

Division of Youth Rehabilitative Services

<b>Chapter 2: Professional Practices</b>	<b>Policy # 2.20</b>	<b>Page: 1 of 7</b>
<b>Subject:</b> Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI)	<b>Standards:</b> Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape; Final Rule 2013 (115.315, 115.331, 115.341, 115.342)	
<b>Effective Date:</b> 6/1/15	<b>Revised:</b> 05/29/15, 05/16/16, 03/05/19	

- I. **PURPOSE:** The Division of Youth Rehabilitative Services is committed to providing a high standard of care and oversight to all youth in our supervision. Our standard of care includes the exception of ethical standards for children and their families who present differently than the traditional roles regarding sexual identities, expression or orientation. The purpose of the policy is to establish clear guidelines and to provide a value statement on all children that is free of discrimination of any type.
  
- II. **POLICY:** This policy outlines procedures that shall be reinforced for all Division managed facilities, youth on community supervision and any private provider that contracts with the Division to provide services to our children and families. In short, we will practice zero tolerance on any behaviors of discrimination in regards to sexual orientation, expression or identification and we will educate ourselves and address all situations where others may attempt to apply discriminatory practices (through decisions, conversation or actions).
  
- III. **DEFINITIONS:** As used in this document, the following definitions shall apply:
  - A. **LGBTQI:** is an acronym commonly used to refer to lesbian, gay, bisexual, transgender, questioning, and intersex individuals.
  - B. **Lesbian:** refers to a female who is emotionally, romantically, and sexually attracted to other females.
  - C. **Gay:** refers to a person who is emotionally, romantically, and sexually attracted to people of the same gender. Sometimes, it may be used to refer to gay men or boys only. It is preferred over the term homosexual.
  - D. **Bisexual:** refers to a person who is attracted to and may form sexual and romantic relationships with males and females.
  - E. **Transgender:** refers to a person whose gender identity (i.e. internal sense of feeling male or female) is different from the person's assigned sex at birth. It may also be used as an umbrella term to include all persons whose gender identity or gender expression does not match society's expectations of how an individual of that gender should behave in relation to his or her gender.
  - F. **Transgender Female:** are young people who were assigned the sex of male at birth and who now identify as female. Similarly, terms transgender girls and transgender women refer to those who now identify as girls and women.

- G. Transgender Male: are young people who were assigned the sex of female at birth and who now identify as male. Similarly, the terms transgender boys and transgender men refer to those who now identify as boys and men.
- H. Questioning: refers to a person, often an adolescent, who is exploring or questioning issues of sexual orientation or gender identity or expression in his or her life. Some questioning people will ultimately identify as gay, lesbian, bisexual or transgender; others will self-identify as heterosexual and not transgender.
- I. Intersex: refers to a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
- J. Sexual Orientation: refers to a person's emotional, romantic and sexual attraction to persons of the same or different gender.
- K. Gender Identity: refers to a person's internal sense of themselves as male, female, or gender, or another gender, regardless of anatomy.
- L. Gender Expression: refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, etc. A person's gender expression may vary from the norms traditionally associated with his or her assigned sex at birth. Gender expression is a separate concept from sexual orientation and gender identity. For example, a male may exhibit an effeminate manner, but identify as a heterosexual male.
- M. Discrimination: any act or practice that, regardless of intent, has the effect of subjecting any youth to differential treatment as a result of that youth's actual or perceived sexual orientation or gender identity.
- N. Volunteer: refers to a person who chooses freely to provide services with no promise of compensation.
- O. Contractor: a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- P. Harassment: includes, but is not limited to, name-calling, disrespectful gestures, jokes or comments, inappropriate touching, threats of physical or emotional acts or negative consequences, physical abuse, sexual abuse, including unwanted sex acts, touching, pantomime, and threats, and emotional abuse, such as shunning or isolation. Attempting to change a youth's sexual orientation or gender identity is also a form of harassment.
- Q. Interdisciplinary Team: the team of facility staff responsible for communicating, coordinating, and revising a youth's integrated treatment plan. Minimally, the team consists of a Unit Manager, Behavioral Health Services staff, Youth Specialists,

Education, and Recreation. Other participating staff may be included, such as medical services, religious services or administration. Family Members of the team are encouraged to participate when possible.

