



A GUIDE TO JUVENILE DETENTION REFORM

# Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System

Juvenile Detention Alternatives Initiative

A PROJECT OF THE ANNIE E. CASEY FOUNDATION

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# LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN THE JUVENILE JUSTICE SYSTEM

The Annie E. Casey Foundation has developed this practice guide to support Juvenile Detention Alternative Initiative (JDAI) sites in meeting their obligation to ensure the safety and well-being of lesbian, gay, bisexual and transgender (LGBT)\* youth involved in the juvenile justice system. The guide covers a wide range of policies and practices – from broad organizational measures such as staff training and nondiscrimination policies, to specific practices such as talking with youth about sexual orientation and gender identity and making individualized classification and housing decisions. This guidance is critical because LGBT youth are at heightened risk of physical, sexual and emotional abuse, particularly in secure settings. In addition, LGBT youth represent up to 20 percent of detained youth – a far greater percentage than their share of the general population. Although the guide is chiefly aimed at promoting the health and well-being of LGBT youth, its recommendations will benefit all justice-involved youth by exposing and challenging bias, promoting mutual respect and increasing professionalism. The recommendations in the guide are also consistent with core JDAI strategies.

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\* For the purposes of the practice guide, the acronym "LGBT" includes youth who identify as lesbian, gay, bisexual or transgender, youth who are questioning their sexuality or gender identity, youth who use some other word to describe their non-heterosexual, transgender or gender-nonconforming identities and youth whom others perceive as transgressing gender or sexual norms. Different acronyms are used in the guide to reflect the scope or application of specific research, laws or standards. For example, the portions of the guide that address the regulations implementing the Prison Rape Elimination Act use the acronym "LGBTI" because the act applies to intersex youth as well as LGBT youth. Similarly, the guide uses the acronym "LGB" to describe research findings that apply to sexual orientation and do not apply to gender identity. The acronym "SOGIE" stands for sexual orientation, gender identity and gender expression, which are distinct aspects of each person's identity.

# Introduction

LGBT youth have always been present in the juvenile justice system, although many of them have concealed their identities to escape harassment and mistreatment. Until relatively recently, the juvenile justice profession has largely denied, ignored, or dismissed the significance of this reality and its implications for policy and practice. Historically, neither the law nor professional standards acknowledged or addressed the specific and substantial harm suffered by justice-involved LGBT youth. In this vacuum, misinformation and bias have long subjected LGBT youth to unfair and unlawful treatment, including identity-based criminalization, unwarranted and prolonged incarceration and verbal, physical and sexual abuse. Although these harmful and unjust practices persist in many jurisdictions, this guide builds on a sea change the field is undergoing. Prompted by broader societal changes and recent legal developments, the juvenile justice profession has turned its attention to the LGBT youth in its care and custody and has begun to change policies and practices to address their needs.

These changes are taking place in the context of a dramatic shift in public attitudes toward LGBT people in this country. Even 20 years ago, most Americans knew very little about sexual orientation, gender identity or gender expression (SOGIE), and the majority would likely say that they knew few, if any, people who openly identified as LGBT. In the last generation, public opinion has moved from widespread condemnation to growing visibility and acceptance. This shift is particularly evident in the last decade and is reflected across many societal spheres.

**HEALTH:** Until 1973, homosexuality was still listed as a mental disorder in the Diagnostic and Statistical Manual of Mental Disorders.<sup>1</sup> By 1997, the American Psychological Association (APA) issued a policy opposing “portrayals of lesbian, gay and bisexual youth and adults as mentally ill due to their sexual orientation.”<sup>2</sup> In 2008, the APA stated: “Despite the persistence of stereotypes that portray lesbian, gay and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience.”<sup>3</sup>

**LAW:** Throughout the last century, numerous state laws criminalized consensual sex between gay adults. As recently as 1986, the Supreme Court upheld one such statute, supporting the state’s interference with private sexual activity based on the “presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable.”<sup>4</sup> This decision remained the law of the land until 2003, when the Supreme Court reversed course in *Lawrence v. Texas*, extending constitutional protection to private consensual conduct between adults.<sup>5</sup>

**FAMILY:** Before 2003, when the Massachusetts Supreme Court struck down a ban on same-sex marriage, no state extended the right to marry to gay and lesbian couples.<sup>6</sup> Just 12 years later, the



U.S. Supreme Court ruled that no state can deprive an individual of the right to marry based on that person's sexual orientation – effectively extending marriage equality to all 50 states.<sup>7</sup>

**MILITARY:** As recently as 1981, the Department of Defense issued a directive stating that “homosexuality is incompatible with military service” and that “homosexual acts” would be grounds for mandatory discharge.<sup>8</sup> By 2010, the Department of Defense released a report concluding that allowing gays to openly serve in the armed forces would have a minimal negative impact on the military's effectiveness. Shortly thereafter the policy was overturned, and since that time, lesbians and gay men have been serving openly in the military.<sup>9</sup>

**BUSINESS:** In 2002, 61 percent of Fortune 500 companies included sexual orientation in their non-discrimination policies, and just 3 percent included gender identity within those policies. By 2014 those number had risen to 91 percent and 61 percent, respectively.<sup>10</sup>

**ENTERTAINMENT:** In 1998, Ellen DeGeneres' show on ABC Family was canceled shortly after she publicly came out as a lesbian. Today she's a household name and hosts her own nationally syndicated talk show daily. Meanwhile, shows that star LGBT characters, such as “Orange is the New Black,” “Transparent” and “Modern Family” are very popular with viewing audiences.

Having grown up during this period of rapid cultural change, today's children are aware of, and disclose, their LGBT identities in greater numbers and at younger ages.<sup>11</sup> While some of these young people thrive in supportive families, schools and communities, many more are not so fortunate. Our society's continued failure to fully embrace and affirm LGBT youth is tragically reflected in the number of LGBT teen suicides in the United States.<sup>12</sup> Too often, acceptance lags behind visibility. Even formal legal equality, where it exists, cannot erase entrenched prejudice. As in other civil rights movements, progress is slow to reach the most disempowered and disadvantaged members of the LGBT community, including its youth.

Meanwhile, social stigma, family rejection, and discrimination subject LGBT youth to increased risk of substance use, homelessness, school drop out or push-out, depression and suicidality. These risks are well-documented and devastating, driving disproportionate numbers of LGBT youth into the justice system. Recent research has shown that up to 20 percent of the youth confined in America's juvenile detention facilities identify as LGBT, questioning or gender nonconforming, which is almost three times their estimated number in the general population.<sup>13</sup> Lesbian, gay and bisexual youth confined in juvenile facilities are at least seven times more likely to be sexually assaulted by other youth as are their heterosexual peers.<sup>14</sup> The significant overrepresentation and documented vulnerability of LGBT youth in the juvenile justice system prompted recent changes in law and policy that significantly impact practice.

In the first published opinion addressing the treatment of LGBT youth in juvenile justice facilities, a federal district court found that the staff's failure to protect the plaintiffs from relentless verbal

harassment and abuse, as well as subjecting them to prolonged “protective” solitary confinement, violated the Constitution.<sup>15</sup> The Prison Rape Elimination Act of 2003 (PREA)<sup>16</sup> also has imposed new requirements. Enacted to respond to “the epidemic character of prison rape,”<sup>17</sup> PREA required the U.S. Department of Justice (DOJ) to collect data on the prevalence of sexual assault in adult and juvenile facilities.<sup>18</sup> The data produced through this investigation documented that youth who identify as lesbian, gay, bisexual or “other” are at significantly higher risk of sexual assault in custodial settings than their heterosexual peers.<sup>19</sup> As a result, the regulations adopted by the DOJ contain the first explicit protections of lesbian, gay, bisexual, transgender and intersex (LGBTI) youth in federal law. Although the PREA regulations are aimed at preventing sexual abuse, they have the potential of improving custodial environments for LGBTI youth in general by acknowledging their enhanced vulnerability, and requiring facility staff to consider and address the effect of a youth’s sexual orientation, gender identity and gender expression (SOGIE) on the youth’s safety and well-being. These changes in law and policy have created new expectations of juvenile justice personnel. Implementation of these new requirements, however, varies widely across the country and has created a demand for clear professional guidance.

This practice guide is a response to that demand and:

- provides an overview of key concepts and terminology related to SOGIE;
- summarizes the research on the effect of stigma and bias on the health and well-being of LGBT youth, the drivers contributing to their disproportionate involvement in the justice system and the harmful and unfair practices to which they are subjected in the system;
- identifies policies and procedures to prohibit discrimination, prevent harm and promote fair and equitable treatment of LGBT youth who are arrested and referred to juvenile justice agencies; and
- provides guidance on policies and practices required to ensure the safety and well-being of LGBT youth in detention facilities.

Sites may encounter challenges executing the practice standards contained in this guide. Some juvenile justice personnel subscribe to many of the same myths and misconceptions that support societal anti-LGBT discrimination in the first instance, and may resist change. Others may be less resistant but simply unfamiliar with the issues discussed in the guide. Some sites will encounter operational challenges applying new policies governing classification, housing, and searches. Some sites will have implemented many of the changes discussed in this guide, and others will be just beginning. Although full application of these standards will not occur overnight, these efforts cannot wait. LGBT youth are harmed in juvenile justice systems every day. There is an urgent need to immediately begin the process of creating systems in which all young people, irrespective of sexuality and gender, are treated with fairness and respect.

