



SAFE HAVENS

Closing the Gap Between Recommended Practice and Reality
for Transgender and Gender-Expansive Youth in Out-of-Home Care



APRIL 2017

PRINCIPAL RESEARCHERS AND AUTHORS

Christina Wilson Remlin, Esq., Children's Rights
M. Currey Cook, Esq., Lambda Legal
Rosalynd Erney, Center for the Study of Social Policy

ADDITIONAL RESEARCHERS AND AUTHORS

Hailey Cherepon, Children's Rights
Kaitlyn Gentile, Lambda Legal

FEATURED YOUTH

Mohammed, from a midwestern state
Ashley, from a southeastern state
Savannah, from a northeastern state
Jennifer, from a southern state
Barrett, from a northwestern state
Lydia, from a southern State

SERVICE PROVIDER CONTRIBUTORS

Jerry Peterson, Ruth Ellis Center – Detroit, MI
Cindy Simpson, CHRIS 180 – Atlanta, GA
John Robertson, Crosswalk, Volunteers of America –
Spokane, WA
Jennifer Romelien, Administration for Children's
Services – New York, NY

TABLE OF CONTENTS

I. Executive Summary	1
II. Introduction.....	6
III. Existing Law and Policy and Recommendations for Reform	7
A. Federal Law and Policy	7
1. Child Welfare	7
2. Juvenile Justice	9
3. Runaway and Homeless Youth	11
B. State Law and Policy.....	12
1. Child Welfare.....	13
2. Juvenile Justice	15
3. Runaway and Homeless Youth	18
C. State-Based Licensing, Training and Other Requirements.....	19
IV. Eliminating Practice Barriers: Lessons from Affirming Programs and Positive Experiences of TGNC Youth	26
A. Families, Kin and Guardianship Placements.....	26
B. Congregate Care Settings.....	29
1. Child Welfare	29
2. Juvenile Justice	35
3. Programs Serving Youth Experiencing Homelessness	38
V. Conclusion	40
Endnotes.....	41
VI. Appendix A: State-by-State Licensing and Other Regulations	
VII. Appendix B: Additional Resources	

I. EXECUTIVE SUMMARY

Child advocates and experts from a host of disciplines have documented for over a decade the overrepresentation of lesbian, gay, bisexual, transgender and queer or questioning (LGBTQ+) youth in child welfare, juvenile justice and runaway and homeless youth systems² (“out-of-home care systems”) compared to the general population.³ Further, **transgender**,⁴ **gender-expansive**⁵ and **gender-nonconforming** (TGNC)⁷ youth, who may identify across the sexual orientation spectrum,⁸ are overrepresented in these systems at even higher rates than youth who identify as LGBQ.⁹

Data are scarce regarding the particular experiences of TGNC youth in out-of-home care.¹⁰ However, extraordinarily high rates of family rejection, societal discrimination and victimization of TGNC people¹¹—including staggering rates of violence against transgender women of color¹²—and anecdotal evidence suggest that TGNC youth in out-of-home care are exposed to even harsher and more abusive treatment than LGBQ youth in these systems. Most out-of-home care placements and facilities are sex-specific and many aspects of youths’ supervision and care are governed by regulations that reference a youth’s sex (or gender). This makes it particularly important to insure that out-of-home care practices are accepting and affirming for TGNC young people.¹³ For example, placing a young woman who is transgender on the boys’ floor in a child welfare group home, juvenile justice facility or shelter for youth experiencing homelessness can be

dangerous, exposing her to bullying, physical assaults and even sexual abuse. At its core, such a placement constitutes a refusal to fully affirm the youth’s identity and may contribute to suicidal ideation and depression and exacerbate gender dysphoria,¹⁴ among other undesirable health outcomes.¹⁵ Lack of affirmation for TGNC youth in care is, too frequently, accompanied by discrimination and mistreatment in school, at work and within their communities. Stigma, conflicts around gender nonconformity and racial identity also

IN A LOS ANGELES COUNTY FOSTER CARE SURVEY,

5.6% OF YOUTH IDENTIFIED AS **TRANSGENDER** COMPARED TO 1-2% IN THE GENERAL POPULATION

AND 11.1% IDENTIFIED AS **GENDER-NONCONFORMITY**.

contribute to the criminalization of TGNC young people, particularly TGNC youth of color, at higher rates than their cisgender¹⁶ and gender-conforming peers.¹⁷ Without assistance and support from out-of-home care providers, these issues may remain unaddressed, leading to disparately poor life outcomes for these young people.

This report, based on the authors’ research, identifies barriers to affirming treatment for TGNC

GLOSSARY

The authors use the term **transgender**—a person whose *gender identity* (i.e., their innate sense of being male, female or something else) differs from the sex they were assigned or presumed to be at birth—to include youth who identify at all points along the gender spectrum, including youth who identify as *non-binary* or *gender fluid*. As an example, the authors use the description *transgender girl* to describe a girl who identifies as female, but was assigned the sex of male at birth.

Gender-expansive is a broad term referring to aspects of gender expression, identity, and interests that go beyond cultural binary prescriptions of behaviors and interests associated primarily with boys or girls. Gender-expansive includes young people who do not identify with the sex they were assigned at birth as well as those who do, but may nonetheless find themselves barraged with questions based on their dress, appearance, or interests, such as, “Are you a boy or a girl?” or “Why do you play with that? It’s a boy/girl toy!” Other words with similar meanings include *gender diverse* and *gender creative*. Nat’l Ass’n of School Psychologists & Gender Spectrum, *Gender Inclusive Schools: Overview, Gender Basics, and Terminology* (2016), <https://www.nasponline.org/resources-and-publications/resources/diversity/lgbtq-youth/gender-inclusive-schools-faqs/gender-inclusive-schools-overview-gender-basics-and-terminology>.

Gender Non-conforming or Gender Variant—a person whose gender expression differs from how their family, culture, or society expects them to behave, dress, and act.” Substance Abuse & Mental Health Servs. Admin., *A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children* (2014), at 3, <https://store.samhsa.gov/shin/content/PEP14-LGBTKIDS/PEP14-LGBTKIDS.pdf>.

The authors use the abbreviation **TGNC** in this report because it appears most frequently in the literature and research. The authors emphasize that every individual is unique and there is no “correct” way to identify or express oneself. Here, the authors use *gender-nonconforming* to convey that cultural norms around gender still negatively impact youth who express themselves outside of those norms.

"WHILE I WAS IN THE FACILITIES, I WASN'T ABLE TO FOCUS ON MY CLASSES AND WHAT I NEEDED TO LEARN. I WAS ALWAYS MORE FOCUSED ON WHO WAS OUT TO FIGHT ME AND WHO WAS GOING TO JUMP ME TODAY. I WAS SO BUSY PAYING ATTENTION TO MY SURROUNDINGS THAT I COULDN'T PAY ATTENTION TO MY WORK. ONCE I KNEW MY PAROLE OFFICER WAS GOING TO RESPECT ME AND TREAT ME FAIRLY, I WAS ABLE TO FOCUS ON WHAT I NEEDED TO DO AND WORKING ON POSITIVE THINGS."

—LYDIA,
transgender youth in care

youth in out-of-home care and suggests steps to eliminate these barriers. The report provides first-of-their-kind live national maps¹⁸ of specific out-of-home care statutes, policies and licensing regulations related to sexual orientation, gender identity and

gender expression, providing a resource to help users understand the explicit protections that exist (or do not exist) in all 50 states and the District of Columbia. Also provided are concrete law and policy reform recommendations and practical tips to better protect and serve TGNC youth involved in intervening public systems. The recommendations were developed with significant input from both TGNC youth who reported affirming experiences during their placement in out-of-home care and providers who have made recommended practices a reality for the youth they serve.

ONLY **5-7%** OF YOUTH ARE LGBTQ+ BUT LGBTQ+ YOUTH ARE ALMOST **25%** OF THOSE IN FOSTER CARE, **20%** OF YOUTH IN THE JUVENILE JUSTICE SYSTEM AND ALMOST **50%** OF YOUTH EXPERIENCING HOMELESSNESS.



All photographs are stock images for illustrative purposes only.

THE PROBLEM

Comprehensive data on the number of LGBTQ+ youth in out-of-home care are difficult to find and data specific to transgender and gender-nonconforming youth even more so.¹⁹ Available research using representative samples has shown that while young people who identify as LGBTQ+ comprise about 5-7% of the overall youth population,²⁰ they make up almost one-fourth of those in the foster care system,²¹ one-sixth of those in the juvenile justice system²² and almost half of young people experiencing homelessness.²³ Moreover, sexual orientation and gender identity are important, but not singular, aspects of a young person's identity. Data disaggregated by race and ethnicity show that LGBTQ and TGNC young people in out-of-home care are disproportionately young people of color,²⁴ therefore exposed to overlapping inequalities associated with that intersectionality.²⁵

For TGNC youth in out-of-home care systems, the combination of societal stigma and discrimination and sex-specific regulations presents a veritable minefield of challenges. While a young person is in out-of-home care, nearly all aspects of the youth's life—from the doctor they see to the place they sleep, the clothes they wear and who searches their bodies—are controlled by out-of-home care professionals who in most cases lack training and guidance on how to properly serve this population. The report highlights gaps in law and

IN NEW YORK CITY, 78% OF HOMELESS LGBTQ+ YOUTH WERE REMOVED OR RAN AWAY FROM FOSTER HOMES BECAUSE OF ABUSE OR DISCRIMINATION.

policy that must be filled in order to protect youth from discrimination and seeks to improve practice by sharing insights from the experiences of TGNC youth and from affirming and supportive providers. The authors hope that this information will enable policymakers and practitioners to drive change in the systems where they work, in line with professional commitments and legal obligations that require them to provide for the safety and well-being of all youth.

Out-of-home care systems are often ill-equipped to serve LGBTQ+ youth adequately. Research has shown that once in out-of-home care, LGBTQ+ youth face higher rates of victimization and discrimination and worse life outcomes than their non-LGBTQ+ peers. In New York City, studies show that 78% of LGBTQ+ youth experiencing homelessness were removed or

LGBTQ+ YOUTH IN THE JUVENILE JUSTICE SYSTEM ARE TWICE AS LIKELY AS THEIR NON-LGBTQ+ PEERS TO HAVE EXPERIENCED CHILD ABUSE, OUT-OF-HOME PLACEMENT OR HOMELESSNESS.

ran away from foster homes because of abuse or discrimination, and 56% chose to live on the street—rather than in a foster care placement—because they felt safer there.²⁶ Findings show that, when compared to their heterosexual and cisgender peers, LGBTQ+ youth in the juvenile justice system are twice as likely to have experienced child abuse, out-of-home placement or homelessness.²⁷ The U.S. National Alliance to End Homelessness reports that LGBTQ+ youth experiencing homelessness are roughly 7.4 times more likely to suffer acts of sexual violence than their non-LGBTQ+ peers, and are more than twice as likely to attempt suicide (62%) than their peers (29%).²⁸ Research specific to TGNC youth has shown that transgender youth in New York City have been found eight times as likely as non-transgender youth to trade sex for a place to stay.²⁹ This bleak picture is, of course, not inherent to being TGNC, but certainly indicative of intense misunderstanding, stigma and prejudice in general society. These factors fuel horrifyingly high rates of suicide, self-harm and physical and sexual victimization among TGNC youth.³⁰

In light of the challenges that TGNC youth face and the weighty obligations of out-of-home care providers, experts have produced a body of professional standards that identify how to serve LGBTQ+ youth appropriately and reduce disparities in outcomes.³¹ Some federal and state laws and policies specific to child welfare, juvenile justice and runaway and homeless youth systems of care have likewise evolved and, consistent with youth's constitutional rights, provide explicit protection from discrimination and harassment on account of sexual orientation, gender identity or gender expression (SOGIE). Flowing from professional standards and law and policy protections, a handful of jurisdictions have provided training for staff working with young people on affirming and supporting LGBTQ+ youth and have developed pilot programs or “best practice” models. At the same time, policies and practices that affirmatively hurt LGBTQ+ children and youth also persist.

