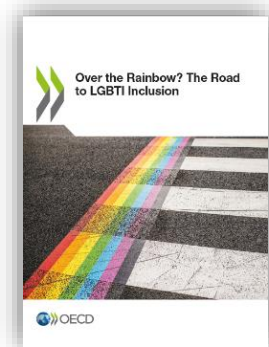


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



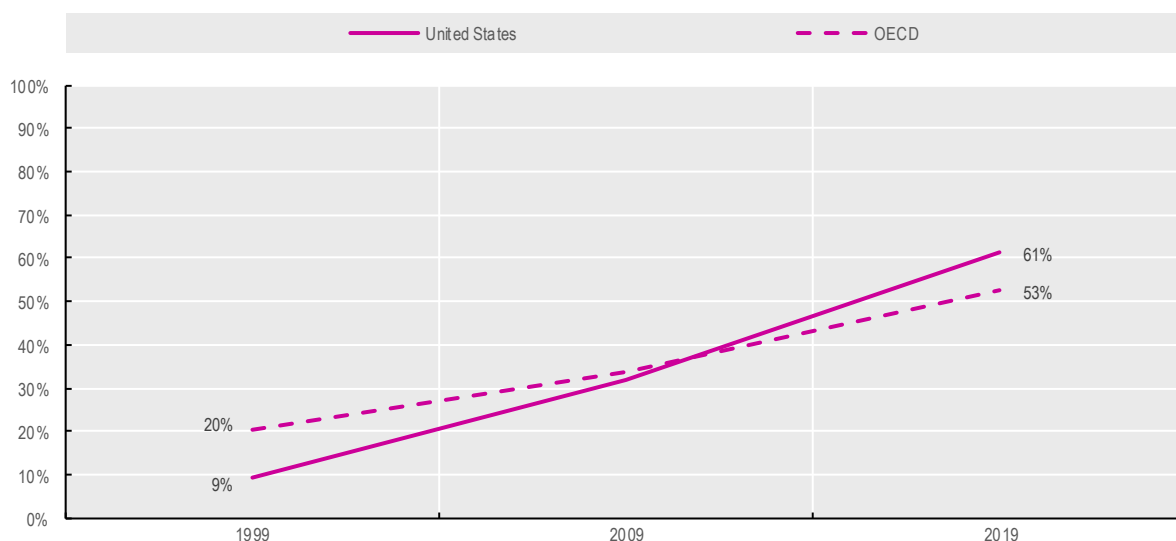
## Legal LGBTI inclusivity in the United States

### Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. The United States is one of 17 countries in the OECD that have most legal protections for sexual and gender minorities. These countries are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

### Figure 1: The strides made by the United States over the past two decades have been spectacular

Evolution of legal LGBTI inclusivity between 1999 and 2019 in the United States and OECD-wide



Note: Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Legal LGBTI inclusivity in the United States rose from 9% in 1999 to 61% in 2019, thereby showing that even countries that used to perform poorly can become high achievers (Figure 1). As of 2019, the United States performs better than the OECD average concerning laws addressing the unique challenges faced by lesbians, gay men and bisexual individuals (Figure 2). Since the 2015 ruling of the *Supreme Court*, the United States is the most populous country in the world to have established same-sex marriage nationwide. On top of being granted full legal recognition of their partnerships, U.S. same-sex couples are also treated on an equal footing (or nearly so) relative to different-sex couples concerning access to adoption and assisted reproductive technology. Finally, the United States is one of three OECD countries that ban conversion therapy for minors in some of their jurisdictions. Significant strides have also been made towards depathologising being transgender (Figure 2). In 2013, “gender identity disorder” was dropped from the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* maintained by the *American Psychiatric Association*. That said, only a minority of U.S. states no longer condition the change of gender marker in the civil registry on medical requirements. By contrast, depathologisation of legal gender recognition is already in force in 12 OECD countries nationwide.

### **How could the United States further improve legal LGBTI inclusivity?**

On 15 June 2020, the U.S. Supreme Court ruled, in a ground-breaking and historic decision, that sexual orientation and gender identity are included under “sex” as prohibited ground of employment discrimination in the *Civil Rights Act* of 1964. However, discrimination based on these grounds is still not prohibited in education, housing or public accommodations. Moreover, some U.S. states allow for a non-binary gender option in the civil registry for transgender and intersex individuals. By alleviating the pressure to categorise an intersex baby as either female or male, this legal provision contributes to reduce the perceived need for unconsented medically unnecessary sex-normalising interventions on intersex minors. Yet, the United States hasn’t taken significant other steps towards postponing such interventions (Figure 2). Therefore, further improving legal LGBTI inclusivity in the United States could entail: (i) passing the *Equality Act*, a bill in the U.S. Congress, that, if passed, would amend the *Civil Rights Act* to prohibit discrimination based on sexual orientation and gender identity in a broad range of fields; and (ii) engaging in preparatory steps towards guidelines banning unconsented non-vital medical interventions on intersex minors.

