

Keeping LGBTQ Youth Safe in Juvenile Justice & Delinquency Placements

Many young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ) and in the custody of juvenile justice and delinquency systems are unsafe in their placements and are not receiving appropriate services. Professionals working within these systems must ensure that LGBTQ young people are protected from harm and supported in their development.

ACKNOWLEDGE THEIR EXISTENCE.

If you work in the juvenile justice and delinquency systems, you probably work with LGBTQ young people. Some may be out to you as LGBTQ, while others may hide their identities to avoid conflict. Never rely on unfounded myths and stereotypes about LGBTQ people in an effort to identify LGBTQ youth. Instead, treat all young people in custody with respect for their individuality and their decision to be open or not about their sexual orientation or gender identity.

UNDERSTAND THE FACTORS CONTRIBUTING TO DISPROPORTIONATE NUMBERS OF LGBTQ YOUTH IN THESE SYSTEMS.

Research shows that young people facing family rejection, harassment and failure at school are more likely to enter the child welfare and juvenile justice systems. LGBTQ youth are more likely than their non-LGBTQ peers to face abuse and neglect at home, including being thrown out by their families. They are also more likely to be harassed and victimized at school. All too often, dropping out of school and living on the streets are seen as the only alternatives for survival. On the streets, LGBTQ teens may be forced into illegal activities, including sex work, to support themselves. LGBTQ youth of color congregating in public places, in particular, face selective enforcement of “quality of life” and “morals” regulations. Violations of age-of-consent laws between young people of the same sex are more likely to be criminally charged and to be punished more harshly than violations between different-sex partners. These factors contribute to the overrepresentation of LGBTQ youth in juvenile justice and delinquency systems.

ADOPT POLICIES TO IMPROVE THE QUALITY OF CARE PROVIDED TO LGBTQ YOUTH.

Adopt explicit written policies that provide guidance on how to better meet the needs of LGBTQ youth in juvenile justice settings and that

prohibit discrimination and harassment based on actual or perceived sexual orientation, gender identity or HIV status. These policies should also include mandatory training for staff on sexual orientation and gender identity and guidance with regard to rooming assignments, dress codes, requests to be called by names and pronouns that match a youth’s gender identity and access to gender dysphoria treatment for transgender youth.

SEEK ALTERNATIVES TO DETENTION OF LGBTQ YOUTH.

LGBTQ youth are often detained even when detention is uncalled for, because their families refuse to accept their LGBTQ status, or the court believes that incarceration will keep these youth safe from their own LGBTQ behavior.¹ Such detentions are “inappropriate and unnecessary.”² Seek safe “alternative placements”³ for LGBTQ youth when detention is not warranted, and encourage families to understand the disastrous effect rejection can have on LGBTQ youth. For more information about the importance of family acceptance on the health and well-being of LGBTQ youth, visit the Family Acceptance Project™ website at <http://familyproject.sfsu.edu>.

SEEK OUT SAFE, AFFIRMING PLACEMENTS.

LGBTQ youth should be placed in facilities that have LGBTQ-inclusive nondiscrimination policies and where qualified staff have been trained to protect and support LGBTQ youth. If no such placements exist in your community, advocate for these changes at an existing facility.

1 Katayoon Majd, Jody Marksamer & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts* 95 (2009), available at www.equityproject.org/pdfs/hidden_injustice.pdf (internal citations omitted).

2 *See id.*

3 *Id.* at 97.

FOSTERING TRANSITIONS

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PROTECT THE RIGHT OF LGBTQ YOUTH TO SAFETY.

All young people in state custody are entitled to state protection from physical and emotional harm from other juveniles or the staff. The federal right to safety while in state custody is grounded in the Fourteenth Amendment of the U.S. Constitution and has been enforced by courts around the country. In fact, juveniles are entitled to greater civil rights protections than adult prisoners while in state custody. The right to safety has been held by courts to include the right to appropriate medical and mental health care services. When a young person in state custody is harassed, harmed or not provided adequate treatment and services, the state officials responsible for ensuring protection can be held personally liable. Courts have awarded sizeable monetary awards for damages in cases involving mistreatment of LGBTQ young people.⁴ In 2007 and 2008, the Hawaii Youth Correctional Facility and the New York State Office of Children and Family Services implemented policies to protect LGBTQ youth in their care. California's Juvenile Justice Safety and Protection Act prohibits discrimination and harassment based on sexual orientation and gender identity specifically in juvenile facilities.⁵

ENSURE FREEDOM FROM UNREASONABLY RESTRICTIVE CONDITIONS OF CONFINEMENT.