OUR FINDINGS:

Our first-of-its-kind 50-state analysis of state statute, regulations and policy found that:

- Despite the fundamental need for protection against discrimination, only 27 states and the District of Columbia explicitly include *sexual orientation* and *gender identity* in non-discrimination protections specific to the child welfare system; only 21 states and the District of Columbia do so in their juvenile justice systems; and only 12 states and the District of Columbia do so in their facilities serving runaway and homeless youth.
- Despite the near-ubiquitous use of the term *sex* (or *gender*) in regulations governing placement, clothing, searches and other critical aspects of systems of care, only three states in the nation define *sex* (or *gender*) to include gender identity, and only one of those does so in a regulation specific to out-of-home care.
- Despite the critical need for placement decisions that respect identity and keep TGNC youth safe, only four states have statutory or regulatory guidance regarding placement of transgender youth in out-of-home care in accordance with their gender identities.
- Even though professional standards dictate that the well-being of TGNC youth requires they be allowed to dress and express themselves in accordance with who they are, 24 states provide no such explicit allowance in statute or regulation in their child welfare systems, 40 states provide no such allowance in their juvenile justice systems and 34 states provide no such allowance in their homeless and runaway youth facilities.



New York and California are the only states to have comprehensive protections in place to protect these young people across all of their out-of-home care systems. Both enacted SOGIE-inclusive anti-discrimination statutes and regulations specific to out-of-home care systems as well as definitions of *sex* (or *gender*) that include gender identity. On the other end of the spectrum, the states of Alaska and North Carolina provide no explicit protections for LGBTQ or TGNC youth in any of their out-of-home care systems. Most states fall somewhere in between these extremes.

Law and policy protections are essential for ensuring the health and well-being of TGNC youth, but they are not sufficient. Of utmost importance is the responsibility of caregivers to turn recommended practice into reality. Based on concrete tips from providers featured in this report who are bridging that gap, the authors call for solid legal and policy protections that are connected to staff hiring, training and ongoing coaching and development; better support for families of origin and foster and

LGBTQ+ YOUTH EXPERIENCING HOMELESSNESS ARE MORE THAN TWICE AS LIKELY AS THEIR NON-LGBTQ+ PEERS TO ATTEMPT SUICIDE.

adoptive parents; increased community collaboration; intentional engagement with LGBTQ+ young people to ensure that they are affirmed in care; and a commitment to agency-wide culture change.

Youth with lived experience in out-of-home care systems who contributed to the report had the following recommendations for providers: Provide affirming health care and use qualified and trusted providers; screen existing placements and develop affirming ones; don't replicate the harm youth experienced at home; respect youth to build trust with them; give non-TGNC youth and adults time to learn about and understand TGNC youth; affirm identity in all aspects and promote well-being; don't blame youth for being victimized; use resources to help youth and avoid unnecessary grievances; provide safe environments to allow youth to focus on positive development; don't gender things; if you see bullying, stop it and connect youth to LGBT supports. As this important work progresses, TGNC youth must be engaged³² to ensure that their voices are part of policy development and that their positive experiences can serve as examples to guide life-changing system improvements.

"EVEN THOUGH YOUR CLIENTS ARE CHILDREN, THEY STILL NEED TO BE TREATED WITH RESPECT. ESPECIALLY IN THIS SETTING, THE TRANS KIDS YOU WORK WITH ARE THERE FOR A REASON AND IT'S OFTEN BECAUSE THEIR IDENTITIES WERE REJECTED BY THEIR PARENTS. WHEN THE SYSTEM IS SUPPOSED TO BE THERE TO HELP, IT'S CRITICAL THAT IT DOESN'T REPLICATE THE SITUATION THAT [A YOUTH] IS TRYING TO GET AWAY FROM."

– SAVANNAH,
transgender youth in care

Explicit protection from discrimination and training for providers on how best to work with LGBTQ+ youth are critical precursors to safe and supportive participation by youth in system reform efforts. These precursors also allow for safe collection of much-needed SOGIE demographic data on system-involved youth and families in order to inform and improve practice.³³ Unfortunately, the vast majority of states have no statutory or regulatory requirements for LGBTQ+-specific ongoing training and coaching in any of their out-of-home care systems.

The authors hope this report will constitute a call to action for states, agencies, advocates and stakeholders across the country to require their out-of-home care systems to provide affirming treatment for TGNC youth.

II. INTRODUCTION

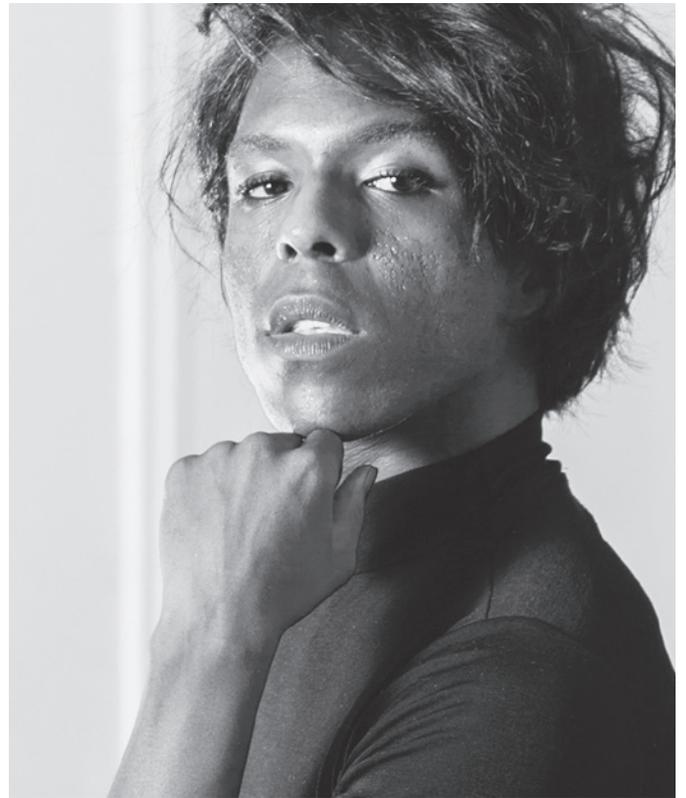
Could there be any need more fundamental than the need to sleep safely at night? Could anything be more critical to a young person's development than being accepted where they live? When physical and psychological safety is protected, young people have the freedom to think creatively and optimistically about their futures.

At a minimum, all youth need to be safe, have food and appropriate shelter and be supported and affirmed by others, including their families and communities. For youth in out-of-home care these needs are especially critical and states must ensure that they are met. Many LGBTQ+ youth in out-of-home care systems have been rejected by their families of origin and kicked out of their homes, only to be rejected again based on who they are when placed in other settings. These issues are particularly acute for TGNC youth, because so much of their treatment in out-of-home care systems is governed by the way those systems define and segregate youth on the basis of sex (or gender).³⁴

This report provides concrete recommendations to state policymakers, administrators and providers about comprehensive and affirming policies and practices that can support TGNC youth in their care. The report examines the federal and state laws and policies that enshrine youth's right to be safe from physical and psychological harm and to be treated equally and fairly while in state custody, and it identifies law and policy gaps and their impacts in the field. Most critically, the report highlights practical tips from providers serving these youth and insights from youth themselves about the positive impact of having their needs met. The authors hope that in response to this call to action, states will adopt comprehensive law and policy for TGNC youth, and that agencies and providers will follow models of appropriate TGNC youth treatment and incorporate constant and meaningful feedback from TGNC youth themselves.

About the Authors

M. Currey Cook is Counsel and Director of the Youth in Out-of-Home Care Project at Lambda Legal, the nation's oldest and largest legal and advocacy organization dedicated to achieving full recognition of the legal rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV. Lambda Legal's Youth in Out-of-Home Care Project raises awareness and advances reform on behalf of LGBTQ+ youth in child welfare, juvenile justice and homeless systems of care. Prior to joining Lambda Legal, Cook was a guardian *ad litem* and attorney for children in a variety of family and juvenile court cases,



including child welfare and delinquency matters, in Alaska, New Jersey and New York.

Christina Wilson Remlin is a Lead Counsel with Children's Rights, a national non-profit organization that uses the law to bring about meaningful reform in government child welfare agencies that provide foster care, adoptive and child protective services. Since joining Children's Rights in 2011, Remlin has represented classes of children in foster care in suits challenging violence, inadequate medical care, inappropriate conditions and over-institutionalization. Her clients include those at risk of discrimination associated with their LGBTQ+ identity, gender, race, immigration status and class.

Rosalynd Erney is a Policy Analyst with the Center for the Study of Social Policy (CSSP), a national policy organization that works to secure equal opportunities and better futures for all children and families, especially those facing the greatest barriers to success, with a long history of working alongside community partners and system professionals to improve child welfare systems. Erney works to develop policy strategies to advance equity with a focus on intersectionality. Her policy work supports CSSP's getR.E.A.L (Recognize. Engage. Affirm. Love) initiative to help transform child welfare policy and practice to promote the healthy sexual and identity development of all children and youth.

III. EXISTING LAW AND POLICY AND RECOMMENDATIONS FOR REFORM

The U.S. Constitution requires that youth in state custody be protected from unreasonable risk of harm and provides all youth with freedom of speech and expression as well as protection from unequal treatment under the law.³⁵ In addition to these fundamental rights, recent advancements in federal law and policy for youth in out-of-home care offer with explicit protection from SOGIE-based discrimination.³⁶ Moreover, courts around the country continue to clarify that discrimination based on sex, a protected class in some federal laws, includes both sex stereotyping and gender identity-based discrimination.³⁷

As detailed in Section III (B) below, a growing number of jurisdictions at the state and local level provide explicit protections for youth in their child welfare, juvenile justice or runaway and homeless youth systems of care. Some states offer complete SOGIE-inclusive protection in all three systems, others in only one system and still others only for discrimination on account of sexual orientation. In a few states and localities, protection may be offered under general nondiscrimination laws that are not specific to out-of-home care systems, such as public accommodation or human rights laws. In others, there are no explicit law or policy protections whatsoever against SOGIE-based discrimination.

Advocates and administrators should utilize existing protections to ensure that children and youth are treated fairly while proactively working to develop laws and policies so that protection is explicit and complete. Explicit protection from discrimination is an essential component of appropriate care for system-involved youth and provides clarity for professionals regarding their obligations.³⁸

In addition to nondiscrimination laws (whether statutory or regulatory) and policies, a complex array of state-based licensing regulations governs services for children in out-of-home care, covering such areas as placement, clothing and staff training. In some jurisdictions, regulations regarding placement for youth in single-sex homes or facilities, or access to clothing or programming that is sex- or gender-specific, has been perceived as a barrier to affirming gender identity. In the absence of clear definition or guidance, administrators and staff may have assumed that the term *sex* (or *gender*) references a youth's sex assigned at birth and consequently barred them

from sex-specific facilities, programming or other practices consistent with that youth's gender identity. This report offers a compilation of those regulations for out-of-home care systems in all 50 states and the District of Columbia, along with recommendations for regulatory reform. Affirming models are also highlighted.

