sanctioning by considering criminal offense categories or sentencing outcomes. We also cannot account for a range of potential explanatory confounders, such as past experiences of victimization, sexual stigma, minority stress, absence of family support, involvement in the child welfare system, educational experience, psychological wellbeing, and a range of other factors which may help to better understand the pathways into and barriers to pathways out of custody for sexual minority youth, as well as higher rates of sexual victimization or longer duration incarceration. Despite these limitations, the NSYC-2, a probability sample of youth in juvenile facilities in the U.S., offers the most comprehensive view of the number and demographic characteristics of sexual minority youth in custody to date. The data also provide insights about gender differences in youth in custody. We have focused on the significance of gender differences (between respondents who identified themselves as female and those who identified as male) to better understand the overrepresentation and victimization rates of sexual minority youth in custody.

Missing from our analyses are young people who selected that they were “not sexually attracted to either males or females” and those that refused to answer the question on sexual orientation, a relatively small portion of the overall sample, with a potentially unique set of experiences. Further missing is a separate analysis for young people who may be transgender or otherwise gender non-conforming due to the limitations of the NYSC-2 instrument that was not designed to capture these data.

Conclusion

Our data have important policy and research implications. The Juvenile Justice and Delinquency Prevention Act (JJDP) brings attention to the need to reduce

disproportional representation of minority groups in detention. However, the JJDP focuses exclusively on youth of color (Coalition for Juvenile Justice 2016). This study highlights the importance of broadening the focus on disproportionality to other social statuses, such as sexual minority status. The findings provide some evidence for scholars' calls to analyze the simultaneous categories of gender and sexuality, as well as race (Richie 2005; Robinson 2017). That is, girls and sexual minority youth as independent social statuses comprise a relatively small proportion of all youth in custody, and yet sexual minority girls make up a substantial proportion of all girls in custody. This vast overrepresentation warrants future attention in public policy research. As the implementation of the Prison Rape Elimination Act continues to roll out, attention to the risks faced by LGB and other sexual minority youth in custody should receive particularly focused attention. In addition, the BJS-conducted research mandated by PREA should consistently disaggregate data by sexual minority status in order to allow us to understand the circumstances surrounding the detention of this uniquely vulnerable population of youth.

Our research demonstrated that sexual assault and victimization by other youth is a key area of vulnerability for both LGB and mostly straight youth. In this way, the study also highlights the ways that mostly straight youth experience similar types of risks as LGB-identified youth when compared to straight youth, which is commensurate with previous research among women with various sexual minority categorizations (Thompson and Morgan 2008). Future research and public policy could consider further examining the ways that non-heteronormative youth, along varying identities, attractions, and behaviors, may all be targeted in similar ways that explicitly LGB identified youth are targeted because they also diverge from the (hetero)norm. In this study, mostly straight boys also indicated significant differences than GB identified boys, suggesting that research is needed to distinguish these groups and consider the meaning of sexual identity and attraction as separate categories among boys as well as girls. Public policy guiding research efforts in these contexts should continue to match appropriate and accurate methods of measuring sexual minority statuses with the types of information needed to inform policy and practice.

Authors' Contributions B.W. conceived of the current study, participated in its design and coordination, developed the outline and structure of the manuscript, conducted analyses, and drafted the methods, results, and discussion of the manuscript; S.J. drafted the introduction of the manuscript, co-edited the remaining of the manuscript, and participated in the interpretation of the data; I.M. led the design of the overarching study, coordinated the original analyses of the data, and participated in preparing the manuscript; A.F. participated in the design and coordination of the study and performed the statistical analyses; L.S. participated in the design of the study,

participated in the interpretation of the data, and participated in preparing the manuscript; J.H. participated in the design of the study, participated in the interpretation of the data, and participated in preparing the manuscript. All authors read and approved the final manuscript.

Compliance with Ethical Standards

Conflict of Interest The authors declare that they have no competing interest.

Ethical Approval IRB approval was not necessary as this article analyzes publicly available de-identified data.

Informed Consent This study did not involve informed consent as the data were a secondary data source.

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