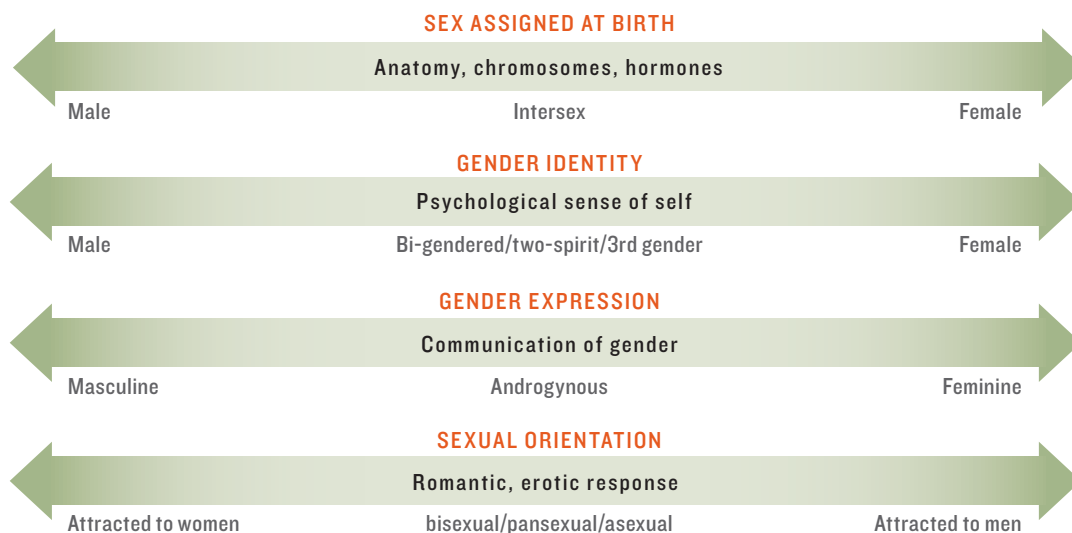
The appendices following the guide contain a glossary of relevant terms and a list of resources, with links to sample policies and interview protocols.



## Understanding Sexual Orientation, Gender Identity and Gender Expression (SOGIE)

This chapter of the guide explains basic concepts and terms related to gender and sexuality. Its purpose is to provide the necessary foundation to understand and apply the practices and policies discussed throughout the guide. These concepts may be new and confusing to some readers and practitioners. Even people who have some familiarity with SOGIE will benefit from a refresher on basic concepts and terminology. Changing practice and ensuring consistency requires a shared vocabulary and clear expectations. Educating personnel about these distinct aspects of human identity and giving them opportunities to apply the concepts to daily practice will help develop agencywide fluency and expertise. Personnel responsible for implementing the standards in this guide should reinforce these concepts at every opportunity.

A more comprehensive glossary of relevant terms and concepts is contained in Appendix A.



This diagram<sup>20</sup> depicts four distinct aspects of human identity: sex assigned at birth, gender identity, gender expression and sexual orientation. As the diagram shows, each of these aspects of identity exists on a spectrum that is more complex than a simple, either-or choice between two “opposite” characteristics.

“SEX ASSIGNED AT BIRTH” refers to the designation of an infant’s sex at birth, usually recorded as such on the birth certificate. The designation is based on the child’s external genitalia. Although sex



is typically defined as either male or female, some people are born with sex chromosomes, external genitalia or internal reproductive systems that are not considered “typical” for either males or females. These individuals are known as “**INTERSEX.**”

“**GENDER IDENTITY**” is a person’s internal identification as male, female or something in between or outside of the gender binary. Children express a clear sense of their gender by about 3 years old.<sup>21</sup> Most people are **CISGENDER**, meaning their gender identity aligns with their assigned sex. Many cisgender people do not think of their assigned sex and gender identity as separate or distinct. However, every person has a gender identity, which may or may not match their assigned sex. “**TRANSGENDER**” refers to people whose gender identity (or “affirmed gender”) does not match their assigned sex. For example, a transgender boy is a child who was assigned female at birth, but whose gender identity is male. Transgender people may choose to “transition,” or live as their affirmed gender, as children, teenagers or adults. Transition is a unique process for each individual, and might include social transition (clothing, hairstyle, name), medical transition involving hormone blockers or cross-sex hormones, gender confirmation surgery or some combination of these.

“**GENDER EXPRESSION**” is the manner in which people communicate their gender to others, through their clothing, mannerisms and hairstyle, for example. A person’s gender expression can be fluid or even situational – presenting gender differently in different settings. One’s expression of gender may be neither masculine nor feminine (androgynous) or may combine masculine and feminine elements (“gender bending”). “**GENDER NONCONFORMING**” describes people whose gender identity, role or expression differs from the cultural norms prescribed for their assigned sex. Many gender nonconforming people do not identify as transgender.

“**SEXUAL ORIENTATION**” is an emotional, romantic and/or sexual attraction to others that is shaped at an early age. Sexual orientation falls on a spectrum that ranges from exclusively attracted to men or women, to attraction to both men and women (“bisexual”), to attraction to people of all genders (“pansexual”). Children may be aware of their sexual orientation as feelings of attachment or connection to others long before they become sexually active. Research shows that most children are aware of sexual attraction by about age 10.<sup>22</sup>

### Why is it important for juvenile justice personnel to understand these concepts?

- ▶ Rigid conceptions of gender and sexuality undermine the system’s effectiveness.

Cultural norms profoundly define our understanding of gender and sexuality, and our expectations of one another. Many public policies in the United States are based on a dominant cultural norm that views every person as either exclusively male or female, and assumes that every person’s gender

identity and expression match the person's assigned sex. These policies erase and harm people whose gender falls outside this narrow construction. For example, when juvenile justice personnel routinely place transgender girls in male housing units without consideration of the safety implications or the psychological impact on the transgender youth, they erase a core aspect of the youth's identity and potentially jeopardize their health and safety. Juvenile justice systems must acknowledge the diversity and complexity of gender and sexuality in order to provide individualized services that promote the health and well-being of each young person in their care and custody.

▶ **When the system affirms LGBT youth, all youth benefit.**

Every youth has a gender identity, not just transgender youth. All youth express their gender, whether they transgress or conform to gender norms. Every youth has a sexual orientation, not just gay, lesbian and bisexual youth. Creating a professional environment that acknowledges and respects youth across the full spectrum of gender and sexuality permits all youth to explore their emerging identities, prevents mistreatment based on anti-LGBT bias, and promotes the health and well-being of all youth. It also sends the message to all youth that self-determination and affirmation are core values and gives all youth the opportunity to define themselves in a supportive and affirming environment. Learning respect for differences will serve youth in all parts of their lives.

▶ **Personnel cannot make sound decisions based on assumptions about a youth's SOGIE.**

A youth whose gender expression is nonconforming may or may not be gay. Likewise, many youth who identify as gay, lesbian or bisexual conform to gender norms. A transgender girl might identify as heterosexual, lesbian, bisexual or another sexual orientation. These aspects of identity are distinct and independent of one another. A legal document that identifies a young person's sex as "male" provides no information about the youth's gender identity or sexual orientation. For this reason, an intake officer who is assessing this youth cannot assume that the youth identifies as male or straight, even if the youth looks and dresses in a stereotypically male manner. Decisions based on erroneous assumptions could subject the youth to unsafe conditions by failing to take into account the specific needs of that particular youth. To reach an informed decision, the intake officer must possess reliable, accurate information, which is best obtained directly from the youth.

# Profile of LGBT Youth in the Juvenile Justice System



This chapter of the guide summarizes the research on the effect of anti-LGBT bias and stigma on the health and well-being of LGBT youth, and the risks and practices that contribute to their disproportionate numbers and unfair treatment in the juvenile justice system.<sup>23</sup>

## A. The effect of stigma and rejection in the community and at home

Despite significant advances in legal protection and social integration of LGBT adults, many LGBT youth continue to struggle in families and institutions that pathologize and disparage their core identities. Too often, misinformation and bias marginalize LGBT youth, particularly poor youth, immigrant youth and youth of color. When they are rejected and ostracized in their homes, schools and communities, LGBT youth are at elevated risk for negative health and mental health outcomes, school drop-out or exclusion, homelessness and social isolation. These risks combine to create a powerful current that too often deprives them of basic supports and consigns them to the streets or public systems of care.

America's schools are notoriously hostile settings for LGBT students, the majority of whom report regular verbal or physical harassment by students or school personnel based on their sexual orientation or gender expression.<sup>24</sup> LGBT students who report high levels of victimization at school also have higher rates of truancy, lower grade point averages, higher levels of depression, lower self-esteem and fewer plans for secondary education.<sup>25</sup> Data show that schools administer sanctions to non-heterosexual youth, particularly girls, that are harsher than those administered to heterosexual youth and are disproportionate to their misbehavior.<sup>26</sup> When biased school discipline practices and pervasive harassment push LGBT youth out of schools, they are at higher risk of contact with the justice system. In fact, 90 percent of LGBT youth in juvenile detention have been suspended or expelled from school at least once.<sup>27</sup>

LGBT youth who navigate societal discrimination without family support are particularly vulnerable. Research by the Family Acceptance Project (FAP) has documented the critical role that parents and caregivers play in promoting or undermining their LGBT children's future health and well-being.<sup>28</sup> FAP researchers identified more than 100 specific ways that parents and caregivers express acceptance or rejection of their LGBT children.<sup>29</sup> The researchers conducted a follow-up study to assess the relationship of family acceptance or rejection during adolescence to health and mental health outcomes in young adulthood.<sup>30</sup> The results showed that LGBT young adults whose families engaged in rejecting behaviors reported high levels of health problems, and those whose parents engaged in accepting behaviors reported greater well-being, better health and significantly decreased risk for suicide, depression and substance abuse.<sup>31</sup>

The differences were dramatic. For example, the data showed that LGBT young adults who reported high levels of family rejection were also:

- 8.4 times as likely to have attempted suicide;
- 5.9 times as likely to experience significant depression;
- 3.4 times as likely to use illegal drugs;
- 3.4 times as likely to have engaged in unprotected sexual intercourse.<sup>32</sup>

That many families struggle with supporting their LGBT children is evidenced by the number of LGBT youth who are homeless. Primarily as a result of being kicked out or running from their homes due to conflict over sexual orientation or gender expression, LGBT youth represent up to 40 percent of the homeless youth population nationally.<sup>33</sup> Homeless youth, in general, experience poor health and mental health outcomes, including substance use, sexual practices with reduced safety measures, sexual exploitation, physical abuse and depression.<sup>34</sup> Homeless LGBT youth, however, are at significantly higher risk than their heterosexual and gender conforming peers for these negative outcomes.<sup>35</sup> Homeless LGBT youth are also more likely to have contact with the police.<sup>36</sup>

When their families, schools and communities fail to provide a safe harbor, many LGBT youth are relegated to public systems of care. The percentage of LGBT youth in the child welfare system far exceeds their proportion of the general population. In 2013, the Williams Institute and colleagues administered a telephone survey of 786 youth in long-term foster care in Los Angeles County.<sup>37</sup> The purpose of the survey was to determine the percentage of foster youth who identified as LGBT, and whether their experiences in foster care were different from the experiences of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBT, which is 1.5 to 2 times the number of LGBT youth estimated to be living outside of foster care.<sup>38</sup> Like all youth in the foster-care system, most of LGBT youth surveyed (93.6 percent) were youth of color.<sup>39</sup> The study also confirmed that the child welfare system largely fails in its mission to ensure the safety, permanency and well-being of LGBT youth. LGBT youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>40</sup> More than twice as many LGBT youth reported being treated poorly by the foster care system compared to non-LGBT youth.<sup>41</sup> They were also more likely to have been homeless and more likely to have experienced mental-health-related hospitalizations.<sup>42</sup>

These risk factors – school exclusion, family rejection, homelessness and failed safety-net programs – contribute to the disproportionate number of LGBT youth who come in contact with the juvenile justice system.