A. FEDERAL LAW AND POLICY



1. CHILD WELFARE

A. CONSTITUTIONAL LAW

The U.S. Constitution. Youth in child welfare custody have substantive due process rights under the Fourteenth Amendment, including rights to:

- Personal security and reasonably safe living conditions;³⁹
- Freedom from psychological harm⁴⁰ and from physical and psychological deterioration;⁴¹
- Adequate care, including the provision of certain services;⁴² and
- A reasonably suitable placement.⁴³

Additionally, all LGBTQ+ youth, including those in child welfare custody, have the right to be treated equally under the law as compared to their non-LGBTQ+ peers.⁴⁴ An Equal Protection claim for a transgender or gender-nonconforming child may be brought where the child has been subjected to discrimination on the basis of their transgender or gender-nonconforming identity because “[t]ransgender people as a class have historically been subject to discrimination or differentiation; ...they have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society; ...as a class they exhibit immutable or distinguishing characteristics that define them as a discrete group; and...as a class, they are a minority with relatively little political power.”⁴⁵ State discrimination against TGNC and LGBQ youth may be subjected to a more rigorous review by the court in an Equal Protection case (enjoying “heightened scrutiny,” making it easier for the plaintiffs to prevail), given the growing number of federal courts recognizing that discrimination on the basis of sexual orientation or gender identity triggers heightened scrutiny.⁴⁶ “As to these Plaintiffs, gender identity is entirely akin to ‘sex’ as that term has been customarily used in Equal Protection analysis. It is deeply ingrained and inherent in their very beings.”⁴⁷ Furthermore, youth have the right to freedom of religion (or freedom not to practice religion) because the Establishment Clause forbids imposition of a

state-sanctioned religion.⁴⁸ TGNC youth may have Establishment Clause claims if they are subjected to the imposition of religion in their out-of-home care placement settings.⁴⁹

Youth have the right to freedom of expression, including the right to express one's identity, which has been interpreted to be "speech" protected by the First Amendment.⁵⁰ Many cases affirm constitutional protections of LGBTQ+ speech in schools.⁵¹ Of note, the Fifth Circuit Court of Appeals has also signaled that wearing clothing, even clothing not tied to a particular political message, may constitute protected speech.⁵²

Discrimination and mistreatment against LGBTQ+ youth in out-of-home care may violate some or all of these rights.

B. STATUTORY AND REGULATORY LAW

Titles IV-E and IV-B of the Social Security Act. The Federal Foster Care Program, authorized by Titles IV-E and IV-B of the Social Security Act, aims to support states in providing safe and stable out-of-home care for children until they are safely returned to their families of origin, placed permanently with adoptive families or guardians or placed in other planned arrangements for permanency. Agencies receiving federal child welfare dollars are required to place children in a "safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child[.]"⁵³ In order for an agency to receive IV-E dollars, its State plan must document how it establishes and maintains standards for foster family homes and child care institutions that are "reasonably in accord with recommended standards of national organizations concerned with [such] standards."⁵⁴ These standards include those related to admission policies, safety and protection of civil rights, among others.⁵⁵ In addition, agencies must develop a case that assures the child receives safe and proper care and that services are provided to the parents and child. Thus, agencies are required to ensure safety, permanency and well-being for all children in their care.⁵⁶ These fundamental aims are applicable to all children in child welfare custody, including LGBTQ+ children.

Foster Care Independence Act (John H. Chafee Foster Care Independence Program).⁵⁷ The Chafee program provides services and support to children and youth aging out of foster care to make the transition to self-sufficiency.⁵⁸ Agencies receiving funding under this program must ensure that children and youth "have regular, ongoing opportunities to engage in age or developmentally-appropriate activities."⁵⁹ States and



tribes must "use objective criteria...for ensuring fair and equitable treatment of benefit recipients."⁶⁰ States and tribes are required to use federal training funds "to help foster parents, adoptive parents, workers in group homes and case managers understand and address the issues confronting adolescents preparing for independent living."⁶¹ These fundamental aims are applicable to all children covered by the Act, including LGBTQ+ children.

Health and Human Services Grants. Regulation 45 CFR Part 75, the Department of Health and Human Services (HHS) Grants Rule, provides that "it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation." This provision is binding on state child welfare agencies because they receive federal funds through awards from the Administration for Children and Families (ACF), a division of HHS.⁶²

The Affordable Care Act. Section 1557 of the Affordable Care Act (ACA)⁶³ prohibits discrimination on the basis of race, color, national origin, sex, age or disability in health programs and activities that receive financial assistance from the federal government

or are administered by an executive agency or any entity established under Title I of the ACA.⁶⁴ Many child welfare programs, such as those involving therapeutic foster care or residential treatment, may qualify as health programs under the ACA.⁶⁵ In 2016, the HHS Office for Civil Rights issued the final rule implementing Section 1557 of the ACA, the Nondiscrimination in Health Programs and Activities Rule.⁶⁶ This rule prohibits discrimination on account of gender identity or sex stereotyping and requires all health programs and activities that receive federal dollars to treat individuals in a manner consistent with their gender identity.⁶⁷

Title IX of the Education Amendments of 1972.

Title IX protects people from discrimination based on sex, among other protected classes, in education programs or activities that receive federal financial assistance.⁶⁸ Courts have interpreted Title IX's prohibition on discrimination based on sex to include sex stereotyping, gender identity-based discrimination and nonconformity to gender norms.⁶⁹ To the extent that programs serving youth in child welfare systems receive federal funds for educational programs or activities, they are required to follow Title IX requirements.⁷⁰

C. POLICY MEMORANDA AND INFORMATION

Administration for Children and Families

Information Memorandum 11-03. On April 6, 2011, Administration on Children, Youth and Families (“ACYF”) Commissioner Bryan Samuels issued an information memorandum to state child welfare agencies regarding LGBTQ+ youth in foster care. Commissioner Samuels’ memorandum “confirms and reiterates [the] fundamental belief that every child and youth who is unable to live with his or her parents is entitled to a safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”⁷¹ It addresses safety concerns specific to LGBTQ+ youth in foster care and describes steps that states receiving Title IV-E funding should take to protect these young people, including steps regarding workforce development, training, the support of families of origin and of relative legal guardians and recruitment and support for foster and adoptive parents, including LGBTQ+ parents and families.⁷²

In addition to the 2011 Memorandum, numerous helpful resources related to recommended practices for appropriately protecting and serving LGBTQ+ youth can be found on ACF’s Children’s Bureau and the Child Welfare Information Gateway websites, including reports and webinars.⁷³ ACF also funded the RISE (Recognize, Intervene, Support, Empower)

Project in Los Angeles and established a Quality Improvement Center focused on developing affirming policies and practice for LGBTQ+ youth in the child welfare system.⁷⁴



2. JUVENILE JUSTICE

A. CONSTITUTIONAL LAW

The U.S. Constitution. In addition to the protections defined in the child welfare description above, LGBTQ+ youth in juvenile justice facilities, like all youth, have the right to a sound classification system that prevents the placement of vulnerable youth in cells or units with aggressive youth who may physically or sexually attack them.⁷⁵ All youth, including LGBTQ+ youth, have a right to be free from unreasonably restrictive conditions of confinement, including isolation and segregation, and isolation cannot be used as a punishment for expressing their identity, to protect them from harm or as a response to the unfounded and illogical myth that LGBTQ+ youth pose a danger to other youth.⁷⁶

LGBTQ+ youth in detention and correctional facilities, like all youth, have a right to receive adequate physical and mental health care, including a right to health care that may be of special need to LGBTQ+ youth.⁷⁷ For example, even under the more restrictive standard applicable to adult prisoners, courts have held that “transsexualism” constitutes a “serious medical need” and deliberately denying access to transgender-related health care for prisoners amounts to cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution.⁷⁸

Additionally, under the First Amendment, LGBTQ+ youth, like all youth, have the right to religious freedom; to be free from religious indoctrination; not to be forced to hide their identities because of religious objections; and to choose not to participate in religious activities that condemn homosexuality or gender-nonconformity.⁷⁹ Nor should facility staff be permitted to intimidate or coerce a young person into adopting any particular religious practices or beliefs.⁸⁰

A Federal District Court has found that LGBTQ+ youth in juvenile detention have the right to be protected from long-term segregation or isolation because it amounts to punishment in violation of their due process rights.⁸¹ The court agreed with an expert that it is “[t]he likely perception by teenagers that isolation if imposed as punishment for being LGBT only compounds the harm.”⁸² Though such practices could be excused if they were “an incident of a legitimate non-punitive governmental objective,” the

court held that the practice was, at best, excessive and therefore unconstitutional.⁸³ The court also held that youth have a due process right to minimally adequate policy, training, staffing, supervision, grievance procedures and a classification system under the Due Process Clause of the Fourteenth Amendment.⁸⁴ The court held that the “relentless campaign” of harassment by other youth and staff, of which the juvenile justice detention center supervisors were aware, and the accompanying “failure to take any minimally adequate remedial measures constitute[d] deliberate indifference.”⁸⁵ Of note, the court relied on “the totality of the circumstances at [the facility]” in its holding, but specifically noted the failure of the facility to maintain: “(1) policies and training necessary to protect LGBT youth; (2) adequate staffing and supervision; (3) a functioning grievance system; and (4) a classification system to protect vulnerable youth.”⁸⁶ Because it found that the plaintiffs were entitled to injunctive relief under their due process claims, the court did not address the Equal Protection claims.⁸⁷

Discrimination and mistreatment against LGBTQ+ youth placed in juvenile justice custody may violate some or all of these rights.

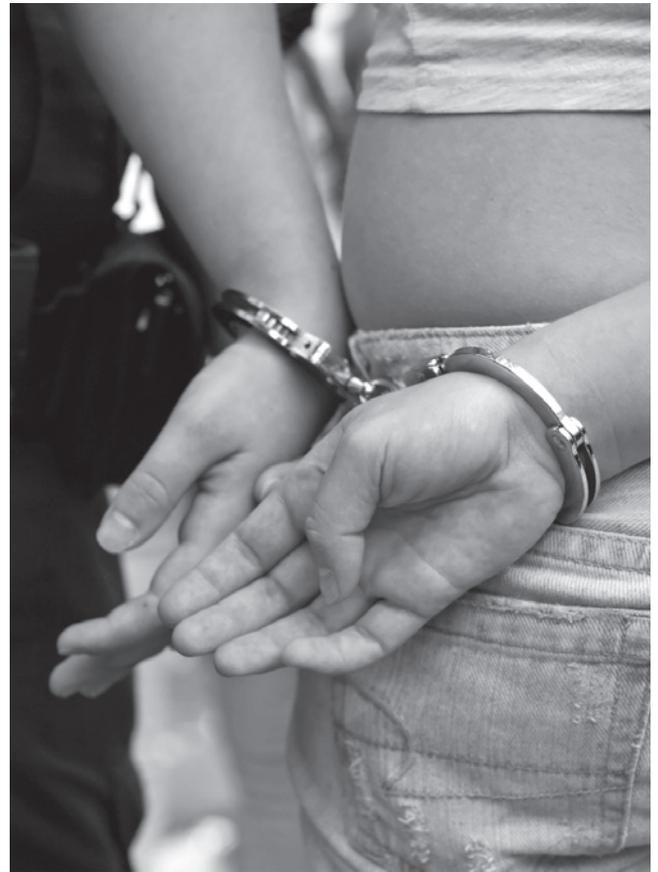
B. STATUTORY AND REGULATORY LAW

Juvenile Justice and Delinquency Prevention Act.

The Juvenile Justice and Delinquency Prevention Act⁸⁸ (JJDP) established the Office of Juvenile Justice and Delinquency Prevention (OJJDP)⁸⁹ and established funding for state juvenile justice systems via block and discretionary grants (administered by OJJDP) and other provisions to support local and state efforts to prevent delinquency and improve the juvenile justice system. JJDP’s nondiscrimination provision⁹⁰ incorporates by reference 42 U.S.C. § 3789d(c)(1), which states: “No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.”⁹¹ The JJDP should be interpreted in accordance with other federal court decisions finding that sex-based discrimination includes discrimination on account of gender identity and sex stereotyping.

Omnibus Crime Control and Safe Streets Act.

The Omnibus Crime Control and Safe Streets Act of 1968 prohibits sex discrimination by federal grant recipients, including police and sheriff departments, prosecutors, courts, juvenile justice facilities and victim assistance programs.⁹² As addressed above,



since a majority of courts have held discrimination based on transgender or gender-nonconforming identity to be sex discrimination,⁹³ this prohibition should be interpreted to include discrimination on account of gender identity or sex stereotyping.