Unlike adult inmates, young people in the custody of the juvenile justice system have not been "convicted" of crimes. They are entitled to services intended to rehabilitate—not punish—them. The public policy and legislative intent behind the juvenile justice and delinquency systems are to provide services to help a youth adjudicated as a delinquent to become a productive member of society. While some restrictions on the freedom of young people within these institutions are necessary for safety purposes, these restrictions must be "reasonably related" to a legitimate government interest. If not, they are inappropriate punishment. LGBTQ young people in these systems shouldn't be subjected to conditions amounting to punishment or be stigmatized or humiliated as part of their treatment. Searches may be necessary to maintain the safety of youth in juvenile justice settings, but for transgender youth they can invoke undue distress. In situations where it is necessary to conduct a search on a transgender youth, ensure that the search is conducted by a staff member with whom the youth feels comfortable, and that it is done in private. Under no circumstances should a search ever be used as an opportunity to determine a youth's genital status.

PROVIDE APPROPRIATE SERVICES.

Young people confined in institutions have the right to receive adequate medical and mental health services. Ignoring the health care needs of an LGBTQ young person in state custody would violate the young person's right to safety. For example, if a youth diagnosed with gender dysphoria exhibits a need for medical and psychological intervention and nothing is done to address that need—or worse, if the youth is referred to a so-called conversion or reparative therapist to change them—his or her legal rights have been violated. LGBTQ youth must be afforded access to affirming medical and mental health care. For transgender youth, this may include transition-related health care.⁶ Youth also have the right to comprehensive sexual health education. For more information, visit the web page for the Center for HIV Law and Policy at

⁴ *R.G. v. Koller*, 415 F. Supp.2d 1129 (D. Haw. 2006); *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006).

⁵ Cal. Welf. & Inst. Code §§ 224.71(i), 224.73 (effective 2008).

⁶ For more information, see Lambda Legal's *Transgender Rights Toolkit: Survival Tips for Trans Youth*, www.lambdalegal.org/publications/trt_survival-tips-for-trans-youth (2012) and *Transition-Related Health Care*, www.lambdalegal.org/publications/trt_transition-related-health-care (2011).

www.hivlawandpolicy.org/public/teensense.

Furthermore, every institution should have policies governing the supervision and treatment of suicidal youth. Research shows that LGBTQ young people facing extreme forms of harassment and abuse are at an increased risk for suicidal ideation and behavior. Ensure that anti-LGBTQ harassment is prevented, and that appropriate mental health services are available for victims.

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

LGBTQ youth are often vulnerable and at increased risk for sexual abuse in juvenile justice settings. Staff should assess risk of sexual victimization and abuse of LGBTQ youth in a sensitive manner. Special attention should be given to prevent, detect and respond to sexual assault of LGBTQ youth. In 2012 the U.S. Department of Justice released national standards in accordance with the Prison Rape Elimination Act of 2003 (PREA), aimed at protecting inmates and detained juveniles from sexual abuse. For more information about how the PREA standards protect LGBTQ people, please read the National Center for Transgender Equality fact sheet found here: www.transequality.org/Resources/PREA_July2012.pdf.

DON'T ASSUME LGBTQ YOUTH ARE POTENTIAL SEX OFFENDERS.

LGBTQ youth shouldn't be treated as or housed with sex offenders unless they have a history of offending behavior. It's unacceptable for a juvenile justice or delinquency facility automatically and arbitrarily to assume based on unfounded stereotypes that LGBTQ young people should be segregated from the general population and placed with sexually aggressive youth.

PROVIDE A SOUND CLASSIFICATION SYSTEM.

Every facility must have a sound classification system for identifying and protecting the safety of youth. LGBTQ youth shouldn't be inappropriately placed with an aggressive population, with known sex offenders or with other youth who display anti-LGBTQ behaviors and attitudes. Recognize the risk of harm to a young person if he or she is openly LGBTQ or perceived by others to be LGBTQ. Consider the maturity, physical size, offense history and other risk factors, including sexual orientation and gender identity, in determining the appropriate level of security and confinement for a particular youth.

NEVER UNNECESSARILY ISOLATE LGBTQ YOUTH FROM THE GENERAL POPULATION.

LGBTQ youth should never be placed in isolation or segregation simply because of their sexual orientation or gender identity, or as punishment for being open with others about their identity. The American Psychiatric Association has denounced the practice of isolation in juvenile justice facilities, stating, "Children should not be subjected to isolation, which is a form of punishment that is likely to produce lasting psychiatric symptoms."⁷ Whether for administrative convenience or out of a well-meaning desire to protect LGBTQ youth from harassment, subjecting LGBTQ youth to isolation for extended periods of time violates their legal rights.

⁷ Am. Psychological Ass'n, *News Release No. 09-12: Incarcerated Juveniles Belong in Juvenile Facilities* (Feb. 27, 2009), available at http://www.njjn.org/uploads/digital-library/resource_1050.pdf.

Lambda Legal

120 Wall Street
19th Floor
New York, NY 10005
866-LGBTTeen
212-809-8585
www.lambdalegal.org

Child Welfare League of America

1726 M Street NW
Suite 500
Washington, DC 20036
202-688-4200
www.cwla.org