## B. LGBT youth in the juvenile justice system

Findings on the disproportionality and disparate treatment of LGBT youth in the foster-care system are replicated in the juvenile justice system. Impact Justice conducted research in seven jurisdictions across the country to determine whether race, gender identity, gender expression and sexual orientation influenced juvenile justice involvement. In a self-administered survey completed by 1,400 detained youth, approximately 20 percent of youth self-identified as lesbian, gay, bisexual, questioning (LGBQ), gender nonconforming (GNC) or transgender (T).<sup>43</sup> Of these youth, 85 percent identified as youth of color.<sup>44</sup> These findings confirm:

- Youth of color are overrepresented among LGBQ/GNCT youth in the justice system. This finding is important both to undermine the common assumption that most youth who identify as LGBQ/GNCT are white, and to reinforce that most of LGBQ/GNCT youth in the justice system are cumulatively disadvantaged by prejudice based on race and SOGIE.
- LGBQ, gender-nonconforming and transgender youth are significantly overrepresented in the justice system. Most population based surveys estimate that LGBQ/GNCT youth comprise 7-8 percent of the general population. With disclosure rates of approximately 20 percent, this population is represented in the juvenile justice system at a rate close to three times higher than their percentage in the general population.

The research also showed that the rates of overrepresentation were particularly high for girls, although the reasons for this discrepancy are unknown. The total percentage of boys who identified as LGBQ/GNCT was 13.6. By contrast, the total percentage of girls who identified as LGBQ/GNCT was 39.9.

An earlier round of the same research also showed that LGBQ/GNCT youth experienced disparate treatment in the juvenile justice system. LGBQ/GNCT youth in detention were more likely to have experienced child abuse, foster and group-home placement, and homelessness when compared with their heterosexual, cisgender and gender-conforming peers.<sup>45</sup> They were also more likely to be detained for truancy, warrants, probation violations, running away and prostitution – low-level and victimless offenses related to economic and social marginalization.<sup>46</sup>

Law enforcement practices also contribute to disproportionate numbers of LGBT youth in the system. LGBT youth, particularly youth of color, report that they are regularly subjected to profiling and other forms of discriminatory policing, including indiscriminate stops and searches, verbal, physical or sexual harassment, and arrests for “quality of life” offenses.<sup>47</sup> Police profile or arrest LGBT youth for prostitution based solely on their transgender status, gender-nonconforming appearance, possession of condoms or presence in specific neighborhoods.<sup>48</sup> LGBT youth are also more likely than their straight and cisgender peers to be arrested and criminally charged with sex offenses for consensual sexual activity.<sup>49</sup>

The abuse experienced by LGBT youth in the streets is more pervasive in detention and correctional settings. Virtually all juvenile custodial personnel concede that youth who are perceived to be gay or lesbian or to transgress gender norms are at heightened risk of verbal, physical and sexual assault in secure settings.<sup>50</sup> Nonetheless, until the PREA regulations were promulgated, intake personnel rarely considered SOGIE in assessing a youth's safety or assigning the youth to a housing unit. The common practice was, and too often remains, to assign LGBT youth to housing units with no consideration of their safety, or to place them in prolonged "protective" isolation.<sup>51</sup> Intake personnel may also classify youth who are perceived to be LGBT as sex offenders, based on the prevailing myth that gay and lesbian youth are more likely to engage in coercive sexual conduct.<sup>52</sup> Custodial staff further imperil LGBT youth by ignoring or minimizing harassment directed at them by their peers or staff, or subjecting them to religious proselytizing or homophobic rhetoric.<sup>53</sup>

#### R.G. vs. KOLLER

In 2005, the American Civil Liberties Union of Hawaii sued the Hawaii Youth Correctional Facility (HYCF) in federal court on behalf of R.G., an 18-year-old lesbian, J.D, a 17-year-old boy perceived to be gay, and C.P., a 17-year-old transgender girl. The plaintiffs alleged that the HYCF staff failed to intervene to protect them from relentless emotional, physical and sexual abuse by other youth, and that the staff also verbally harassed and demeaned them. The court issued a preliminary injunction, finding that the plaintiffs were likely to prevail at trial by showing that the facility violated their constitutional rights. The court found that HYCF was deliberately indifferent to the health and safety of the plaintiffs by failing to have policies and staff training necessary to protect LGBT youth, adequate staffing and supervision, a functioning grievance system and a classification system to protect vulnerable youth. The court also held that placing youth in isolation as a means of protecting them from abuse amounted to punishment and violated the 14th Amendment of the Constitution.

LGBT youth are especially subject to extended detention or community supervision. Youth, in general, are subject to indeterminate periods of custody or supervision, and secure their liberty only upon demonstration of "rehabilitation" or satisfaction of probation conditions. Judicial officers, detention staff or agency personnel may extend custody or probation for a broad range of behavioral infractions. These vague and subjective standards result in additional confinement or isolation of LGBT youth, who may be punished for insisting upon expressing their gender identity, expressing same-sex attraction or affection, refusing to admit to baseless sex offense charges or simply defending themselves against homophobic or transphobic harassment.<sup>54</sup> LGBT youth who present no risk to public safety remain locked up when the system has no placement or community alternatives competent to serve them.<sup>55</sup>

LGBT youth also experience disproportionately high levels of sexual abuse in detention and correctional settings. In 2010, the Bureau of Justice Statistics (BJS) surveyed more than 9,000 youth in 195 juvenile confinement facilities across the nation to determine the prevalence of sexual victimization of residents.<sup>56</sup> Along with a disturbingly high incidence of sexual assault overall, the survey results revealed that youth who identified as lesbian, gay, bisexual or “other” reported significantly higher rates of sexual victimization by other youth (12.5 percent) compared with heterosexual youth (1.3 percent), nearly 10 times higher.<sup>57</sup> In 2012, BJS conducted a follow-up survey in 326 juvenile facilities. Although overall rates of sexual victimization decreased about 3 percent, the rate of abuse of LGB residents remained nearly seven times higher than that of straight youth.<sup>58</sup>

Understanding the manifestations of anti-LGBT bias and their impact on youth is critical to making informed and equitable decisions about all youth involved in the juvenile justice system. More than simply avoiding biased decisions, juvenile justice personnel must consider the unique experiences and characteristics of every youth in their care, and take affirmative steps to protect their safety and advance their well-being.

## Creating a Fair, Inclusive and Respectful Organizational Culture

This chapter focuses on the obligation of juvenile justice personnel to prohibit anti-LGBT discrimination and to promote a professional environment in which all youth, irrespective of SOGIE, are physically and emotionally safe, and treated fairly and respectfully. The recommendations in this chapter apply to all probation and detention employees, contractors and volunteers who interact with youth in the juvenile justice system. While Chapter V is specifically focused on conditions and practices in detention facilities, this chapter applies to probation services personnel as well as detention staff.

### A. Prohibiting Discrimination

▶ Juvenile justice agencies should adopt written policies prohibiting discrimination against any youth on the basis of SOGIE, and guaranteeing equal treatment and access to services.

The adoption of a comprehensive nondiscrimination policy is the cornerstone of organizational equity efforts on behalf of LGBT youth. At a minimum, the policy should prohibit any form of discrimination against youth on the basis of actual or perceived SOGIE and should guarantee equal treatment and access to services to all youth, irrespective of SOGIE. The policy reflects the organization's commitment to ensuring equitable and respectful treatment of LGBT youth, and demonstrates formal support of these values by agency leadership. The policy should apply to all probation and detention personnel, contractors and volunteers.

#### NEW ORLEANS DEPARTMENT OF HUMAN SERVICES AND JUVENILE DETENTION CENTER POLICY

“Staff shall not discriminate against or harass, physically or verbally, any youth in our care because the juvenile is lesbian, gay, bisexual or transgender or because a staff member perceives a juvenile to be LGBT. Staff must also protect youth from being discriminated against or harassed, physically or verbally, by other youth for being LGBT, or because juveniles believe another juvenile is LGBT. All staff will ensure that LGBT juveniles are safe and accepted and will support LGBT juveniles with fair and equal treatment, without bias and in a professional and confidential manner.”

Several jurisdictions have adopted comprehensive policies, examples of which are contained in Appendix B. Besides provisions prohibiting discrimination on the basis of SOGIE, the policies typically include provisions addressing:



- Confidentiality
- Screening and intake
- Medical and behavioral health care
- Staff training
- Reporting and responding to harassment or discrimination
- Respectful communication
- Clothing and grooming
- Names and pronouns of transgender youths
- Searches

The following best practices have been distilled from the experiences of jurisdictions that have adopted comprehensive policies:

- In the process of creating policy, sites should include representatives from the probation agency and detention facility, prosecutors, defenders, judges, community stakeholders and LGBT youth and their families. This approach is consistent with JDAI's core strategy of cross-disciplinary collaboration.<sup>59</sup> An inclusive process that permits diverse participants to anticipate how the policy will affect daily practice results in a more thoughtful and comprehensive policy and creates broad awareness and buy-in. The agency's attorney should also review the policy to make sure that it complies with federal and state laws.
- The policy should be explicitly grounded in the probation agency's mission and values and integrated into the agency's broader objectives.
- Detailed policies that provide clear guidance on practice issues are necessary to change entrenched behaviors. It is particularly important to address controversial or complex practice issues, such as medical care for transgender youth.
- The policy should include clear enforcement provisions. Policies should make clear the responsibility of agency and detention staff personnel and contractors to report policy violations by other staff and to promptly intervene to address harassment or other discriminatory behavior by one youth against another youth. Policies should also provide youth with a meaningful, accessible process to grieve violations of the policy.
- The agency should take steps to ensure that all relevant professional stakeholders, youth and families are aware of the policy and understand its provisions. The agency should provide initial and ongoing training to all personnel on the provisions in the policy and should provide a means of addressing questions that arise in relation to the policy's implementation.