Prison Rape Elimination Act. The Prison Rape Elimination Act of 2003 (PREA)⁹⁴ was passed to address the high rates of sexual victimization and sexual harassment of inmates. It applies to both adult and juvenile facilities. LGBTQ+ people are highlighted as being particularly at risk and entitled to specific protections.⁹⁵ In juvenile facilities, PREA standards require:

- an inquiry to ascertain any gender-nonconforming appearance or LGBTQ or intersex⁹⁶ (LGBTQI) identity to determine if the juvenile may be at risk of sexual abuse;⁹⁷
- an affirmative opportunity for youth to self-identify as LGBTQI;⁹⁸
- a case-by-case assessment for placement of transgender or intersex youth that seriously considers their gender identity and is not based solely on external anatomy;⁹⁹
- ensuring youth are not segregated or placed in particular housing or bed assignments based solely on being LGBTQI;¹⁰⁰

- a prohibition on using LGBTQI status as an indicator of likelihood of being sexually abusive;¹⁰¹
- ensuring transgender and intersex youth are given the opportunity to shower separately from other residents;¹⁰² and
- ensuring searches of transgender or intersex youth are conducted professionally and never for the sole purpose of determining genital status.¹⁰³

C. POLICY MEMORANDA AND INFORMATION

Federal Advisory Committee on Juvenile Justice Recommendations. In 2016, the Department of Justice formed an LGBTQ Subcommittee of the Federal Advisory Committee on Juvenile Justice. In January 2017, the committee adopted the subcommittee recommendations that OJJDP work with state juvenile justice programs to help them establish SOGIE-inclusive nondiscrimination protections, implement training and encourage data collection, among other items.¹⁰⁴

Office of Juvenile Justice and Delinquency Prevention LGBTQ Listening Session. In 2014, OJJDP held a listening session entitled “Creating and Sustaining Fair and Beneficial Environments for LGBTQ Youth.”¹⁰⁵ At the listening session, experts summarized information and resources about the experiences of LGBTQ+ youth and suggested recommendations for reform. In addition, youth with system involvement discussed their experiences and met with the OJJDP Administrator. A summary of the presentations and recommendations for reform made by the attendees can be found in the listening session report.¹⁰⁶



3. SYSTEMS SERVING RUNAWAY AND HOMELESS

A. CONSTITUTIONAL LAW

As described above, under the Constitution, LGBTQ+ youth experiencing homelessness have Equal Protection rights to be treated in the same way as their non-LGBTQ+ peers, First Amendment rights to freedom of speech and expression and the right to be free from religious indoctrination under the Establishment Clause.¹⁰⁷

B. STATUTORY AND REGULATORY LAW

The Runaway and Homeless Youth Act. The Runaway and Homeless Youth Act¹⁰⁸ authorizes community-based runaway and homeless youth

projects to provide temporary shelter and care to runaway or otherwise homeless youth in need of temporary shelter, counseling and aftercare services. The Act, as amended and reauthorized by the Reconnecting Homeless Youth Act of 2008, states that services should be provided “using a positive youth development approach” and should ensure young people have a sense of “safety and structure, belonging and membership, self-worth and social contribution, independence and control over their life, as well as closeness in interpersonal relationships.”¹⁰⁹ In 2016, pursuant to the Runaway and Homeless Youth Act, HHS promulgated the Runaway and Homeless Youth Rule, which explicitly prohibits discrimination on account of sexual orientation and gender identity by runaway and homeless youth programs receiving federal funds.¹¹⁰ In addition, the rule requires that providers collect SOGIE demographic information and receive training.¹¹¹

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.

The Department of Housing and Urban Development (HUD) Equal Access Rule ensures that its core programs, including runaway and homeless youth shelters, are open to all eligible individuals and families regardless of sexual orientation, gender identity or marital status.¹¹² The rule prohibits discrimination on account of sexual orientation or gender identity in all programs receiving federal assistance through HUD, including all providers who operate shelters for runaway and homeless youth across the country.¹¹³

Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs.

Subsequent to the Equal Access Rule referenced above, HUD issued the Gender Identity Rule to clarify that gender identity should be affirmed in all programs, including housing.¹¹⁴ The Gender Identity Rule also applies to all programs receiving federal financial assistance from HUD.

C. INFORMATION

Information and resources regarding affirming programs and services for LGBTQ+ youth experiencing homelessness may be found on ACF’s and HUD’s websites.¹¹⁵ HUD funded two pilot initiatives to address homelessness among LGBTQ+ youth in Houston (Harris County) and Cincinnati (Hamilton County).¹¹⁶

Federal Law and Policy Reform Recommendations

CHILD WELFARE

- HHS should issue a nondiscrimination regulation, pursuant to federal child welfare law, clarifying that youth may not be discriminated against on account of SOGIE in federally funded child welfare programs.
- HHS should issue policy guidance interpreting existing federal law as requiring Title IV-E and IV-B agencies to implement SOGIE-inclusive nondiscrimination policies that ensure LGBTQ+ youth are physically and emotionally safe while in care; have equitable access to services and opportunities; and achieve safety, permanency and well-being outcomes. The guidance should also prohibit “conversion” therapy and any similar attempts to change, condemn, suppress or pathologize LGBTQ+ identity.

JUVENILE JUSTICE

- Congress should include SOGIE as protected classes in a reauthorization of the JJDP.
- OJJDP should fully implement the LGBTQ+ recommendations adopted by the Federal Advisory Committee on Juvenile Justice.

RUNAWAY AND HOMELESS YOUTH

- Congress should include SOGIE as protected classes in the reauthorization of the Runaway and Homeless Youth and Trafficking Prevention Act.

A wealth of experts have published recommended practices to promote the safety and well-being of LGBTQ+ youth in out-of-home care systems. The authors recommend consulting these professional standards, many of which may be found in Appendix B, for more information.¹¹⁷ In addition, experts from a wide variety of disciplines have unanimously endorsed explicit protection from discrimination inclusive of SOGIE.¹¹⁸

B. STATE LAW AND POLICY

Child welfare, juvenile justice and runaway and homeless youth systems of care are administered through a complicated array of state, county and municipal government agencies and their contractors. In addition to the federal protections outlined above, explicit protection from SOGIE-based discrimination may be found in some state statutes and regulations as well as in agency policies specific to these three systems.¹¹⁹ State and local public accommodation and human rights laws and ordinances offer additional



protections, to the extent that they apply to out-of-home care systems.¹²⁰

This section offers a snapshot of SOGIE nondiscrimination protections found in statutes, regulations and policies specific to out-of-home care systems, in addition to a map of the United States with links to the sources of protection in each state’s child welfare and juvenile justice systems.¹²¹ Due to the scarcity of explicit state-based protections specific to systems serving runaway and homeless youth, a map is not available, but this section does offer a narrative description.

Explicit SOGIE nondiscrimination protections in state law and policy provide youth and professionals with a clear set of expectations and enable systems to conduct training in order to broaden awareness of these obligations.¹²² Explicit state-based SOGIE nondiscrimination provisions are essential to the fair and equitable treatment of TGNC youth.

Despite the fundamental importance of these protections, 22 states fail to include both sexual orientation and gender identity in law and policy protections specific to child welfare. In the juvenile justice system, 29 states fail to include both sexual orientation and gender identity as protected classes in law or policy. Only three states have state-based regulatory protections explicitly for runaway and homeless youth systems that are inclusive of sexual orientation and gender identity.



1. CHILD WELFARE

California, New Jersey and New York rank highest among the states in terms of legal protections for TGNC youth, as they provide explicit SOGIE-inclusive protection from discrimination in statute or regulation and additional legal and policy guidance. New Jersey and New York have statewide LGBTQ+-specific policies, and California, as discussed below, requires transgender youth in out-of-home care to be placed in accordance with their gender identity.¹²³ California law also requires providers to receive LGBTQ+ youth-focused training, an essential component of ensuring that protections are implemented. Nevada also ranks highly. In statute, it has sexual orientation and gender identity protections, requires training for system professionals on working with LGBTQ+ youth and mandates that transgender youth be treated in all respects, including placement, in accordance with their gender identity.¹²⁴ In addition to New Jersey and New York, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, Tennessee and Utah have LGBTQ+-specific agency policy.

The lowest-ranking states—offering no express protection from discrimination on account of sexual orientation, gender identity or sex (or gender) in child welfare-specific law and policy—are Alabama, Alaska, Arizona, Georgia, Kansas, Kentucky, Nebraska, North Carolina and Virginia. Virginia law permits government-funded providers to refuse service to youth if doing so conflicts with “sincerely held religious beliefs.”¹²⁵

The following summarizes protections from discrimination, to the extent that they exist, along with their sources:

Sexual Orientation and Gender Identity as Protected Classes

- **Statute or Regulation**

Ten states and the District of Columbia explicitly include sexual orientation and gender identity in statutes or regulations specific to their child welfare systems: California, Florida, Mississippi, Nevada, New Mexico, New Jersey, New York, Ohio (uses *sexual identity* versus *gender identity*), Rhode Island and Washington. Florida’s protections cover youth placed in congregate care facilities and are not system-wide.

- **Agency Policy**

Additionally, 16 states contain explicit sexual orientation and gender identity protections in agency policy (either Department of Health/

Human or Social Services or the child welfare agency itself): Connecticut (child welfare), Hawai‘i (DHS), Idaho (child welfare), Illinois (child welfare), Indiana (child welfare), Iowa (DHS), Maine (child welfare), Maryland (child welfare), Massachusetts (child welfare), Michigan (DHHS),¹²⁶ Minnesota (child welfare), Oregon (DHS), South Dakota (DSS),¹²⁷ Tennessee (child welfare), Utah (child welfare) and Vermont (AHS).

- **LGBTQ+-Specific State-Wide Policy**

Nine states not only include sexual orientation, gender identity and gender expression in their nondiscrimination protections but also have detailed LGBTQ+-specific policies: Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Tennessee and Utah. California has issued a statewide policy transmittal to county child welfare agencies summarizing their obligations under state nondiscrimination law but does not go into further detail.¹²⁸

Sex and Sexual Orientation as Protected Classes

As noted above, courts have held that discrimination based on sex, a protected class in some federal laws, includes both sex stereotyping and gender identity-based discrimination.¹²⁹ To the extent the term *sex* (or *gender*) appears in state or local anti-discrimination measures, it should be uniformly interpreted.

- **Statute or Regulation**

Twelve states include either sex (or gender) and sexual orientation, but not gender identity, as protected classes in nondiscrimination protections in child welfare-specific statute or regulation: Colorado, Delaware, Louisiana, Massachusetts, Minnesota, New Hampshire, North Dakota,¹³⁰ Pennsylvania, Utah, West Virginia, Wisconsin and Wyoming. Of these states, Colorado, Massachusetts, Minnesota and Utah include gender identity (and some gender expression) in agency policy.

Sex as a Protected Class

- **Statute or Regulation**

Four states include sex (or gender) as a protected class in statute or regulation but do not explicitly include sexual orientation or gender identity: Arkansas, Maine, Oklahoma and South Carolina.

Neither Sexual Orientation, Gender Identity nor Sex as Protected Classes

Ten states have no explicit protection against discrimination on account of sexual orientation, gender identity or sex (or gender) in child welfare-specific statute, regulation or policy: Alabama, Alaska, Arizona,¹³¹ Georgia, Kansas, Kentucky, Nebraska, North Carolina, Texas and Virginia. Virginia has a so-called conscience clause law, which allows providers receiving government funds to refuse to serve persons if doing so conflicts with their “sincerely held religious beliefs.”¹³²

Recommended Regulatory Language

Examples of recommended regulatory language may be found in New Mexico’s regulations governing child-placing agencies and Rhode Island regulations governing residential child care:

New Mexico Child-Placing Agencies:

Discrimination: Agencies who receive state or federal monies, shall not discriminate against applicants, clients, or employees based on race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity.¹³³

Rhode Island Residential Child Care: The Department of Children, Youth, and Families does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap. The prohibition against discriminatory practices extends to the agencies, organizations and institutions the Department licenses.¹³⁴

Recommended TGNC-Affirming Policies

Explicit SOGIE-inclusive nondiscrimination laws are an essential starting point for ensuring safety and well-being for TGNC youth. More detailed policy and training on policy obligations are needed to ensure that youth and system professionals are clear on exactly what it means not to discriminate on account of sexual orientation, gender identity or gender expression. As referenced above, nine states have developed more detailed LGBTQ+-policies and include more specific requirements for working with TGNC youth. A few of the recommended examples below include specifics such as referring to transgender youth by the name and pronouns they use and ensuring that they are allowed to express their gender freely and are provided trans-affirming health and behavioral health care,¹³⁵ among other necessities.