#### IV. PROCEDURES:

##### A. Youth Disclosure

1. All disclosures regarding sexual orientation or gender identity must be initiated by the youth.
2. Staff shall not directly question a youth about his/her sexual orientation or gender identity/expression.
  - a) Prior to the intake processes (showering and housing assignment), staff shall inform the youth of the process and shall ask the youth is there anything we should know before they are asked to disrobe.
3. Upon a youth's disclosure to a staff member that he/she is LGBTQI, staff shall talk with the youth in an open and understanding manner. Staff shall explain to the youth DYRS Policy on Youth Rights and Responsibilities, specifically to lesbian, gay, bisexual, transgender and intersex youth, as it relates to the youth's safety. The youth shall be offered appropriate behavioral health services.
4. Staff should be aware that LGBTQI youth are in various stages of awareness and comfort with their sexual orientation and gender identity.

##### B. Confidentiality

1. Consistent with state law and regulations, it is the policy of DYRS to respect and maintain the privacy of all youth and to protect their information; this includes information about sexual orientation and gender identity/expression. All disclosures regarding sexual orientation or gender identity must be initiated by the youth.
2. Information regarding a youth's sexual orientation or gender identity/expression shall be shared with other staff only on a need-to-know basis and when determined to be therapeutically necessary to ensure the youth's safety.
3. If a youth wishes to disclose their sexual orientation or gender identity/expression with their parent(s) or legal guardian, a behavioral health services clinician/provider shall provide assistance, if necessary.
4. Staff will not disclose a youth's sexual orientation or gender identity to other youth, friends, or family members or to outside individuals or agencies without the youth's permission.
5. This confidentiality restriction does not prevent individuals working in the residential program from discussing a youth's service needs with other staff members.

**C. Youth Rights and Responsibilities**

1. LGBTQI youth have the same rights as all other youth in DYRS custody.
2. LGBTQI youth are subject to the same rules as all other youth in DYRS custody and can expect staff to enforce rules and offer incentives consistently regardless of their LGBTQI status.
3. LGBTQI youth shall not be isolated or otherwise separated from other youth solely due to their LGBTQI status.

**D. Abuse or Harassment Reporting Responsibilities (staff, contractors, and volunteers)**

1. Any employee who is involved in, witness or otherwise becomes aware of abuse or harassment of an LGBTQI youth must report the conduct in writing and verbally to his/her immediate supervisor for appropriate action.
2. Contractors and volunteers must provide the same reports to shift supervisor.
3. As a mandatory reporter, directly report the conduct/incident to the Child Abuse Hotline (1-800-292-9582).
4. Upon learning of abuse or harassment of an LGBTQI youth, staff shall take immediate measures to ensure the safety of the youth, including physically separating the alleged abuser/harasser and the alleged victim.
5. Failure of an employee to report abuse or harassment of an LGBTQI youth may warrant disciplinary action against that employee up to and including dismissal (PREA 115.346).
6. LGBTQI youth will receive fair and equal treatment, without bias, and in a professional and confidential manner.
7. Staff will not discriminate against or harass any youth in their care based on the youth's actual or perceived sexual orientation, gender identity or gender expression.
8. Staff will protect youth from discrimination, physical and sexual harassment or assault, and verbal harassment by other youth, based on a youth's actual or perceived sexual orientation, gender identity or gender expression.
9. The Program Manager will be responsible for establishing and maintaining a culture where the dignity of every youth is respected and all youth feel safe. Staff will model positive behavior when interacting with LGBTQI youth and remind all youth that those anti-LGBTQI threats of violence, actual violence or disrespectful or suggestive comments or gestures, will not be tolerated.
10. All staff will use respectful language and terminology that does not further stereotype about LGBTQI individuals.
11. All staff in the course of their work will not refer to youth by using derogatory language in a manner that conveys bias or hatred of LGBTQI individuals. In particular, staff will not imply or tell LGBTQI youth that they are abnormal, deviant, sinful, or that they can or should change their sexual orientation or gender identity.
12. Transgender youth will be referred to by their preferred name and the pronoun that reflects the youth's gender identity, even if their name has not been legally changed.
13. All written documentation about a transgender youth will utilize the youth's preferred name as well as noting the youth's legal name recognized by the court.