## B. Modeling Respect

▶ Juvenile justice agencies and detention facility administration should require personnel, contractors and volunteers to interact respectfully with all youth, irrespective of SOGIE.<sup>60</sup>

The agency can most powerfully convey a culture of respect by ensuring that its personnel always address each other and youth respectfully. Bias – intentional and unconscious – is often communicated through language, and verbal and nonverbal cues. Agencies should set expectations of all personnel, contractors and volunteers in both custodial and noncustodial settings that include the following guidelines:

- Personnel are prohibited from using language that demeans, ridicules or condemns LGBT individuals. Personnel should also avoid words that convey common misconceptions about SOGIE, such as referring to LGBT status as a “lifestyle” or “preference.”
- Personnel should use the preferred name and gender pronoun of transgender or gender-nonconforming youth, regardless of the name on the youth’s identity documents.
- Personnel should avoid making assumptions about the SOGIE of youth or using heteronormative language – meaning language that assumes that everyone is heterosexual or that heterosexuality is preferable or superior to any other identity. An example is asking a boy, “Do you have a girlfriend?” A neutral alternative is, “Are you dating anyone?”
- Personnel should signal openness and acceptance through nonverbal and environmental cues. An example is displaying LGBT-affirming images, symbols or quotations, such as the equal sign or rainbow flag.
- Personnel should be aware of cultural and generational differences in language related to SOGIE, and should defer to youth about the language they use to describe their identity.

### SANTA CLARA COUNTY PROBATION DEPARTMENT POLICY

“Employees, volunteers and contractors, when working with youth shall use respectful language and terminology that does not further stereotypes about LGBT people. Employees, volunteers and contractors of SCCPD, in the course of their work, shall not refer to youth by using derogatory language in a manner that conveys bias towards LGBT people. In particular, employees of SCCPD shall not imply to or tell LGBT youth that they are abnormal, deviant or sinful, or that they can or should change their sexual orientation or gender identity.”

### C. Collecting and Protecting SOGIE Information

- ▶ Juvenile justice agencies should develop protocols for collecting SOGIE information from all youth served by the agency and for protecting the information from inappropriate dissemination.

Although LGBT youth are overrepresented in the juvenile justice system, they often remain invisible. LGBT youth are understandably reluctant to disclose their SOGIE when they do not feel safe or there is no obvious benefit of doing so. For many reasons, juvenile justice personnel are also reluctant to collect SOGIE information. They do not consider it relevant, they are uncomfortable discussing it, and they believe it is too private. Because of the documented disparities suffered by LGBT youth, however, a “don’t ask” policy subjects youth to unacceptable risks, perpetuates discriminatory treatment and undermines practices designed to promote their health and well-being. For this reason, the juvenile justice field – along with most public systems of care – has begun to apply protocols to collect SOGIE data from individual youth.<sup>61</sup> For example, the PREA standards require that confinement facilities ascertain whether residents are, or are perceived to be, LGBTI or gender non-conforming as part of the intake safety screening.<sup>62</sup> SOGIE data is essential for individual case planning, including safety assessment, dispositional planning and working with families or providers.

Before implementing data collection protocols, agencies should:

- adopt and implement nondiscrimination and grievance policies to protect youth who disclose their SOGIE from adverse consequences and provide a means to redress violations;
- locate or develop services to which LGBT youth may be referred, if needed, to assist them with family, school and peer relationships, and to support their healthy development;
- provide training to relevant personnel about how to sensitively and effectively communicate with LGBT youth about SOGIE;
- develop standardized SOGIE questions and policies making disclosure optional for youth; and
- apply appropriate controls on the dissemination of SOGIE information.

Some agencies have also collected SOGIE data on confidential self-administered surveys of youth in detention, capturing prevalence data, as well as patterns of disparate treatment and outcomes. Consistent with JDAI’s core strategies, this information is essential to developing policies, practices and resources to ensure objective, equitable decisions at every stage of the process.

For example, agencies could learn whether LGBT youth are more likely than their heterosexual and cisgender peers to be detained:

- when their parents cannot or will not assume custody;
- as a result of overrides of the risk assessment instrument;

- for lack of suitable alternatives to detention or non-secure residential settings;
- for status offenses (truancy, AWOL) that constitute violations of probation conditions;
- for warrants;
- for offenses arising out of family conflict; and
- for longer periods of time.

Based on patterns revealed in the national data, sites may also want to collect data on the following issues:

- school-based arrests
- charges based on family conflict
- prostitution charges
- homelessness or unstable housing
- use of alternatives to detention or diversion programs
- placement stability
- warrants and probation violations

#### CALIFORNIA CENTRAL REGION DATA COLLECTION PROTOCOL

With technical assistance from Impact Justice, the probation departments from the 13 counties that comprise the central region in California developed a protocol for asking every youth in county-run secure facilities about SOGIE at intake. Impact Justice conducted a “training of trainers” on the data collection instrument to ensure local expertise and sustainability. The data will be used to shape institutional response in the facilities and analyzed to determine whether there are decision points, such as diversion and detention, that contribute to the overrepresentation of LGBT and gender-nonconforming youth in their systems.

The intake staff in these counties asks the following questions of every youth at intake:

1. What was your sex at birth?

- Male
- Female
- Intersex

2. What is your sexual orientation?

- Bisexual
- Gay
- Heterosexual/straight
- Lesbian

- Questioning
- Other

3. What is your gender?

- Girl/Woman
- Boy/Man
- Transgender
- Other

4. What is your gender expression?

- Male
- Female
- Other

5. (For staff) Does the youth's gender expression match cultural and societal expectations?

- Yes
- No
- Unknown

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## D. Training Staff

► Juvenile justice agencies and detention facility administrators should require all employees, contractors and volunteers to receive initial and ongoing training on agency policies related to serving LGBT youth.

Along with a comprehensive nondiscrimination policy, training is critical to developing system-wide competence to treat LGBT youth fairly and respectfully, and to promote their health and well-being. Many people are not familiar with basic concepts related to SOGIE, and too many subscribe to myths and misconceptions about LGBT individuals that lead to biased and harmful practices, and undermine policies designed to support LGBT youth. Training is necessary, at the outset, to convey the foundational social science related to SOGIE, so that all juvenile justice stakeholders share a common vocabulary and understanding of relevant concepts. Training is also necessary to apply the agency's nondiscrimination policy to the questions that arise in daily practice – in the courts, probation services, institutions and community services, and to ensure that participants understand their role in creating a safe and affirming system for all youth, irrespective of their SOGIE. Participants need a safe environment in which to ask questions, pose challenges and make suggestions. Training also provides an important opportunity to convey the agency's commitment to promoting the well-being of LGBT youth and to reinforce the values that support its policies. Although the initial training may be developed or delivered by external subject matter experts, the agency should develop internal expertise to provide ongoing training. Agencies should not rely on training alone to shift entrenched attitudes and practice. Training must be

supported by written policies and practice guidelines, coaching and supervision, and regular assessment of the agency's implementation of SOGIE-related policies.

#### COOK COUNTY JUVENILE TEMPORARY DETENTION CENTER TRAINING POLICY

The JTDC Training Department shall provide training to all employees, contractors, volunteers, interns and Multidisciplinary Team members regarding the policies and procedures set forth in [the LGBTQI Youth policy]. Staff shall be required to attend the training. The training shall include:

- how to work with LGBTQI youth in a positive and respectful manner
- what behavior constitutes discrimination and harassment
- procedures for preventing, addressing and reporting discrimination and harassment; and
- ways adults are expected to support positive adolescent development, including modeling desired behavior, demonstrating respect for all colleagues and residents, reinforcing respect for differences, encouraging health self-esteem and helping to manage the stigma sometimes associated with difference.

The JTDC shall provide training to all employees regarding this policy as a part of pre-service and in-service training. This training shall be led by a qualified trainer with experience working with LGBTQI youth.

Health and mental health personnel who are involved in admitting residents to the JTDC shall receive additional training regarding how to assess LGBTQI youth.

All JTDC employees, contractors, volunteers and interns shall receive a copy of [the LGBTQI Youth] policy with their orientation materials and must acknowledge receipt and understanding of this policy by way of their signature and the date of receipt.

### E. Ensuring Sustainable Reform

- ▶ Juvenile justice agencies and detention facility administrators should create and support structures to ensure sustainable reform.

Implementing the standards in this guide will require sustained leadership and consistent guidance. Although external consultants or subject matter experts can help develop policies and provide initial training, sites will need to develop internal resources to provide ongoing training and coaching, and assist with complex implementation issues. Sites have addressed this need by creating one or more of the following internal resources:

- Assigning one or more dedicated staff people to oversee policy development, training and technical assistance on issues related to LGBT youth. The same person may also serve as the site's PREA coordinator.

- Developing a multidisciplinary team responsible for creating individualized case plans in complex cases involving LGBT youth. This team may also be required to address questions about application of the nondiscrimination policy.
- Forming a training workgroup to develop and update curricula on serving LGBT youth, and a “training of trainers” program.
- Asking the site’s data workgroup to develop a plan for collecting relevant SOGIE data to track potential disparities at different decision-making points and assess agency performance on relevant practice standards.

## F. Engaging Families

- ▶ Probation agencies should actively engage the parents and families of LGBT youth.