The following are examples of recommended policies that provide specific practice obligations

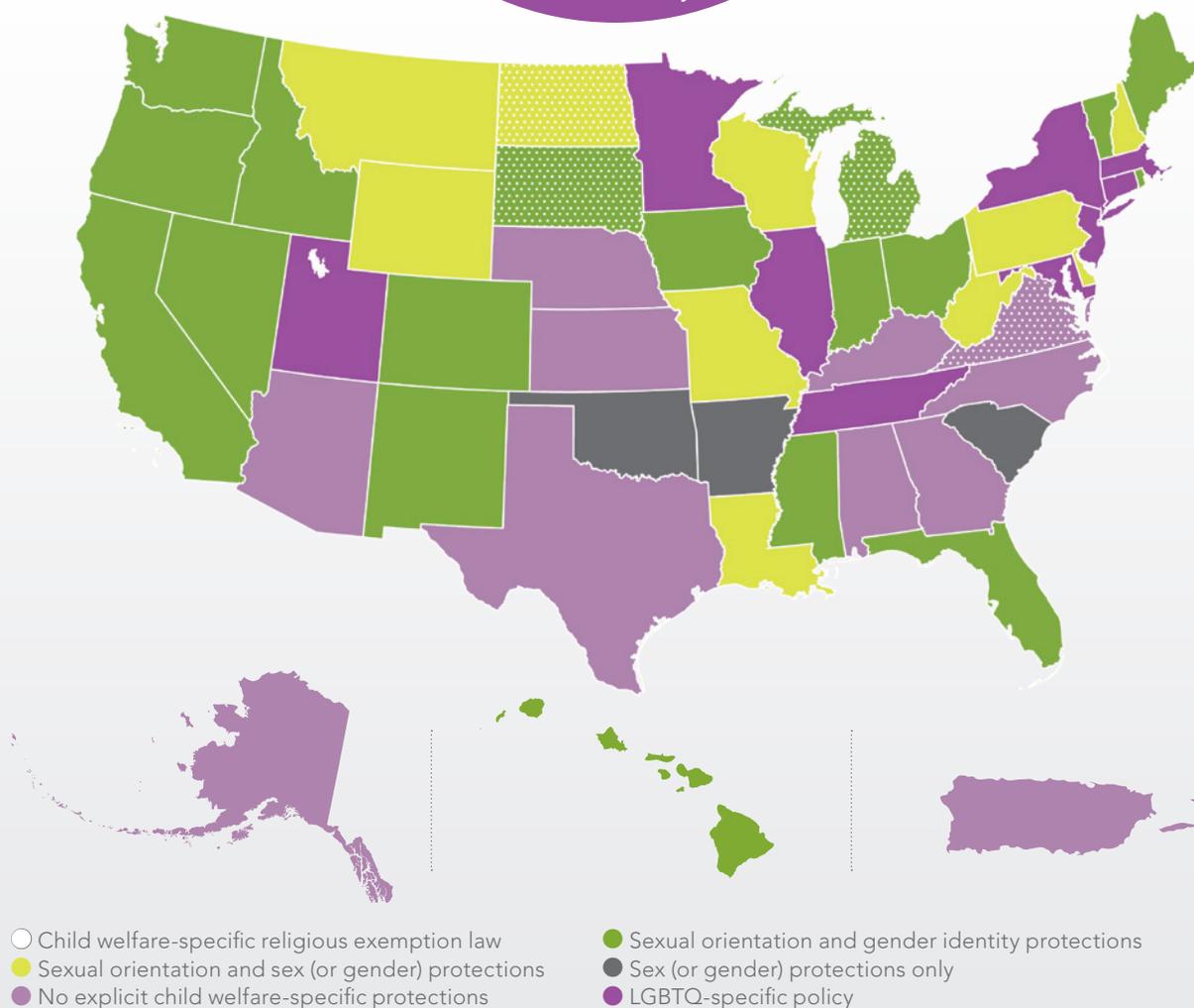


to meet the needs of TGNC youth in child welfare systems:

- Maryland Department of Human Resources, Social Services Administration’s *Working with Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Families* (2016).¹³⁶
- Minnesota Department of Human Services’ *Working with lesbian, gay, bisexual, transgender and questioning/queer youth* (2013).¹³⁷
- The most thorough set of guidelines regarding affirming practice for TGNC youth is provided by New York City’s Administration for Children’s Services in their *Safe and Respected: Policy, Best Practices, and Guidance for Serving Transgender and Gender Non-Conforming Children and Youth in the Child Welfare, Detention and Juvenile Justice Systems* (2014).¹³⁸

CHILD WELFARE

Nondiscrimination
Law and Policy



Please consult the interactive map at the link provided for a comprehensive state-by-state overview of nondiscrimination statutes, regulations and policies specific to the child welfare system lambdalegal.org/map/child-welfare



2. JUVENILE JUSTICE

The District of Columbia, Louisiana and New York rank highest among state juvenile justice systems by providing not only SOGIE-inclusive non-discrimination protections, but LGBTQ+-specific policy as well. California offers statutory protection but has a county-based system and therefore no statewide LGBTQ+-specific policy. Rhode Island and Texas also provide SOGIE-inclusive regulatory protections. Colorado, Connecticut, Illinois, Massachusetts, New Jersey, Ohio and Tennessee rank high because they, like D.C., New York and Louisiana, have LGBTQ+-specific statewide policies.

The lowest-ranking states—offering no protection from discrimination on account of sexual orientation, gender identity or sex (or gender) in juvenile justice-specific law and policy—are Alaska, Maine, Mississippi, Nevada, North Carolina, North Dakota,

Oklahoma, South Dakota, Utah and Wisconsin.

The following summarizes express protections from discrimination, to the extent that they exist, along with their sources:

Sexual Orientation and Gender Identity as Protected Classes

● **Statute or Regulation**

Five states and the District of Columbia explicitly include sexual orientation and gender identity in statute or regulation specific to their juvenile justice systems: California, Louisiana, New York, Rhode Island and Texas. Texas's regulations contain sexual orientation and gender identity as protected classes for youth in the custody of the Texas Juvenile Justice

Department and for youth placed in non-secure facilities, but not for short-term detention. The District of Columbia's statutory protections are provided in the District of Columbia's Human Rights Law, which covers all government agencies.

- **Agency Policy**

Additionally, 16 states contain explicit sexual orientation and gender identity protections in agency policy (either through a Department of Health/Human Rights or Social Services¹³⁹ or through a juvenile justice agency or state detention/facility policy): Arizona, Colorado, Connecticut, Georgia, Hawai'i, Illinois, Iowa (Department of Human Services policy), Kentucky, Massachusetts, Michigan, New Jersey, Ohio, Oregon, Tennessee, Vermont (Administration for Human Services policy) and Washington (Department of Social and Health Services policy). Hawai'i's policy is specific to the state's one detention facility.

- **LGBTQ+-Specific Policy**

Nine states and D.C. have LGBTQ+-specific policies: Colorado, Connecticut, Illinois, Louisiana, Massachusetts, New Jersey, New York, Ohio and Tennessee. Additionally, the following localities have LGBTQ+-specific policies in part or all of their juvenile justice systems: San Francisco Juvenile Probation Department, Santa Clara County Probation Department, Cook County Juvenile Temporary Detention Center, New Orleans Juvenile Detention Center, New York City Administration for Children's Services, New York City Probation Department (Adult and Juvenile) and the Philadelphia Juvenile Justice Center.

Sex and Sexual Orientation as Protected Classes

- **Statute or Regulation**

Nine states include either sex (or gender) and sexual orientation, but not gender identity expressly, as protected classes in nondiscrimination protections in juvenile justice-specific statute or regulation: Arizona, Colorado, Florida, Maryland, Minnesota, Montana, New Mexico (transition services only), Pennsylvania (non-secure residential treatment facilities only) and Rhode Island.

- **Agency Policy**

Five states include either sex (or gender) and

sexual orientation, but not gender identity expressly, as protected classes in juvenile justice or detention/facility policy: Delaware, Indiana, Kansas, Missouri (Department of Social Services) and New Hampshire (Department of Health and Human Services).

Sex as a Protected Class:

- **Statute or Regulation**

Seven states include sex (or gender) as a protected class in juvenile justice-specific statute or regulation, but do not include sexual orientation or gender identity: Alabama, Arkansas, Idaho, Kentucky, Nebraska, New Mexico (all services) and Texas (short-term detention).

- **Agency Policy**

One state, South Carolina, has sex as a protected class in agency policy.

Neither Sexual Orientation, Gender Identity nor Sex as Protected Classes

Eleven states have no explicit protections against discrimination on account of sexual orientation, gender identity or sex (or gender) in juvenile justice statute, regulation or agency policy: Alaska, Maine, Mississippi, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, Utah and Wisconsin.

Recommended Regulatory Language

New York provides an example of recommended regulatory language inclusive of sexual orientation, gender identity and gender expression. Notably, it extends protections to preventative services in addition to protecting youth in detention facilities:

Administration and operation of detention. Staff and volunteers of detention providers shall not engage in discrimination or harassment of families receiving preventative services on the basis of race, creed, color, national origin, age, **sex**, religion, **sexual orientation**, **gender identity or expression**, marital status, or disability. Detention providers shall promote and maintain a safe environment, take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur.¹⁴⁰

California's regulation directs each county to develop a nondiscrimination policy:

All facility administrators shall develop, publish, and implement a manual of written policies and procedures that address, at a minimum, all regulations that are applicable to the facility... The manual

shall include... (h) a non-discrimination provision that provides that all youth within the facility shall have fair and equal access to all available services, placement, care, treatment, and benefits, and provides that no person shall be subject to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, **gender, sexual orientation, gender identity, gender expression**, mental or physical disability, or HIV status, including restrictive housing or classification decisions based solely on any of the above mentioned categories[.]¹⁴¹

Recommended TGNC-Affirming Policies

- Massachusetts Department of Youth Services, Policy 03.04.09, *Prohibition of Harassment and Discrimination Against Youth*,¹⁴² is a recommended example of a juvenile justice policy that affirms and supports TGNC (and LGBTQ+) youth. Massachusetts' policy provides comprehensive SOGIE protection, including protection against those perceived to be LGBTQ+ and gender-nonconforming youth, and provides that transgender youth shall be housed consistently with their identity (after consultation with the youth and decision by a team of administrators), referred to by name and pronouns they use and provided with clothing consistent with their identity and expression.