E. Special Considerations

1. Housing (PREA 115.342)

- a. DYRS shall use information obtained in intake and referral documentation and the Mental Health Assessment to make housing, bed, program, education, and work assignments for youth with the goal of keeping all youth safe and free from sexual abuse and sexual assault.
- b. Prior to the intake process (showering and housing assignment), staff shall inform the youth of the process and shall ask the youth is there anything we should know before they are asked to disrobe.
- c. LGBTQI youth may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other youth safe, and then only until an alternative means of keeping all youth safe can be arranged. During any period of isolation, DYRS staff shall not deny youth daily large-muscle exercise and any legally required educational programming or special education services. Youth in isolation shall receive daily visits from medical staff or a behavioral health services clinician/provider. Youth shall also have access to other programs and work opportunities to the extent possible.
- d. LGBTQI youth shall not be placed in particular housing, bed or other assignments solely on the basis of such identification or status, nor shall DYRS consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.
- e. In deciding whether to assign a transgender or intersex youth to a facility for male or female youth, and in making other housing and programming assignments, DYRS shall consider on a case-by-case basis whether a placement would ensure the youth's health and safety, and whether the placement would present management or security problems.
- f. Placement and programming assignments for each transgender or intersex youth shall be reassessed by the interdisciplinary team at least twice each year to review any threats to safety experienced by the youth.
  - It is recognized that DYRS generally has a small subgroup of youth that are housed for twelve months (12 month commitments and those involved in Superior Court). Of this subgroup, any youth initially assessed by the Interdisciplinary Team shall have an automatic re-assessment date in twelve months.
- g. A transgender or intersex youth's views with respect to his/her own safety shall be given serious consideration.
- h. If a youth is isolated pursuant to paragraph (c) of this section, the facility shall clearly document:
  - The basis for the facility's concern for the youth's safety; and

- The reason why no alternative means of separation can be arranged.
  - i. Every 30 days, the facility shall afford each youth described in paragraph (c) of this section a review to determine whether there is a continuing need for separation from the general population.
- F. Bathroom/Shower (PREA 115.342) – Transgender and intersex youth shall be given the opportunity to shower and use the bathroom separately from other youth.
- G. Search Procedures (PREA 115.315)
  1. All searches shall be conducted in accordance with DYRS Policy.
  2. LGBTQI youth will not be physically searched in a manner that is humiliating or degrading or for the sole purpose of determining the youth's physical anatomy. If a youth's gender is unknown, it will be determined during conversations with the youth, by reviewing medical records, or as a part of a broader medical examination conducted in private by a medical practitioner.
  3. LGBTQI youth shall be asked about their preference for the gender of the staff to conduct any searches of the youth. If the youth does not express a preference, clothed and unclothed searches of a LGBTQI youth will be conducted by a staff member of the same gender as the youth.
  4. Cross gender searches should not occur except in exigent circumstances. If an exigent circumstance exists then, immediately following the emergency, written documentation must be completed to explain the exigent circumstance, available resources and why the policy deviation was necessary. This documentation must be reviewed and approved by the program's manager immediately following the emergency and submitted to the Deputy Director, Division PREA Coordinator and the program's PREA Compliance Manager.
- H. Clothing – Staff will provide youth with institutional clothing, including undergarments, appropriate for the youth's gender identity and gender presentation.
- I. Medical and Behavioral Health Services
  1. LGBTQI youth shall receive medical and behavioral health services consistent with DYRS policies.
  2. For youth admitted to residential care that have been receiving transgender related medical care, such as hormone therapy or supportive counseling, the contracted healthcare provider will consult with the youth's private physician and will continue the youth's transition related treatments that are medically necessary, according to the youth's provider and accepted professional standards.
  3. Healthcare providers will facilitate exploration of gender or sexuality issues with LGBTQI youth in the same manner as with other youth by being open and non-judgmental.

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4. Healthcare staff will be knowledgeable about the healthcare needs of LGBTQI and transgender youth.
5. The Division's contracted healthcare provider working in the residential programs will receive ongoing PREA training consistent in content and frequency as the Division employees.

J. Staff Training

1. All staff shall receive training on how to communicate effectively and professionally with youth including LGBTQI or gender nonconforming youth (PREA 115.331).
2. Training shall be provided during pre-service training sessions in accordance with the DYRS PREA Policy any employee who is involved in, witnesses or otherwise becomes aware of abuse or harassment of an LGBTQI youth must report the conduct in writing and verbally to his/her immediate supervisor for appropriate action.

K. Exceptions – Any exception to this policy will require prior written approval from the Division Director.

Review Date:	Reviewed By:
3/2/19	