All young people need their families to nurture them and help them successfully navigate adolescence. Supportive families are particularly critical for youth who are subjected to societal stigma and bias. Research by the Family Acceptance Project (FAP) demonstrated that families and caregivers of LGBT youth are an essential resource for reducing risk, promoting well-being and creating a healthy future for their children.<sup>63</sup> FAP developed a strengths-based family intervention model to help families decrease rejection and increase support of their LGBT children.<sup>64</sup> Several core assumptions of the FAP intervention are consistent with emerging policy recommendations aimed at increasing family engagement by juvenile justice systems.<sup>65</sup> Because FAP’s research is still relatively new, public agencies may not have access to community-based interventions aimed at strengthening the families of LGBT youth. Probation agencies should work with other child-serving public agencies, such as schools, child welfare agencies and public health departments, to develop and support these services and monitor their success in improving the health outcomes of LGBT youth.

**THE FAMILY ACCEPTANCE PROJECT’S APPROACH TO WORKING WITH FAMILIES**  
**CAITLIN RYAN, PH.D, ACSW**

- Engage, approach and connect with families and caregivers “where they are,” and view each family as an ally.
- Let parents and caregivers tell their story.
- Give families respectful language to talk about sexual orientation and gender identity.
- Educate families on how rejecting behaviors affect their LGBT child.
- Educate families on how supportive and accepting behaviors affect their LGBT child.

Substance Abuse and Mental Health Services Administration, A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children. HHS Publication No. PEPI4-LGBTKIDS, Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

## G. Contracting with Competent Providers

- ▶ Juvenile justice agencies should require all contractors to provide LGBT-competent services.

Juvenile justice agencies commonly contract with a range of community-based programs that provide prevention, diversion and re-entry services, as well as alternatives to detention. Agencies also contract with medical and behavioral health providers and local and out-of-state residential providers to serve youth in their care and custody. Agencies should require that all contractors commit, as part of the contracting process, to provide services that comply with minimum written standards to ensure their competence to serve all youth across the spectrum of gender and sexuality.

LGBT-competent providers and programs:<sup>66</sup>

- understand and acknowledge that some of the youth served will be LGBT;
- do not make assumptions about the SOGIE of individual youth, including pregnant youth or youth who are parents;
- do not rely on stereotypes about race, gender or sexuality, but individually assess the strengths and needs of each youth;
- prohibit “conversion” or “reparative” therapy, or any attempts to change a youth’s SOGIE;
- adopt and enforce nondiscrimination policies inclusive of SOGIE;
- protect the privacy of information related to SOGIE and consult with youth before disclosure to anyone, including parents, schools and other professionals;
- create a culture of mutual respect among staff and youth;
- affirm and respect transgender and gender-nonconforming youth, including using their chosen names and pronouns and giving them access to all services, facilities and programs consistent with their gender identity;
- require and provide training of all personnel and volunteers on policies and practices related to SOGIE;
- address developmental, physical, social and emotional concerns of LGBT youth;
- understand and address the effect of bias on LGBT youth development;
- support LGBT youth in addressing family rejection, school harassment and societal stigma; and
- provide support to families of LGBT youth or refer families to appropriate programs.

Agencies should also look beyond their traditional pool of contractors and establish relationships with community-based organizations already serving LGBT youth. These organizations may provide a range of services, including recreation, shelter, medical testing, counseling, peer support, legal services, political organizing, workforce preparation, life skills education and basic necessities, such as



food, clothing and showers. The common feature of these diverse organizations is their unconditional affirmation and support of every youth across the full spectrum of gender and sexuality – a safety net too often missing from the lives of LGBT youth. Connecting LGBT youth to these critical resources may provide more effective prevention, diversion, detention alternative, treatment, placement or re-entry services to marginalized LGBT youth than the services with which agencies typically contract.

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**MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES POLICY**

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Department of Youth Services has adopted a comprehensive policy and guidelines prohibiting discrimination against, or harassment of, lesbian, gay, bisexual, transgender, queer, questioning and gender-nonconforming youth. The full policy is available through a link identified in Appendix B. The policy explicitly applies to all DYS state and contract provider employees, as well as interns and volunteers. The policy also requires contracted providers to adopt their own policies consistent with the provisions in the DYS policy.

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## Detention Standards<sup>67</sup>

This chapter focuses on the obligations of juvenile justice stakeholders to ensure the safety and well-being of LGBTI<sup>68</sup> youth in secure detention. It is divided into three sections: Equal and Respectful Treatment, Safety, Privacy and Dignity and Qualified Medical and Behavioral Health Care. Each section includes standards governing conditions, policies and practices, followed by commentary explaining the standard's rationale and addressing potential implementation issues. The standards are drawn from several sources – including federal statutes and regulations, case law, professional standards and expert opinion – and are consistent with JDAI's Juvenile Detention Facility Assessment Standards.<sup>69</sup> Citations to source material, contained in endnotes, also reference the relevant JDAI standards.

This chapter is not intended to provide a comprehensive overview of all standards governing detention facilities, but rather to focus on the critical conditions and practices that specifically affect LGBTI youth. At the same time, ensuring compliance with all applicable detention standards also protects the safety and well-being of LGBTI youth along with other youth. The reader should view these standards as part of a more comprehensive set of legal and professional requirements governing all aspects of facility management.

Many of the standards in this chapter define the obligations of juvenile detention personnel. However, all juvenile justice stakeholders – including probation services personnel, prosecutors, defenders and judges – have a role in ensuring the safety and well-being of LGBTI youth in detention. Understanding these standards is critical to support informed decisions by every stakeholder at every stage of the delinquency process.

### A. Equal and Respectful Treatment

Youth in secure confinement are entitled to equal protection and due process under the U.S. Constitution. Under the Equal Protection Clause, facility staff may not discriminate against LGBT youth or subject them to harsher treatment or different standards than those imposed on other similarly situated youth.<sup>70</sup> Conditions or practices that amount to punishment or substantially depart from accepted professional standards violate the Due Process Clause.<sup>71</sup> The standards in this section are aimed at ensuring that LGBTI youth are treated equally and respectfully.

▶ Staff must receive training in providing competent, non-discriminatory, respectful treatment of LGBT youth.

Professional standards require that detention staff receive pre-service and ongoing training.<sup>72</sup> This training should include the following subjects relevant to working with LGBTI youth:

- Basic SOGIE concepts and terminology, including common myths and misconceptions and development of gender and sexuality
- Research on the impact of stigma and bias on the health and well-being of LGBT youth and the drivers contributing to their disproportionate involvement in the justice system
- How to work with LGBTI youth in a respectful and non-discriminatory manner, irrespective of one’s political or religious views<sup>73</sup>
- How to recognize, respond to and prevent harassment of LGBTI youth<sup>74</sup>
- How to assess the safety of LGBTI youth, and make appropriate decisions based on the assessment
- How to communicate with youth about SOGIE<sup>75</sup>
- Confidentiality of information related to SOGIE and limitations on its disclosure
- How to distinguish between consensual sexual contact and sexual abuse between youth<sup>76</sup>
- How to conduct respectful and professional searches of transgender and intersex youth when searches are necessary<sup>77</sup>
- How to create a professional environment in which youth and staff treat one another respectfully, irrespective of differences

**“TOWARD EQUITY” TRAINING CURRICULUM**

The Equity Project is a national initiative to ensure that LGBT youth in the delinquency system are treated with dignity, respect and fairness. The project developed a comprehensive training curriculum for juvenile justice professionals to increase their understanding of SOGIE and develop their competency to serve LGBT justice-involved youth. The curriculum, including a trainer’s guide, handouts and resources, is available on the project website at [www.equityproject.org](http://www.equityproject.org).

Lessons include:

1. Understanding Sexual Orientation, Gender Identity and Gender Expression (SOGIE)
2. Dismantling Bias and Fostering Equity
3. Enhancing Communication and Building Trust with LGBT Youth
4. Reducing Risk and Promoting Protection
5. Ensuring Equity and Safety in Secure Settings
6. Respecting and Supporting Transgender Youth

- ▶ Staff must apply consistent behavioral standards to all youth.

Staff should not apply different standards to LGBTI youth. For example, rules prohibiting sexual conduct should be applied evenly to all youth. When youth engage in same-sex sexual activity, staff should not assign blame or assume coercion based on the SOGIE of the participating youth. Nor should staff assume that all physical interactions between LGBTI youth and their peers are sexual overtures. Staff should not regard consensual, developmentally appropriate displays of affection as sexual harassment or predatory behavior.

Staff should also hold all youth equally accountable for complying with rules prohibiting harassment or abuse. Staff should regard homophobic or transphobic harassment as seriously as any other harassment and should not blame LGBTI or gender-nonconforming youth for provoking mistreatment based solely on their LGBTI status or gender expression.

- ▶ Staff may not punish or prohibit behavior that is perceived to defy gender norms.

Staff should permit youth to express their gender through clothing, hairstyle and mannerisms.<sup>78</sup> Consistent with safety and security procedures, staff should permit transgender and gender-nonconforming youth to possess items necessary to present their gender identity consistent with safety and security procedures including binders, packers, girdles, breast inserts, bras and other items as requested. Staff should not require youth to shave their heads, remove hair weaves or otherwise conform to rigid standards of appearance. Nor should staff require LGBT or gender-nonconforming youth to hide their identities or conform their gender expression to avoid mistreatment. Similarly, staff should not segregate or remove LGBT youth as a means of preventing anti-LGBT harassment.

- ▶ Staff must respect the affirmed gender of all youth, including transgender youth, for all purposes.

All youth must have access to sex-segregated housing, programs, and privileges consistent with their gender identity. This standard is applied without question to most youth, whose assigned sex and physical characteristics align with their gender identity. However, transgender youth, whose assigned sex and gender identity are incongruent, are often deprived of this basic right. Like all youth, transgender youth benefit from acceptance and support, a central component of which is living consistently with their core gender. In fact, “preventing transgender youth from expressing their gender identity or punishing them for doing so increases their distress, undermines their emotional stability, and interferes with their care, treatment, and rehabilitation.”<sup>79</sup> Accordingly, standards of care recommend that professionals refer to transgender youth by their chosen name and pronoun, irrespective of the name and gender marker on the youth’s legal and identity documents.<sup>80</sup> Facilities should also provide youth with personal hygiene items appropriate to their gender identity.<sup>81</sup>

## B. Safety

Youth in government custody have a constitutional right to emotional and physical safety, and facility staff have a corresponding obligation to ensure their safety.<sup>82</sup> Detention, in general, subjects youth to a host of harm.<sup>83</sup> LGBTI youth are at even greater risk of emotional and physical harm than their heterosexual and cisgender peers. The PREA regulations include specific provisions aimed at preventing sexual assault of LGBTI youth in secure settings. Implementation of these same protections will likely create safer institutions generally. However, verbal and emotional mistreatment of LGBTI youth are also pervasive in these settings. Homophobic and transphobic epithets are so common that staff often consider them benign or harmless, and fail to take them seriously.<sup>84</sup> On the contrary, like any expression of bias, anti-LGBT hostility is harmful and creates an unsafe environment. The standards in this section are aimed at creating emotional and physical safety for all youth.