Additionally, the policy provides that youth shall have access to qualified medical providers and be provided with recommended care, including hormone therapy.¹⁴³

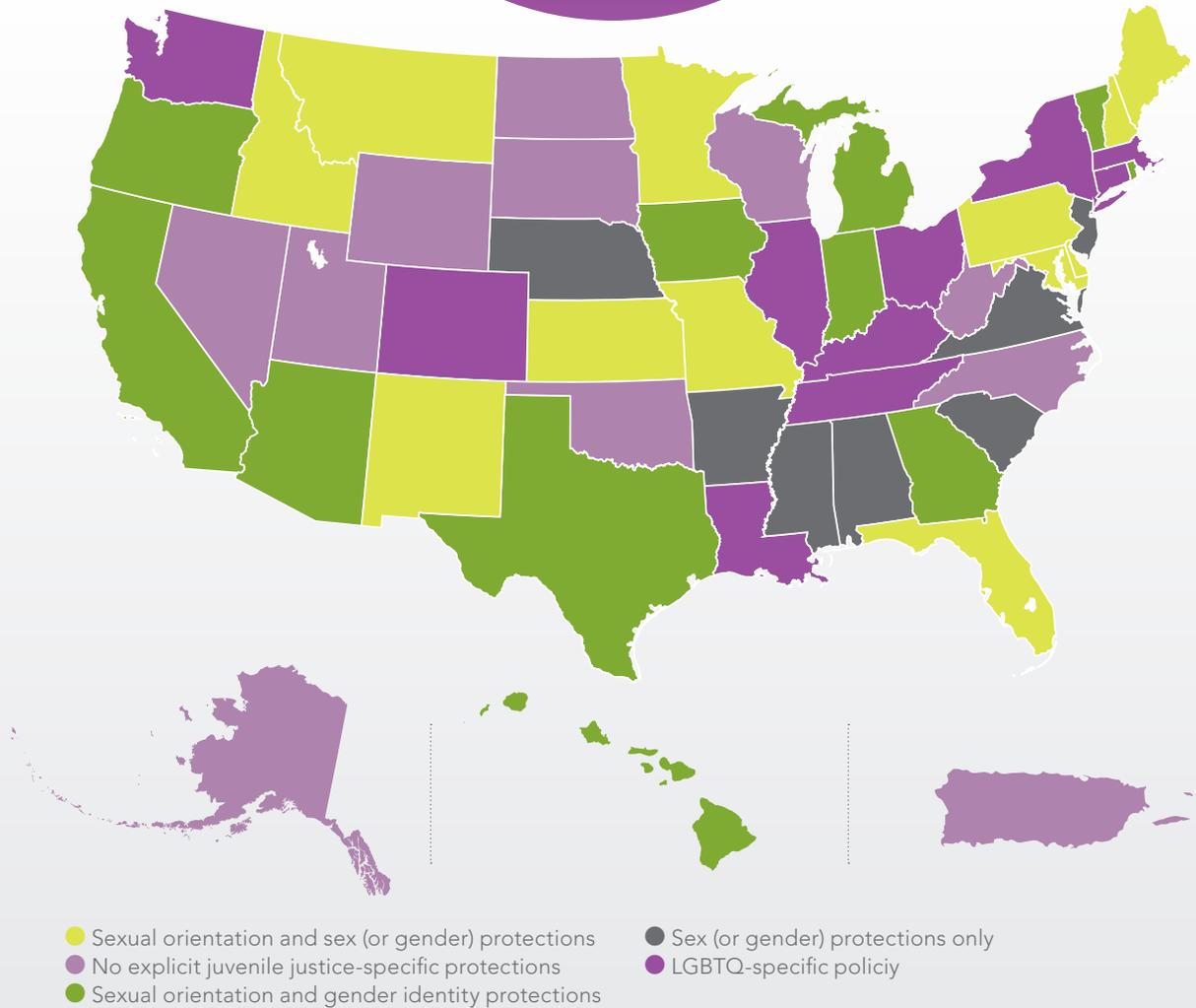
- Colorado's Department of Human Services, Division of Juvenile Corrections, *Non-Discriminatory Services to Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI) Juvenile*,¹⁴⁴ is also a good example of both providing comprehensive policy protection against discrimination, harassment, violence and disparate treatment and specifically requiring affirmation of youth's gender identity and expression. It includes sexual orientation, gender identity and gender expression as protected classes, also covers those merely perceived to be LGBTQI and forbids any attempt to change a youth's identity or expression. In addition, it provides specific guidance regarding housing classifications and clothing provisions based on a youth's identity and requires that health care be provided by qualified professionals. The policy also dictates that a youth is allowed to choose the sex of a staff member who searches them.¹⁴⁵

Both of these policies provided an example of how PREA requirements can be incorporated in agency policy.



JUVENILE JUSTICE

Nondiscrimination
Law and Policy



Please consult the interactive map at the link provided for a comprehensive state-by-state overview of nondiscrimination statutes, regulations and policies specific to the child welfare system

lambdalegal.org/map/child-welfare



3. SYSTEMS SERVING RUNAWAY AND HOMELESS

State-based statutes and regulations and agency policy also offer protection against SOGIE-based discrimination for youth experiencing homelessness and living in government-funded care. These sources may be the same regulations that govern licensing of other types of congregate care facilities, including congregate care facilities that serve youth in child welfare or juvenile justice systems. To the extent these providers and programs receive funding or are otherwise administered through their state's Department of Health and Human Services or Social Services, they may be covered by nondiscrimination protections in state agency policy.¹⁴⁶ Given that state-based systems serving youth experiencing homelessness are, as in many states, not separate distinct government entities or agencies, explicit sources of protection

specific to those systems are often less clear.

Only California, the District of Columbia and New York have SOGIE-inclusive protection from discrimination in statute or regulation for youth served by runaway and homeless youth programs and shelters.¹⁴⁷

The following summarizes protections from discrimination, to the extent they exist, and their sources:

Sexual Orientation and Gender Identity as Protected Classes

● *Statute or Regulation*

California, D.C. and New York contain SOGIE-inclusive protection from discrimination

in placements serving youth experiencing homelessness. Regulations in the District of Columbia and New York are specific to programs serving runaway and homeless youth.

Sex and Sexual Orientation as Protected Classes

● **Statute or Regulation**

Six states prohibit discrimination based on sexual orientation and either sex, gender or both sex and gender in regulation: Colorado, Delaware, Louisiana, Massachusetts, Minnesota and Pennsylvania (residential care facilities serving youth experiencing homelessness).

Sex as a Protected Class

● **Statute or Regulation**

Two states, Maine and New Mexico, prohibit discrimination based on sex (or gender) in regulation.

Neither Sexual Orientation, Gender Identity nor Sex as Protected Classes

The remaining 48 states provide no explicit protections specific to programs and facilities serving youth experiencing homelessness in statute, regulation or policy.

Recommended Regulatory Language:

The District of Columbia provides a good example of regulatory language in the context of programs for runaway and homeless youth:

Youth Shelters, Runaway Shelters, Emergency Care Facilities and Youth Group Homes.

6203.1 A resident in a facility not intended exclusively for children who have been abused or neglected has the following rights: (h) In accordance with the District of Columbia Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code §§ 1-2501 et seq.) not to be discriminated against on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business.¹⁴⁸

State-Based Nondiscrimination Law and Policy Reform Recommendations

- States should enact laws or promulgate regulations that explicitly prohibit discrimination based on sexual orientation, gender identity and gender expression in out-

of-home care systems, including an explicit prohibition against “conversion therapy” and any similar attempt to change, suppress, condemn or pathologize LGBTQ+ youth.

- State and local government agencies and contract providers should include SOGIE-inclusive nondiscrimination protections in their policies, including an explicit prohibition against “conversion therapy” and any similar attempt to change, suppress, condemn or pathologize LGBTQ+ youth.
- State and local government agencies should develop mandatory practice guidelines with detailed expectations for meeting the needs of LGBTQ+ youth generally and TGNC youth specifically.

Additional resources, including publications offering guidance regarding out-of-home care policy development, may be found in Appendix B.

C. STATE-BASED LICENSING, TRAINING AND OTHER REQUIREMENTS

State-administered systems of care for youth rely on a variety of regulations to guide everything from living arrangements to clothing provided and training for staff. Through licensing regulations, states have significant opportunities to better support TGNC youth. States can develop inclusive organizational structures that promote the well-being of TGNC youth through regulations that require affirming placement and classification procedures, promote healthy gender identity development and expression, mandate affirming gender-responsive programming and activities while in care and require clear and ongoing training and competency requirements for staff.

The following research¹⁴⁹ presents a survey of 50 states and D.C. on current¹⁵⁰ licensing regulations for state child welfare, juvenile justice¹⁵¹ and runaway and homeless systems as they relate to sex (or gender), gender identity and gender expression.¹⁵² All regulations referenced here may be found in the full report included as Appendix A. This research is divided into several categories:

1. Definitions of *sex* (or *gender*)
2. Admission procedures and facility licensing
3. Sleeping arrangements
4. Clothing
5. Supervision
6. Body searches
7. Training requirements

1. Definitions of sex (or gender)

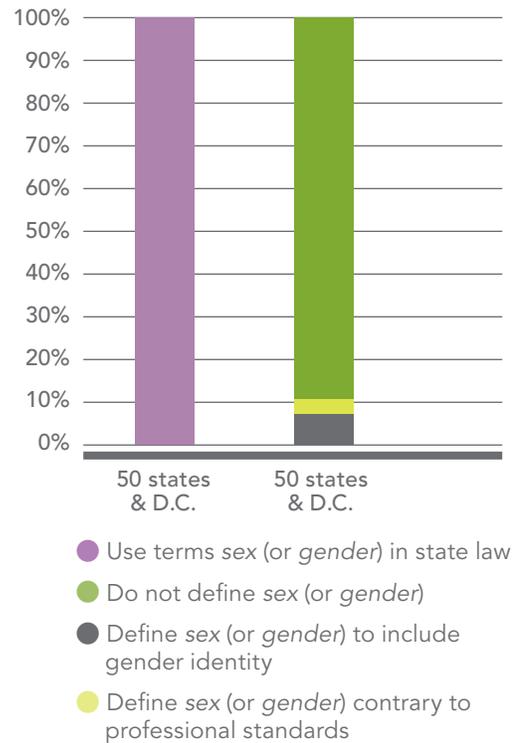
Professional standards rightly describe gender identity as the defining component of sex, rather than sex simply being based on anatomy or the sex assigned or presumed at birth.¹⁵³ To be consistent with professional standards, states should define *sex* (or *gender*) in a way that explicitly acknowledges that sex is determined by gender identity. The vast majority of jurisdictions provide no clear definition of *sex* (or *gender*), leaving these terms open to interpretation. States should enact statutes or promulgate regulations and issue agency policy clarifying that sex (or gender) is determined by gender identity, based on an accurate understanding of gender identity's central role.¹⁵⁴

The definition of *sex* has a profound impact on systems of out-of-home care. Throughout licensing regulations, states use the terms *sex* (or *gender*) when prescribing admissions procedures and in facility licensing, placement determinations, sleeping arrangements, bathroom requirements, clothing distribution, training, supervision and body searches.

While some states may define these terms through agency policy, only three—California, New York and Florida—provide explicit definitions of these terms in statute or regulation that accurately describe gender identity as a defining component of *sex* (or *gender*). Of these three states, only Florida explicitly defines *gender* in the context of out-of-home care licensing regulations. In the absence of explicit definitions in statute, regulation or agency policy, front line workers and administrators are left to interpret the meaning of *sex* (or *gender*) on their own. Workers in different systems, such as the child welfare and the juvenile justice system, or in different counties or jurisdictions within the same state, may disagree on the proper interpretation. This may result in discriminatory treatment, specifically a failure to respect a youth's gender identity and inconsistent treatment and services. In a worst-case scenario, this can mean a youth is housed improperly, refused affirming health care or denied clothing consistent with who they are. These practices are contrary to the child's safety and well-being and can have long-term detrimental effects on a young person.¹⁵⁵

Tennessee is the only state that defines *sex* in a way that explicitly contradicts professional standards and binds sex to an assignment at birth. Tennessee statute says *sex* is “the designation of an individual person as male or female as indicated on the individual's birth certificate,”¹⁵⁶ ignoring gender identity entirely. This is problematic in many ways but specifically because it inaccurately assumes that gender is binary and that a person can only be designated as *male* or *female*, excluding people who identify elsewhere along the spectrum, including intersex people. Illinois's

DEFINITION OF THE TERMS SEX (OR GENDER) IN STATE LAW



definition of *sex* also contradicts professional standards and fails to affirm TGNC people by excluding non-binary individuals from its definition of *sex* as the “status of being male or female.”¹⁵⁷

As an example of the conundrum created for professionals when states do not explicitly define *sex* (or *gender*) in statute or regulation, a child welfare administrator may choose to place a transgender girl in an all-female congregate care facility if the administrator correctly interprets “gender-specific” facilities or services to mean facilities or services that correspond to a person's gender identity, regardless of the youth's sex assigned at birth. However, if that same young person enters care in a different county or becomes involved in the juvenile justice system, a different administrator may interpret “gender-specific” to mean the provision of facilities and services in accordance with a person's sex assigned at birth and place that youth in a facility for all males. Placements and provision of services that are inconsistent with a youth's gender identity can be particularly harmful for that youth, as they can contribute to gender dysphoria,¹⁵⁸ exacerbate other mental health conditions and further complicate an already difficult period of adolescent development.