### **Policies to foster LGBTI inclusion in the United States, beyond LGBTI-inclusive laws**

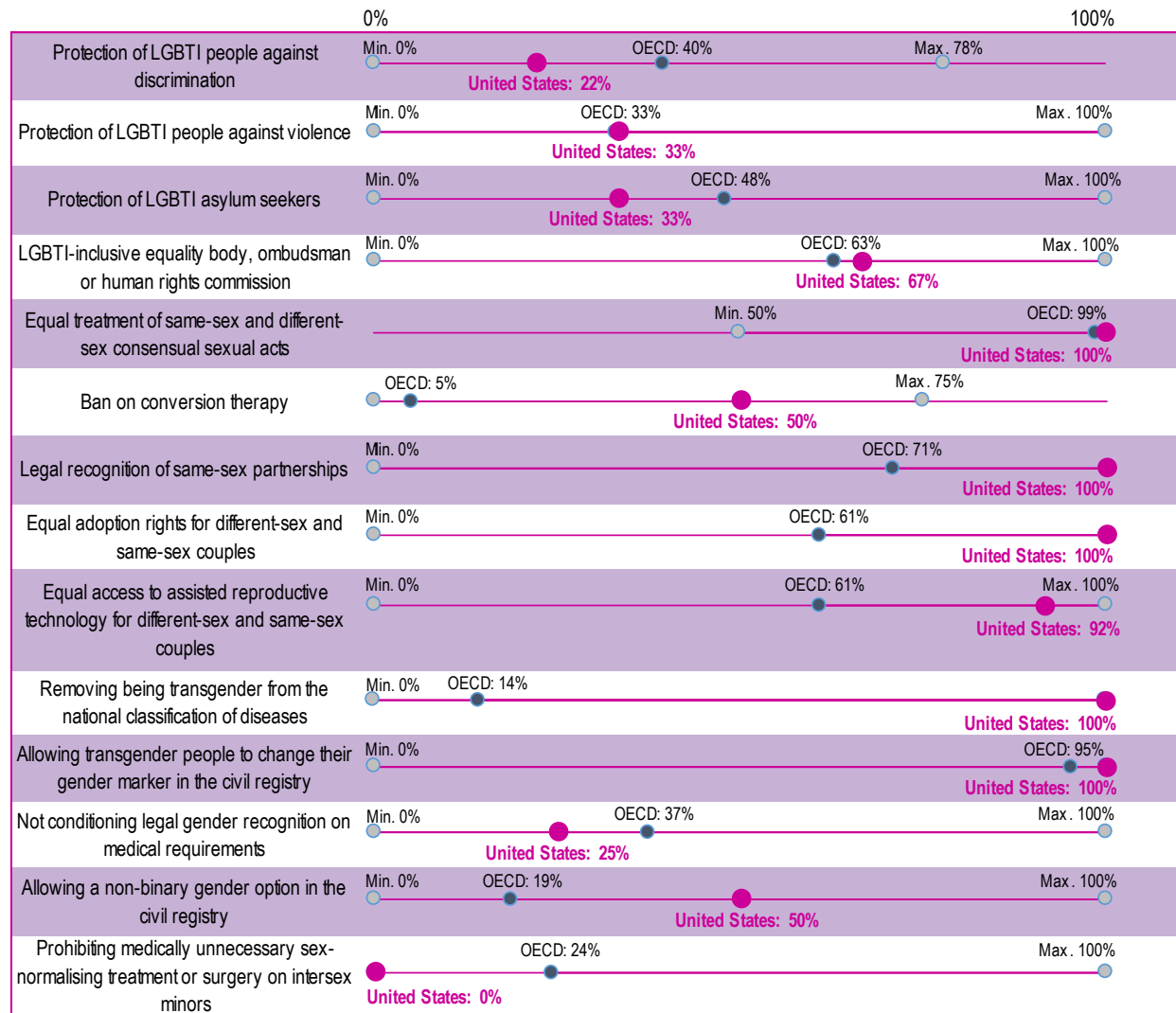
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. The United States is a leader in this field. As of 2018, the United States is one of 15 OECD countries that include or have included a question on self-identification as heterosexual, homosexual, or bisexual, and one of only three OECD countries that collect information on gender identity in at least one nationally representative survey.

It would also be important that the United States be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

<b>Policy #1</b>	<b>Policy #2</b>	<b>Policy #3</b>
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

**Figure 2: How the United States compares**

Legal LGBTI inclusivity as of 30 June 2019 in the United States and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component "Protection of LGBTI people's civil liberties" is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in the United States equal to 33% regarding the protection of LGBTI people against violence means that one third (two) of the six antidiscrimination provisions critical to protect LGBTI people are in force in the United States as of 2019. "Min." refers to the score of the bottom-performing OECD country(ies) while "Max." refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of the United States.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

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