▶ The facility should adopt a written policy prohibiting physical, sexual or verbal harassment or abuse of youth on the basis of SOGIE and requiring fair and respectful treatment of LGBT youth.

At admission or shortly thereafter, the staff should provide a written and verbal or video orientation to every youth about institutional rules and procedures, including the right of all youth to be free from physical, verbal, or sexual abuse and harassment by staff and other youth.<sup>85</sup> The staff should clearly explain that the policy prohibits harassment or mistreatment based on SOGIE or perceived SOGIE. Staff should also describe the prohibited behavior. For example, it is important to explain that the policy prohibits name-calling, teasing, and bullying, as well as physical and sexual assault. Staff should also inform youth about how to report violations of the policy.

Facility staff should reinforce the policy by:

- modeling respectful, affirming treatment toward youth and other staff;
- intervening promptly and consistently to stop name-calling, bullying or other forms of harassment or mistreatment;
- responding to violations of the policy as teaching moments and opportunities to reiterate the facility's policy and address the underlying issues;
- creating an orientation video that celebrates diversity and describes the harms that result from name-calling, bullying and harassment;<sup>86</sup>
- supporting the right of all youth to self-expression, and objecting to any suggestion or requirement that LGBT or gender-nonconforming youth hide their identities or suppress their gender expression to prevent abuse by other youth;
- holding other staff accountable when they use derogatory language or make homophobic or transphobic remarks;

- ensuring that the curriculum, programming, books, materials and visual images in the facility portray positive images of LGBT individuals; and
- working toward creating an environment in which it is rarely necessary to invoke the policy.

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#### CALCASIEU PARISH OFFICE OF JUVENILE JUSTICE SERVICES DETENTION CENTER

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Youth entering the detention center receive information explaining the agency's zero tolerance policy regarding sexual abuse and sexual harassment, as well as the procedure for reporting such incidents. The facility's PREA Video and youth PREA training provide the youth a comprehensive understanding of their right to be free from sexual abuse and sexual harassment and their right to be free from retaliation for reporting such incidents. Both the staff and youth PREA training tools ensure the fidelity of the agency's mission to provide fair and equitable treatment for all youth is upheld.

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- ▶ The facility must have an accessible grievance procedure that permits youth to confidentially report harassment, discrimination, retaliation or abuse.

Anti-LGBT harassment and abuse thrives and worsens when its victims have no meaningful recourse to report or challenge it.<sup>87</sup> To be effective, policies designed to protect the safety of youth must be enforceable and provide a means of holding accountable youth or staff who violate the policies.

JDAI detention standards require facilities to provide opportunities for youth to report abuse, neglect, harassment and retaliation by staff or other youth verbally, in writing, anonymously and by third parties.<sup>88</sup> The grievance procedure must be confidential and accessible to all youth, and must protect youth from any retaliation or reprisals for filing a grievance.<sup>89</sup> In addition to these requirements, PREA requires the agency to provide at least one way for youth to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward reports of sexual abuse and sexual harassment to agency officials, allowing the youth to remain anonymous upon request.<sup>90</sup>

- ▶ As part of the initial safety assessment, intake staff must ask youth about their SOGIE and must not make assumptions based on appearance or stereotypes.

The PREA regulations require facilities to conduct a safety assessment of each youth within 72 hours of the youth's arrival at the facility and periodically throughout the youth's confinement to reduce the risk of sexual abuse by or upon the youth.<sup>91</sup> Along with other information relevant to this assessment, facilities must attempt to ascertain information about "[a]ny gender-

nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender or intersex, and whether the resident may therefore be vulnerable to sexual abuse.”<sup>92</sup> While staff may observe whether the youth’s gender expression appears nonconforming, the only reliable means of determining the youth’s sexual orientation or gender identity is to ask the youth directly. Accordingly, the National PREA Resource Center has clarified that the person conducting the risk assessment must affirmatively ask whether the youth identifies as LGBTI.<sup>93</sup> The facility may not compel youth to disclose this information, nor threaten a youth with discipline or other punishment for refusing to disclose such information. Staff should consider LGBTI status and gender nonconformity along with many other factors in evaluating the youth’s safety. At this writing, there is no national validated PREA-specific risk assessment tool. However, the PREA Resource Center has created several resources to assist jurisdictions, including “Screening for Risk of Sexual Victimization and for Abusiveness: Guidelines for Administering Screening Instruments and Using the Information to Make Housing Decisions.”<sup>94</sup>

The facility should provide training and support to staff to help them learn how to effectively communicate with youth about these issues, and how to use the information obtained from youth to prevent, detect, report and respond to sexual abuse.<sup>95</sup> A few jurisdictions have developed interview protocols to ensure that the information about LGBTI status is collected professionally and consistently. Some examples of these protocols and intake instruments are available through a link provided in Appendix B.

While PREA is focused on preventing sexual abuse, talking with youth about SOGIE also helps the staff prevent other forms of anti-LGBT mistreatment as well. Normalizing these discussions over time increases transparency, and works against the invisibility and stigma that subject youth to harm.

► **Staff must make classification and housing decisions case by case and must not automatically house youth solely on the basis of their actual or perceived LGBTI status.**<sup>96</sup>

Facilities must have a classification system for screening youth and making housing, bed, program, education and work assignments.<sup>97</sup> Information about a youth’s LGBTI status may be relevant to determine whether the youth is at risk of harassment or assault by others, but is not evidence that the youth presents a safety risk to others. Staff must not consider a youth’s LGBTI identity or gender nonconformity as an indication that the youth is likely to be sexually predatory.<sup>98</sup> Nor should staff house LGBTI youth in units reserved for sexual offenders unless they have a documented history of sexual assault or have been adjudicated delinquent for a sexual offense. LGBTI youth are more vulnerable to sexual assault by other residents, and housing them with youth who have a history of sexual assault places them at even greater risk for harm.

▶ **Staff may not isolate LGBT youths to protect their safety.**

Isolation of youth subjects them to significant physical and emotional harm, and should only be used as a temporary response to behavior that threatens immediate harm to the youth or others.<sup>99</sup> Unfortunately, too many facilities have resorted to isolation as a means of protecting youth who identify or are perceived as LGBT. A federal district court in Hawaii held that placing LGBT youth in isolation solely for their protection constitutes punishment and is a violation of due process.<sup>100</sup> PREA regulations also significantly limit the use of protective isolation and provide that “residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.”<sup>101</sup> During any period of isolation, facilities may not deny youth daily large-muscle exercise or any legally required educational programming or special education services.<sup>102</sup> Youth in isolation must receive daily visits from a medical or mental health care clinician, and must have access to other programs and work opportunities to the extent possible.<sup>103</sup> If a youth is placed in protective isolation, the facility must document the basis for concern about the youth’s safety and the reason why no alternative means of separation can be arranged.<sup>104</sup>

▶ **Staff may not automatically house transgender or intersex youth according to their sex assigned at birth. They should determine the appropriate housing unit after consideration of the youth’s health and safety, potential management or security problems, the youth’s perception of which housing assignment will be safe and any recommendations from the youth’s health care provider.**<sup>105</sup>

For many purposes, including housing, detention facilities are segregated by sex. Thus, a youth’s housing assignment is based, in part, on the youth’s sex. This structural reality raises the question of how to classify and house transgender and intersex youth. The general rule is that a youth’s gender identity is the primary determinant of the youth’s sex.<sup>106</sup> A transgender female is and should be considered female, irrespective of the name and gender marker on her legal documents or her physical characteristics. Accordingly, the presumption is that all youth are housed consistent with their gender identity, including transgender and intersex youth. An alternative rule that automatically houses transgender youth according to their assigned sex unnecessarily subjects them to the threat of victimization and psychological harm. When the youth, staff or the youth’s health-care provider identifies a specific safety concern with placing youth consistent with their gender identity, an exception may be made. The safety concern must be specific and credible, and cannot be based solely on the youth’s gender identity. In making this decision, staff must weigh the safety implications of all options. Staff must document the reason for the housing decision, and the decision must be reviewed by the facility administrator or designee.<sup>107</sup> These decisions must be reassessed every 60 days to review the youth’s safety and well-being.<sup>108</sup>



**Intake Assessment at Detention Programs and Residential Programs:**

“Upon conducting an intake of a youth, staff shall ask the youth in accordance with the provided intake questions how they identify by gender. A youth who identifies as a transgender or intersex youth shall be placed in a location consistent with the stated gender identity, absent a safety-based objection made in consultation with the Regional Director. Such safety-based objection shall have a specific, documented credible basis and shall not be solely based on a gender identity reason. If the youth is not currently at a location compatible with their stated gender, the program will move the youth to a location consistent with their stated gender identity at the most reasonable time, again, in consultation with the Regional Director, and consider a safety plan until such move is possible. All placements of a transgender or intersex youth shall be done in consultation with the Regional Director. A dialogue tree is available for those conducting the intake.” (The dialogue tree is available through a link listed in Appendix B.)

**C. Privacy and Dignity**

Detention facilities, by their institutional nature, emphasize surveillance, order and conformity. These environments deprive confined youth of even the most basic privacy and individuality. Loss of liberty is made worse by loss of control over most aspects of daily life, including clothing, food, friends and activities. This dehumanizing environment is particularly harmful to adolescents, whose healthy development requires the ability to explore their identities and express their individuality. LGBTI youth must contend with these challenges and also manage the additional burdens of stigma. The standards in this section are aimed at preserving the privacy, dignity and individuality of LGBTI youth to the extent possible in a detention setting. These standards ultimately enhance physical and emotional safety, and facilitate positive youth development. Facilities should re-examine institutional norms that unnecessarily sacrifice privacy and human dignity for convenience or uniformity, and institute changes that prioritize youth well-being even when such changes are not explicitly required by professional standards.