States should provide clear and concise definitions of *sex* similar to New York's definition, found in

statute but not regulation, which helpfully clarifies that the term *gender* means the same thing as *sex* and is inclusive of gender identity and expression:

(d) The term “gender” mean[s] a person’s actual or perceived sex and shall include a person’s gender identity or expression.¹⁵⁹

Florida provides a definition of *gender* in its licensing regulations for group homes that clarifies the term as defined by identity and explicitly includes *non-binary* as a way a youth may identify:

(2) “Gender” or “gender identity” means a person’s internal identification or self-image as male or female. Gender identity may or may not correspond to the gender that is listed on the person’s birth certificate. The terms “male,” “female,” or “nonbinary” describe how a person identifies.¹⁶⁰

California, Colorado, Florida, Hawai‘i, Nevada,¹⁶¹ New Jersey, New York and Tennessee define the terms *sexual orientation*, *gender identity* and/or *gender expression* in statute or regulation. The authors recommend that states define these terms in statute or regulation and agency policy to provide clarity for professionals working with youth in out-of-home care. Defining these terms, however, does not eliminate ambiguity regarding licensing regulations that contain the term *sex* or *gender*.

2. Admission procedures and facility licensing

As discussed above, out-of-home care facilities, including congregate care facilities, individual foster homes, juvenile detention settings and shelters for runaway or homeless youth may be licensed to serve young people of a specific sex (or gender) (e.g., a boys’ group home or a girl’s shelter). Throughout state facility licensing and admissions procedures, the terms *sex* and *gender* are used interchangeably and, except for as noted above in California and New York statute and Florida regulation, are not defined to include gender identity and expression.

In order to best serve these youth, facilities should also have specific admissions and placement procedures for youth who identify as LGBQ or TGNC, specifying that their placement in a particular facility should be determined in consultation with the youth.¹⁶² Unfortunately, only four states have such procedures in licensing regulations or statute—California’s child welfare placement procedures of transgender youth are specified in statute and Florida regulation provides a protocol for placing transgender youth in accordance with identity.¹⁶³ Nevada requires, in statute, that each child who is placed in child welfare and juvenile justice settings be treated in all respects in accordance with their gender identity or

expression. The law requires Nevada Department of Children and Family Services (DCFS) to establish factors via regulation for the court to follow to ensure transgender youth are placed appropriately. Significantly, DCFS, in adopting the regulation, must consult with LGBTQ children who are current or former residents of “foster homes, facilities for the detention of children, child care facilities and mental health facilities” and representatives of LGBTQ persons.¹⁶⁴ Florida, Louisiana and Texas have licensing regulations governing the placement of LGBTQ+ youth in juvenile justice systems.¹⁶⁵

California’s straightforward approach is a recommended example in the child welfare context:

Placement Consistent with Gender Identity. Youth who are placed in settings licensed by Community Care Licensing (foster homes or group homes) are entitled to be placed according to their gender identity, regardless of the gender listed in their court records.¹⁶⁶

In licensing regulation, Florida provides a protocol for placement of transgender youth that requires consideration of the youth’s safety and well-being, consultation with the youth and recommendations from professionals working with the youth:

(f) For transgender youth, a determination whether the youth should be placed with their gender listed on their birth certificate or their identified gender. Factors to be considered shall include:

1. The physical safety of the transgender youth,
2. The emotional well-being of the transgender youth,
3. The youth’s preference,
4. The recommendation of the youth’s guardian *ad litem*,
5. The recommendation of the youth’s parent, when parental rights have not been terminated,
6. The recommendation of the youth’s case manager; and,
7. The recommendation of the youth’s therapist, if applicable.¹⁶⁷

Examples of regulatory language in the juvenile justice context may be found in Louisiana’s juvenile detention facilities’ admissions regulations:

Decisions for housing or programming of youth who are or are perceived to be gay, lesbian, bisexual, or transgender youth on the basis of their actual or perceived sexual orientation shall be made on an individual basis in consultation with the youth and the reason(s) for the particular treatment shall be documented in the youth’s file. The administrator or designee shall review each decision.¹⁶⁸

In the context of its regulation governing public accommodations, Colorado prohibits discrimination in housing on account of gender identity. Its provisions should be interpreted to cover settings such as group homes or shelters and provide clear direction regarding housing expectations:

(A) Nothing in the Act prohibits segregation of facilities on the basis of gender.

(B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include, but are not limited to, restrooms, locker rooms, dressing rooms, and dormitories.

(C) In gender-segregated facilities where undressing in the presence of others occurs, covered entities shall make reasonable accommodations to allow access consistent with an individual's gender identity.¹⁶⁹

Overall, only ten states do not mention sex (or gender) in their regulations governing facility licensing and admissions procedures in child welfare, juvenile justice or runaway and homeless systems.

In child welfare admissions procedures and facility licensing, 14 states make no mention of sex (or gender). Thirty-six states and D.C. license child welfare facilities or foster family homes to serve children and youth by sex (or gender) in licensing regulations. As noted above, California, via state statute but not regulation, requires transgender youth in foster care to be placed in accord with their gender identity.¹⁷⁰

In juvenile justice licensing regulations, 14 states mention sex (or gender) in their facility licensing and admissions procedures. Of those, nine states license juvenile justice facilities to serve children and youth by sex (or gender), and two states license facilities designated as *male* or *female*. Three states—Florida, Louisiana and Texas—have specific juvenile justice placement and admission procedures related to youth who identify as LGBTQ+. Louisiana and Texas require these placement decisions to be made on a case-by-case basis and in consultation with the youth.

In admissions procedures and facility licensing for facilities serving runaway and homeless youth, 20 states license those facilities to serve children and youth by sex (or gender). Thirty states make no mention of sex (or gender) in admission procedures or facility licensing for systems serving runaway and homeless youth.

The importance of ensuring that TGNC youth are placed in facilities in accordance with their gender identity should not be underestimated. In the absence of comprehensive definitions of *sex* (or *gender*) that are inclusive of gender identity, states should adopt

regulations governing facility licensing and admissions procedures that require placement based on gender identity and require that such decisions be made in ongoing consultation with TGNC youth. Licensing regulations should specify that initial placement determinations are not permanent and that staff should continue to check in with TGNC youth to ensure that they feel safe and affirmed in their current placements.

3. Sleeping Arrangements

In addition to individualized considerations for their placement in a gender-specific facility, best practice literature makes it clear that children should be placed in bedrooms, or other sleeping quarters, according to their gender identity and in consultation with their wishes.¹⁷¹ However, in child welfare licensing regulations, only one state (California) specifically places children in bedrooms in accordance with their gender identity. Thirty-nine states place youth in bedrooms according to their sex (or gender); three use *boy/girl* or *male/female* in their placement language; and eight use *male/female*, *boy/girl* and *gender/sex* interchangeably.

In juvenile justice licensing regulations, two states, Florida and Texas, use individualized classification procedures to place children and youth in bedrooms that take into account the youth's preference. Eight states place youth in bedrooms according to their sex (or gender); nine use *boy/girl* or *male/female* in their placement language; and seven use *male/female*, *boy/girl* and *gender/sex* interchangeably.

In states where explicit language was found for bedroom placement procedures in facilities serving runaway and homeless youth, no state specifically places children according to their gender identity. Twenty states place children and youth in bedrooms according to their sex (or gender); three use *boy/girl* or *male/female* in their placement language; and four use *male/female*, *boy/girl* and *gender/sex* interchangeably.

Notably, not one state specifically requires placement of children in sleeping arrangements in accordance with their gender identity in all three settings as a matter of explicit statute or regulation.

States should adopt regulatory language governing sleeping arrangements similar to California's foster family homes:

(B) Nothing in this section shall preclude a caregiver from requesting a Documented Alternative Plan (LIC 973) permitting a "child" to be in a bedroom based on their gender identity.¹⁷²

4. Clothing

Best practice literature regarding safe and equitable treatment of TGNC youth makes clear that it is essential for well-being that they be allowed to dress and groom themselves in accordance with their gender identity and expression.¹⁷³ However, in child welfare licensing regulations, only three states (California, Florida and Ohio) require children and youth to be provided clothing in accordance with their gender identity. Twenty-three states require children to be provided clothing in accordance with their sex (or gender). New York allows for young people to select their own clothing. The remaining twenty-three states do not explicitly mention sex (or gender) in their child welfare licensing regulations for the prescription of clothing.

Ohio regulations governing both family foster care and congregate care facilities require the provision of clothing, toiletry supplies and instruction on habits of personal care and grooming in accordance with gender identity:

Residential Centers, Group Homes, Residential Parenting Facilities

(C) Clothing provided by a residential facility shall be appropriate to the child's age and gender identity.

(D) A residential facility shall provide each child with adequate personal toiletry supplies. These supplies shall be appropriate to the child's age, gender identity, race, and cultural background and shall be

considered to be the child's personal property.

(E) A residential facility shall provide instruction on good habits of personal care, hygiene, and grooming. This instruction shall be appropriate to each child's age, gender identity, race, cultural background, and need for training.¹⁷⁴

In juvenile justice regulations, one state, Tennessee, requires children and youth in juvenile justice settings to be provided with gender-neutral clothing. Three states, California, Florida and Texas, use *male/female* language in their requirements and seven states (Colorado, Michigan, Maine, New Jersey, Oregon, Pennsylvania and Wyoming) require children and youth to be provided clothing in accordance with their sex (or gender). New York allows for young people to select their own clothing. The remaining 39 states do not explicitly mention sex (or gender) in their juvenile justice licensing regulations for clothing.

In licensing provisions for systems serving runaway and homeless youth, only 16 states and D.C. explicitly mention sex (or gender) in their regulations on provision of clothing (Arkansas, Colorado, Connecticut, Delaware, D.C., Hawai'i, Idaho, Indiana, Maryland, Massachusetts, Maine, Michigan, Mississippi, New Jersey, Pennsylvania, Rhode Island and West Virginia). One state, Ohio, requires children and youth to be provided with clothing in accordance with their gender identity. As mentioned above, New York allows for young people to select their own clothing.



In conclusion, no state consistently provides that youth should be allowed to dress in accordance with their gender identity or expression across all three systems, with the exception of New York, which allows young people to select their own clothing unless the facility in which they are placed provides a uniform. Even New York's regulation fails to require that a youth's uniform align with their gender identity or expression. In addition, 19 states have no mention of sex or gender in any of their licensing regulations. Thus, no state is fully explicitly protecting TGNC youth with respect to their critical need to wear clothing consistent with their gender identity in the context of statute or regulation. States with LGBTQ+-specific policies may clarify expectations regarding clothing and expression in those policies.

5. Supervision

Many states also use the term *sex* (or *gender*) in regulations guiding supervision of youth in general or during showering, using the bathroom or attending to personal hygiene. Twenty-one states in the juvenile justice system, seven states in the child welfare system and five states in systems serving runaway and homeless youth use either term. As with other aspects of programming discussed in this section, lack of clarity regarding the definition of *sex* (or *gender*) creates ambiguity and potential harm for TGNC youth. For safe and equitable treatment of TGNC youth, states should adopt definitions of *sex* and *gender* as the same concept and determined by gender identity. By doing so, professionals can understand supervision requirements in a manner that affirms youth's identity and youth may find instructions easier to follow.