- ▶ Staff must defer to youth about when and with whom to disclose information internally about the youth’s LGBTI status.

Like other information gathered during intake and classification, information about a youth’s LGBTI status should be treated as private and confidential. Facility staff should only share this information internally if disclosure is necessary to serve the youth or ensure safety, and never to the youth’s detriment. For example, facility staff may be working with probation services to develop transition services. Before disclosing the youth’s LGBTI status to probation services, facility staff should consult with the youth and strategize to mitigate negative repercussions and prevent unnecessary redisclosure.

Staff should not share private information about one youth to another youth.<sup>109</sup> While staff should keep this information confidential, youth should be free to disclose their SOGIE to whomever they choose, whenever they choose. Thus, staff should not punish or discourage youth who disclose or express their gender or sexuality. When youth disclose their LGBTI status, staff should react with acceptance and support. Staff should also promptly intervene to stop harassment or harmful reactions from other youth.

▶ **Staff must not disclose information about a youth's LGBTI status to anyone, including the youth's parents, without obtaining the youth's consent, unless disclosure is required by a court order.**<sup>110</sup>

Staff should consider information about a youth's LGBTI status private and confidential, and the youth should be given as much control as possible over its management. Intake staff should consult with youth about how they want the information recorded and with whom they wish it to be shared.<sup>111</sup> Unwarranted disclosure of SOGIE information may subject youth to rejection, ridicule, harassment or abuse. Facility personnel should be thoughtful and cautious about recording or sharing this information, and should only do so when necessary to advance the youth's well-being and after consulting with the youth. Talking with youths before disclosure gives them the opportunity to ask questions, assert their wishes and solve problems to minimize potential negative consequences. Engaging with youth on these issues also conveys respect and sensitivity and builds trust.

▶ **Staff must conduct searches of transgender and intersex youth professionally and respectfully, and in the least intrusive manner possible, consistent with security needs.**

Besides the laws and standards governing searches of youth in general, the PREA regulations limit the circumstances under which staff are permitted to conduct cross-gender searches of youth. Staff may not conduct cross-gender strip searches or visual body cavity searches, except in exigent circumstances or when performed by medical practitioners.<sup>112</sup> Nor may staff conduct cross-gender pat down searches, except in exigent circumstances.<sup>113</sup> Staff must document and justify any cross-gender searches.<sup>114</sup>

The National PREA Resource Center offers two options for applying this standard to transgender or intersex youth in juvenile facilities: either use medical staff to perform searches, or ask youth to identify the gender of the staff with whom they would feel most comfortable conducting the search.<sup>115</sup>

PREA also prohibits staff from searching or physically examining transgender or intersex youth for the purpose of determining the youth's genital status.<sup>116</sup> If the youth's genital status is unknown – and is somehow relevant – it may be determined during conversations with the youth, by reviewing medical records, or by obtaining that information as part of a broader medical examination conducted in private by a medical practitioner.<sup>117</sup>

The facility should train staff to conduct all searches professionally and respectfully, and in the least intrusive manner possible, consistent with security needs.<sup>118</sup>

- ▶ Staff must accommodate any youth, including transgender or intersex youth, whose physical or emotional condition justifies privacy while showering, performing bodily functions or changing clothing.

The PREA regulations require facilities to implement policies and procedures that enable youth to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.<sup>119</sup> The emphasis on cross-gender viewing in this provision stems from its focus on preventing sexual abuse.

The JDAI standards, which are more broadly focused on health and well-being, extend these protections to require accommodation of any youth whose physical or emotional welfare may require additional privacy.<sup>120</sup> Because transgender and intersex youth are at increased risk of victimization while showering, performing bodily functions or changing clothing, facilities must provide the necessary accommodations to ensure their privacy.

#### **D. Qualified Medical and Behavioral Health Care**

Juvenile detention facilities are obligated to ensure that detained youth receive all medically necessary health and behavioral health services.<sup>121</sup> Facilities must ensure that youth receive a medical and mental health screening at admission, a full medical assessment within a week of admission and any necessary medical, mental health or dental services identified in the assessment.<sup>122</sup> These services must be delivered by qualified professionals who are familiar and comply with the relevant standards of care.<sup>123</sup> The standards in this section are aimed at meeting these requirements for LGBTI youth.

- ▶ Facility staff must ensure that transgender youth receive a full medical assessment by qualified medical personnel who adhere to the relevant medical standards of care.<sup>124</sup>

Physicians or other health care professionals who assess or treat transgender youth must be familiar and comply with the medical standards of care promulgated by the World Professional Association for Transgender Health (WPATH).<sup>125</sup> In particular, health care professionals must be competent to diagnose and treat gender dysphoria, which is defined by WPATH as the discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics).<sup>126</sup>

The core principles of the WPATH standards of care are as follows:

- Exhibit respect for patients with nonconforming gender identities (do not pathologize differences in gender identity or expression).

- Provide care (or refer to knowledgeable colleagues) that affirms patients' gender identities and reduces the stress of gender dysphoria, when present.
- Become knowledgeable about the health-care needs of transsexual, transgender and gender non-conforming people, including the benefits and risks of treatment for gender dysphoria.
- Match the treatment approach to the specific needs of patients, particularly their goals for gender expression and need for relief from gender dysphoria.
- Facilitate access to appropriate care.
- Seek patients' informed consent before providing treatment.
- Offer continuity of care.
- Be prepared to support and advocate for patients within their families and communities (schools, workplaces, and other settings).<sup>127</sup>

If the medical staff in the facility are not familiar with the WPATH standards, they should ensure that transgender youth have access to qualified medical personnel who are familiar with the standards and competent to diagnose and treat gender dysphoria. Under no circumstances should nonmedical staff make decisions about whether youth are entitled to be evaluated for transition-related care. Upon request by the youth or referral by facility medical staff, the staff should ensure that the youth has access to qualified health care professionals for assessment and medically necessary treatment.

► Policies must require provision of medically necessary transition-related health care to transgender youth, as determined by qualified medical personnel familiar with the relevant standards of care.

The National Commission on Correctional Health Care (NCCHC) issued a position statement on transgender healthcare in correctional settings, including juvenile confinement facilities.<sup>128</sup> Key provisions of that statement include:

- Determination of treatment necessary for transgender patients should be done case by case. Ideally, correctional health care staff are trained in transgender health care. Alternatively, they should have access to other professionals with expertise in transgender health care to help determine appropriate management and provide training on gender-related care.
- Because transgender patients may be under different stages of care before incarceration, there should be no blanket administrative or other policies that restrict specific medical treatments. Policies that make treatments available only to those who received them before incarceration or that limit transition and/or maintenance are inappropriate and out of step with medical standards and should be avoided.

- Accepted treatments for gender dysphoria should be made available for people with gender dysphoria. Providing mental health care, while necessary, is not sufficient.
  - Psychotherapy such as “reparative” or “conversion” therapy or attempts to alter gender identity should never be employed.
  - Transgender patients who received hormone therapy with or without a prescription before incarceration should have that therapy continued without interruption pending evaluation by a specialist, absent urgent medical reasons to the contrary. Hormone therapy should not be discontinued precipitously as this will likely cause depression and anxiety.<sup>129</sup>
  - Gender dysphoric patients who have not received hormone therapy prior to incarceration should be evaluated by a health care provider qualified in the area of gender-related health care to determine their treatment needs.
  - When determined to be medically necessary for a particular patient, hormone therapy should be initiated, and regular laboratory monitoring should be conducted according to community medical standards.
  - Transgender patients should have access to services that address self-acceptance, disclosure of sexual orientation or gender identity, family relationships, healthy intimate relationships and sexual decision making.
- ▶ The facility must not employ or contract with medical or behavioral health providers that attempt to change a youth’s sexual orientation or gender identity.<sup>130</sup>

Interventions, formal or informal, that seek to change a youth’s SOGIE or suggest that these aspects of identity can or should be changed, are known as “conversion therapy,” “reparative therapy” or “Sexual Orientation Change Efforts” (SOCE). The nation’s leading professional medical and mental health associations have universally rejected these interventions as unnecessary, ineffective and dangerous. These groups have cautioned that the practices do not work and have warned patients that they may be harmful. For example, the American Psychological Association “advises parents, guardians, young people and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support and reduce rejection of sexual minority youth.”<sup>131</sup> Facilities should ensure that medical and behavioral health providers do not engage in any form of conversion therapy, which should be contractually prohibited.

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# Appendix

## A. Glossary

**AGENDER:** Describes a person who does not identify with a specific gender.

**ALLY:** Describes people who confront and challenge heterosexism, sexism, homophobia, transphobia and heterosexual privilege in themselves and others.

**ANDROGYNOUS:** Describes a person with physical and/or presentational traits ascribed to both men and women.

**ASEXUAL:** Describes a person who does not feel sexual attraction or a desire to engage in sexual behavior with either men or women.

**BIAS:** A personal, generalized preference for or against something that has the tendency to interfere with one's ability to be impartial or objective.

**BIGENDERED:** Describes a person having two genders; exhibiting cultural and/or physical characteristics of male and female roles.

**BIPHOBIA:** Fear or hatred of, or prejudice against, bisexual people.

**BISEXUAL:** Describes a person who is attracted to both men and women.

**CISGENDER:** Describes people whose gender identity matches their sex assigned at birth.

**CISGENDERISM:** Assuming that every person is cisgender, and marginalizing people who are gender nonconforming. Also believing cisgender people are superior, and holding others to traditional or stereotypical gender-based expectations.

**COMING OUT:** The act or process of voluntarily disclosing one's sexual orientation or gender identity.

**GAY:** Describes a person who is attracted to individuals of the same gender. While historically used to refer specifically to men, it is often used to refer to women attracted to other women as well.

**GENDER:** A social construct used to classify a person as a man, a woman or some other identity. Fundamentally different from sex assigned at birth, it is often closely related to the role that a person plays or is expected to play in society.

**GENDER BINARY:** The idea that there are only two genders – male and female – and that a person can only be either exclusively male or female.

**GENDER EXPRESSION:** Describes how individuals communicate their gender to others. People express and interpret gender through hairstyles, clothing, physical expression and mannerisms, physical alterations of their body or by choosing a name that reflects their gender identity.

**GENDERFLUID:** Shifting naturally in gender identity and/or gender expression. The term may be used to refer to a specific gender identity or the fluidity between identities. Other similar terms include: gender creative, gender-nonconforming (GNC), gender expansive, genderqueer, gender variant and pangender.

**GENDER IDENTITY:** A person's internal identification or self-image as male, female, something in between, or outside of the male/female binary. Everyone has a gender identity. One's gender identity may or may not be consistent with one's sex assigned at birth.

**GENDERISM:** The belief that there are – and should be – only two genders, and that one's gender, or most aspects of it, are inevitably tied to one's sex assigned at birth.

**GENDER NEUTRAL:** Describes facilities that any individual can use regardless of gender (e.g. gender-neutral bathrooms); can also be used as a synonym for androgynous, or someone who does not identify with a particular gender.

**GENDER NON-CONFORMING (GNC):** Describes a person who does not subscribe to gender expression or roles imposed by society.

**GENDER ROLE:** A societal expectation of how people should act, think, look, dress, sound and/or feel based upon the gender corresponding with their sex assigned at birth.

**HETERONORMATIVITY:** The assumption, by individuals or institutions, that everyone is heterosexual, and that heterosexuality is superior to other sexual orientations.

**HETEROSEXUALITY:** Describes a sexual orientation in which a person feels physically and emotionally attracted to individuals of the opposite sex.

**HETEROSEXUAL PRIVILEGE:** A term describing the benefits derived automatically from being heterosexual or perceived as heterosexual, which are denied to people of other sexual orientations.

**HOMOPHOBIA:** The irrational hatred or fear of lesbian or gay people, or disapproval of other sexual orientations, regardless of motive. Homophobia includes prejudice, intolerance, discrimination, harassment and acts of violence against people on the basis of their gay or lesbian identity. It occurs on personal, institutional and societal levels, and is closely linked with transphobia and biphobia. Internalized homophobia is the fear and self-hate of one's own gay or lesbian identity, which can occur for individuals who have been conditioned throughout childhood with negative ideas about sexual orientations other than heterosexuality.

**HOMOSEXUALITY:** Describes a sexual orientation in which a person feels physically and emotionally attracted to people of the same sex. This term is disfavored in LGBT communities because of its historical association with mental illness.

**INTERSEX:** Describes people born with sex chromosomes, external genitalia or internal reproductive systems that are not considered "typical" for either males or females.

**"IN THE CLOSET":** Refers to a lesbian, gay, bisexual, transgender or intersex person who chooses not to disclose his or her sex, sexual orientation or gender identity to friends, family, co-workers or society. There are varying degrees of being "in the closet." For example, a person can be "out" in his or her social life, but "in the closet" at work or with family. Also known as "Down-low" or "D/L."

**LESBIAN:** Describes a woman who is attracted to other women.

**LGBT:** An acronym used to describe lesbian, gay, bisexual and transgender persons, or the community as a whole.

**MSM:** An abbreviation for “men who have sex with men,” which refers to men who engage in sexual behavior with other men, but who may not necessarily identify as gay or bisexual.

**QUEER:** An umbrella term used to refer to all LGBT people; the term can be a political statement as well as an identity, seeking to expand upon limited sexual and gender-based categories. For some, “queer” has a negative connotation, given its historical use as a pejorative term. Many LGBT people, however, have reclaimed the word and now use it in a positive light. Many people use the term “queer” because other terms do not accurately describe them.

**QUESTIONING:** People who are unsure of, or in the process of, discovering their sexual orientation or gender identity.

**SAME-GENDER LOVING:** A term used in some communities (often African-American) for people who love, date and/or have attraction to people of the same gender. Often used by those who prefer to distance themselves from the terms they see as associated with primarily white LGBT communities or movements.

**SEX:** Assigned at birth, a biological construct that is based primarily on physical attributes such as chromosomes, external and internal genital and reproductive anatomy and hormones.

**SEXUAL OR GENDER MINORITY:** A person whose sexual orientation or sexual behavior is not part of the mainstream. May also refer to members of gender groups that do not fall into the binary categories of male or female.

**SEXUAL ORIENTATION:** An attraction to others that is shaped at an early age (usually by about the age of 10). Sexual orientation falls on a spectrum that ranges from attraction to only men or only women, to varying degrees of attraction to both men and women, to attraction to neither men nor women.

**SOGIE:** An acronym for sexual orientation, gender identity and gender expression. Everyone has a sexual orientation, gender identity and gender expression.

**STEREOTYPE:** A preconceived, generalized and oversimplified opinion, belief or judgment applied to an entire group of people. It is also an assumption that people, groups or events conform to a general pattern and lack any individuality.

**STIGMA:** A mark of humiliation or shame associated with a particular circumstance, quality or group of people.

**STRAIGHT:** Describes a man who is attracted to women or a woman who is attracted to men.

**TRANSGENDER:** Describes a person whose gender identity and sex assigned at birth do not match.

**TRANSGENDER MAN:** A person who was assigned a female sex at birth, but identifies as and is living as a man. Similar terms include: “trans man,” “trans boy” and “transgender boy.” [*Note:* Some transgender people object to the use of “FTM” or “F2M,” abbreviations for “female-to-male.”]

**TRANSGENDER WOMAN:** A person who was assigned a male sex at birth, but identifies as and is living as a woman. Similar terms include: “trans woman” and “trans girl.” [*Note:* Some transgender people object to the use of “MTF” or “M2F,” abbreviations for “male-to-female.”]

**TRANSITION:** A process by which transgender people align their anatomy (medical transition) or gender expression (social transition) with their gender identity.

**TRANSPHOBIA:** Fear or hatred of, or prejudice against, transgender people.

**TRANSSEXUAL:** A term used by the medical community to refer to individuals who wish to alter their bodies to make their anatomy more in line with their gender identities. Transsexual is not a term you will hear very often among youth or transgender community members.

**TWO SPIRIT:** A term used in some Native American communities for persons who identify with gender roles of both men and women, and/or are considered a separate or third gender.

## B. Resources

### I. LOCAL POLICIES

Several jurisdictions have developed policies governing the treatment of LGBT youth in the juvenile justice system. Examples of these policies are available on the Equity Project website at <http://www.equityproject.org/type/policy/>.

### 2. INTERVIEW AND INTAKE PROTOCOLS

Some jurisdictions have developed surveys or intake protocols to collect SOGIE data. Examples of these interview and intake protocols are available on the Equity Project website at <http://www.equityproject.org/resource/1022/>.

### 3. PROFESSIONAL STANDARDS AND RECOMMENDATIONS

The following reports address the social conditions that contribute to the criminalization of LGBT youth, and provide recommendations for promoting the safety and well-being of LGBT youth who are involved in the juvenile justice system.

- *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts (2009)*

This report, authored by the Equity Project, represents the first effort to examine the experiences of LGBT youth in the juvenile justice system, and to recommend measures to promote their health and well-being. The report contains recommendations directed at judges, defenders, prosecutors, probation officials, detention administrators, policymakers and advocates. The report is available on the Equity Project website at <http://www.equityproject.org/type/equity-project-resources/>

- *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-conforming Youth (2011)*

This report, produced by the National Center for Lesbian Rights and the Sylvia Rivera Law Project, provides group care facilities with information and tools to provide transgender and gender nonconforming young people with appropriate and informed care. The report is available online at <http://www.nclrights.org/legal-help-resources/resource/a-place-of-respect-a-guide-for-group-care-facilities-serving-transgender-and-gender-non-conforming-youth/>

- *Teen SENSE Model Standards: Sexual Health Care for Youth in State Custody (2012)*

Produced by the Center for HIV Law and Policy, these standards reflect minimum professional standards for meeting the sexual health care needs of youth in foster care and juvenile justice



settings. The report is available online at <http://www.hivlawandpolicy.org/resources/teen-sense-model-sexual-health-care-standards-youth-state-custody-center-hiv-law-and>

- *Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems (2014)*

In this document, the New York City Administration for Children's Services (ACS) outlines strategies for promoting the health and well-being of transgender and gender-nonconforming youth in ACS custody. The document is available online at [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL\\_03\\_05\\_2014\\_TGNC\\_guide.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/FINAL_03_05_2014_TGNC_guide.pdf).

- *Restoring Justice: A Blueprint for Ensuring Fairness, Safety, and Supportive Treatment of LGBT Youth in the Juvenile Justice System (2014)*

This report by the Center for American Progress provides existing policies and practices aimed at promoting the health and well-being of LGBT youth in the juvenile justice system. The report is available online at <https://cdn.americanprogress.org/wp-content/uploads/2014/12/LGBTJJPpolicy-brief.pdf>.

#### 4. PREA IMPLEMENTATION

The following resources provide detailed information related to implementation of PREA in juvenile facilities.

- *Implementing the Prison Rape Elimination Act: A Toolkit for Juvenile Agencies and Facilities (2013)*

Produced by the National Institute of Corrections (NIC), this toolkit provides juvenile justice agencies and facilities with a step-by-step guide for preventing, detecting and eliminating sexual abuse of residents in their custody, and for responding effectively to abuse when it occurs. The toolkit is available online at <http://nicic.gov/library/026881>. A list of resources for serving LGBTI youth in juvenile justice settings is also available on NIC's website at <http://nicic.gov/lgbtijjuveniles>.

- *National PREA Resource Center (PRC)*

The PRC provides support, information, and technical assistance to state and local entities responsible for implementing the PREA standards. The PRC website, <http://nicic.gov/library/026881>, contains links to resources, training curricula, technical assistance, information about audits and FAQs.

## **5. TRAINING MATERIALS**

The Equity Project has developed a comprehensive curriculum entitled: “Toward Equity: Understanding Sexual Orientation, Gender Identity, and Gender Expression, and Developing Competency to Serve Lesbian, Gay, Bisexual, and Transgender Youth in the Juvenile Justice System.” The curriculum, including a trainer’s guide, handouts, and resources, is available on the project website at <http://www.equityproject.org/training-type/curricula/>.





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