6. Body searches

Best practices for ensuring safe and equitable treatment of TGNC youth require that systems that use pat-down searches prohibit cross-gender body pat-downs. Under PREA, such searches are prohibited absent exigent circumstances.¹⁷⁵ However, as mentioned above, ambiguity regarding the definition of *sex* or *gender* leads to confusion in this area as well. The PREA Resource Center recommends that in order to remain in compliance with PREA standards, searches of transgender detainees should be conducted by medical professionals, or else transgender youth should be allowed to state a preference of the sex of the staff who conducts a search.¹⁷⁶

Most states that explicitly mention sex (or gender) in their licensing regulations governing body searches only authorize the use of pat-down or body searches when agency staff have determined a search is necessary to discourage the introduction



of contraband. In licensing regulations for child welfare systems and facilities serving runaway and homeless youth, four states (Arizona, Idaho, Montana and Virginia) prohibit cross-gender pat-down or body searches. Three states (Arkansas, Minnesota and New York) prohibit strip searches from being conducted by staff members of a different sex as the youth being searched in their child welfare licensing regulations.¹⁷⁷ One state, Illinois,¹⁷⁸ authorizes the use of body inspections or strip searches in its child welfare licensing regulations only when the agency has decided such a search is necessary to determine if a child or youth is engaging in self-mutilation or self-destructive behavior that may be hidden by their clothing. Illinois requires that such searches be conducted by staff who are the same sex as the youth being searched. One state, Oregon, prohibits cross-gender pat down searches in its regulations licensing systems serving runaway and homeless youth.¹⁷⁹

In juvenile justice settings, 13 states (Arizona, California, Idaho, Iowa, Louisiana, Montana, Nebraska, New Jersey, New Mexico, Ohio, Pennsylvania, Tennessee and Texas) prohibit cross-gender body and pat-down searches. Eighteen states prohibit cross-gender strip or body cavity searches. Notably, Idaho's regulations specifically prohibit the searching of transgender or intersex youths for the purposes of ascertaining their "genital status," which complies with professional standards and PREA and offer a good example for other states to follow:

h. Prohibition on searches or physical examinations of transgender or intersex residents for the sole purpose of determining genital status.¹⁸⁰

One state, Alaska, permits body searches for the purpose of ascertaining a youth's "true identity"¹⁸¹ in its juvenile detention licensing regulations. Although the regulation does not explicitly reference searching to determine genital status, the vagueness of the regulation could allow for such searches in the absence of clear policy to the contrary. The regulation should be amended to avoid such an invasive and psychologically damaging invasion of a young person's bodily integrity.

States should enact regulations that ensure youth are not searched merely to ascertain their genital status. In addition, states should place PREA standards into regulation and provide that transgender and intersex youth are able to select the sex or gender of the person who searches them.

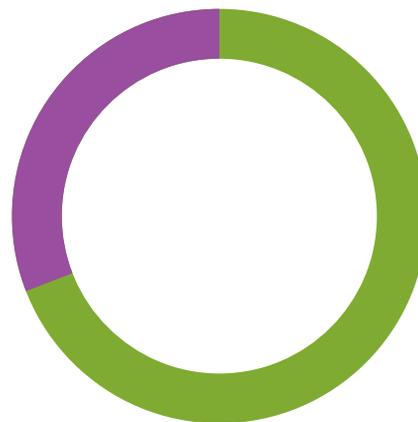
7. Training requirements

Best practice literature makes clear that staff working with youth should receive initial and ongoing coaching and training regarding healthy sexual and identity development. This should include training about sexual orientation, gender identity and expression and other issues specific to LGBTQ+ youth.¹⁸² The vast majority of states require no training about sexual orientation, gender identity and expression, healthy sexual development or issues specific to LGBTQ+ youth for staff working in child welfare (39 states), juvenile justice (43 states) or runaway and homeless systems (49 states) in statute or regulation. Requirements may appear in policy, however, in states with LGBTQ+-specific policies protecting youth in these systems.

Six states (Massachusetts, Minnesota, New Mexico, Rhode Island,¹⁸³ Washington¹⁸⁴ and West Virginia) include training requirements in regulation related to sexual orientation and gender identity for those working with children in the child welfare system. Three states (North Carolina, Ohio and Wisconsin) require workers in child welfare settings to receive training related to human sexuality and sexual development. Nevada, in statute, requires agencies, facility staff and foster parents to receive training on working with LGBTQ+ youth. One state, California, in statute, requires staff working in child welfare systems or facilities serving runaway and homeless youth to receive training on nondiscrimination policies related to sex (or gender), sexual orientation and gender identity.

In juvenile justice settings, three states (Florida, Idaho and Rhode Island) require workers to be trained to provide gender-specific programming.¹⁸⁵ Four states (Louisiana, Minnesota, Nevada and Texas) require

EXISTING TRAINING REQUIREMENTS FOR STAFF



- No training requirements
- Requirements related to sexual orientation and gender identity, human sexuality developmental, sexual development, gender-specific programming or nondiscrimination policies in any of the three systems

workers to receive cultural competency training that includes sexual orientation and gender identity and expression.

Notably, no state requires initial and ongoing coaching and training regarding sexual orientation, gender identity and expression, healthy sexual development *and* issues specific to LGBTQ+ youth for staff across all three systems. Ensuring that these issues are part of basic competency requirements and providing ongoing support and assistance around these issues for staff working with young people is particularly important to ensure that young people receive consistent, competent treatment while in out-of-home care. States should adopt comprehensive coaching and training requirements regarding healthy sexual and identity development with a particular emphasis on issues particular to TGNC young people.

State-Based Recommendations for Reform – Licensing, Training and Other Requirements

- States should, via statute or regulation, expressly define *sex* (or *gender*) as inclusive of gender identity and explicitly acknowledge non-binary identity. States should also define *sexual orientation*, *gender identity* and *gender expression*.
- States should, via statute or regulation, require placement in accordance with gender identity after initial and ongoing consultation with the youth.

- States should eliminate *sex* (or *gender*) from regulations regarding clothing, grooming and expression in order to avoid unnecessarily stereotyping of young people and harm to TGNC youth.
- States should promulgate regulations that specify that youth are allowed to express themselves regardless of their gender identity or expression.
- States should promulgate regulations that permit transgender youth to elect the gender of the person that will perform a search of their person.
- States, via statute or regulation, should require initial and ongoing training for agency staff and all contract providers in their out-of-home care systems regarding the experiences and needs of LGBTQ+ youth, with a special emphasis on TGNC youth.
- Agencies and their contractors should place the recommendations above in agency policy, even if they are not found in statute or regulation.

IV. ELIMINATING PRACTICE BARRIERS: LESSONS FROM AFFIRMING PROGRAMS AND POSITIVE EXPERIENCES OF TGNC YOUTH

Around the country, an increasing number of youth-serving agencies and providers are taking the wealth of guidance available regarding recommended practices for affirming TGNC youth and making them reality.¹⁸⁶ TGNC youth¹⁸⁷ who have experienced affirmation and support in programs and services have vital insights to share with professionals about how and why their positive experience made a big difference in their lives and how professionals can reform their practice to better support and affirm TGNC youth.

A. Affirmation and Support from Families, Kin and Guardians

Research by the Family Acceptance Project at San Francisco State University confirms that higher rates of family rejection are associated with poorer health outcomes for lesbian, gay and bisexual youth. Lesbian,



gay and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection.¹⁸⁸ In light of this, the Family Acceptance Project, in collaboration with Child and Adolescent Services at San Francisco General Hospital/University of California, San Francisco and community providers, developed a new model of family-related care to enable families to accept and support their LGBTQ+ children and to prevent health and mental health risks, keep families together and promote well-being for LGBTQ+ children and adolescents.¹⁸⁹

The model is of critical importance for youth in out-of-home care, since “conflict related to the adolescent’s sexual and gender identity is a primary cause of ejection or removal from the home.”¹⁹⁰ Thus, “[e]arly intervention to help educate families about the impact of rejecting behaviors is important to help maintain these youth in their homes.”¹⁹¹ This new approach helps ethnically and religiously diverse families by decreasing rejection of youth and resulting risks while increasing support to help parents promote their LGBTQ+ children’s well-being. The Family

Acceptance Project provides training and consultation on family support strategies; resources; and an intervention model to providers, families and religious leaders across the United States and in other countries. The Family Acceptance Project also developed a screening tool for use by health, mental health, school-based, social service and other care providers in a wide range of settings to identify those LGBTQ+ youth who are at risk for serious health problems related to family rejection that may also lead to removal or ejection from the home.

Work to assist parents, kin and legal guardians to affirm and accept their LGBTQ+ children takes many forms across the country, ranging from informal referrals to therapists, chapters of Parents and Friends of Lesbians and Gays (PFLAG) and more formal evidence-based interventions such as Multi-Systemic Family Therapy or Functional Family Therapy that incorporate family acceptance work. Family acceptance work is significant given states' obligation under federal law to make reasonable efforts to prevent removal and to return children home safely, absent extreme circumstances, once they have been removed.¹⁹² Featured here is a pilot project that is both a community resource and a source of formal referrals when family rejection emerges as an issue in a child welfare investigation in Wayne County (Detroit), Michigan's child welfare system.



Overview. For 17 years, the Ruth Ellis Center (REC) has served LGBTQ+ youth in the Detroit area through Second Stories Street Outreach, Ruth's House residential foster care and a recently added Health and Wellness Center. Historically, social services specific to LGBTQ+ youth have operated as grassroots non-profits. REC was founded in response to a crisis situation: For its first seven years of existence, REC operated primarily as a drop-in center for homeless LGBTQ+ youth.

Eventually, the agency plugged into federal runaway and homeless youth programs, state-funded residential foster care and Medicaid dollars for outpatient community mental health services. Through these more established systems of care, youth and families are now referred to LGBTQ+-specific services with which they would be unlikely to engage otherwise. Additionally, REC is now able to work with clients who are younger than the youth accessing

"WHEN PRESENTING THE CASE FOR A NEED FOR A FAMILY PRESERVATION PROGRAM, REC DID NOT LEAD WITH THE LGBTQ IDENTITY COMPONENT OF THE WORK. INSTEAD, REC PRESENTED STORIES AND STATISTICS RELATED TO THE SAFETY OF VULNERABLE CHILDREN ALREADY IN THEIR SYSTEM OF CARE AND/OR CHILDREN LIKELY TO END UP IN THEIR SYSTEM OF CARE."

– JERRY PETERSON, RUTH ELLIS CENTER

the drop-in center. Working with different systems of care allows REC to provide services to families *before* youth are kicked out of their homes, saving them from the compounded trauma of family rejection and living on the streets. This represents REC's primary work to prevent homelessness: engaging families while youth are still in the home, mitigating the harm youth experience from rejection and supporting families in their efforts to stay together, when possible.

Family Preservation Program. In October 2015, REC began a Family Preservation pilot program designed to help LGBTQ+ youth at risk for removal from their families. The key goals of this program are family engagement, preservation and support. The program is a collaboration between REC and Dr. Caitlin Ryan from the Family Acceptance Project. Dr. Ryan is working with REC staff to integrate the Family Acceptance Project's research-based family intervention strategies into a Family Group Decision Making (FGDM) model. As an established international model, FGDM engages parents, caregivers, youth and others to provide services to keep children safe, preserve families and improve family connections.

REC receives referrals primarily through the county's Child Protective Services (CPS). Referrals can also come from juvenile justice, foster care, community mental health, runaway and homeless youth providers, primary health care providers or other community-based agencies. REC has trained front line protective service investigators on the core needs and experiences of LGBTQ+ youth. REC has also trained investigators on the Family Acceptance Project's research, including its findings about the critical role of family support and how to identify abusive and harmful behaviors related to a child's LGBTQ+ identity.

This approach empowers families to support their LGBTQ+ children in a culturally congruent framework that allows them to address other pressing

needs such as housing stability, food security and health and mental health care. This work aims to reduce the number of LGBTQ+ youth placed in foster care, which can otherwise be a pathway to homelessness or involvement in the juvenile or criminal justice systems. REC has trained almost every CPS caseworker in the county and is working to increase connectedness and support for families and their LGBTQ+ children through this project.

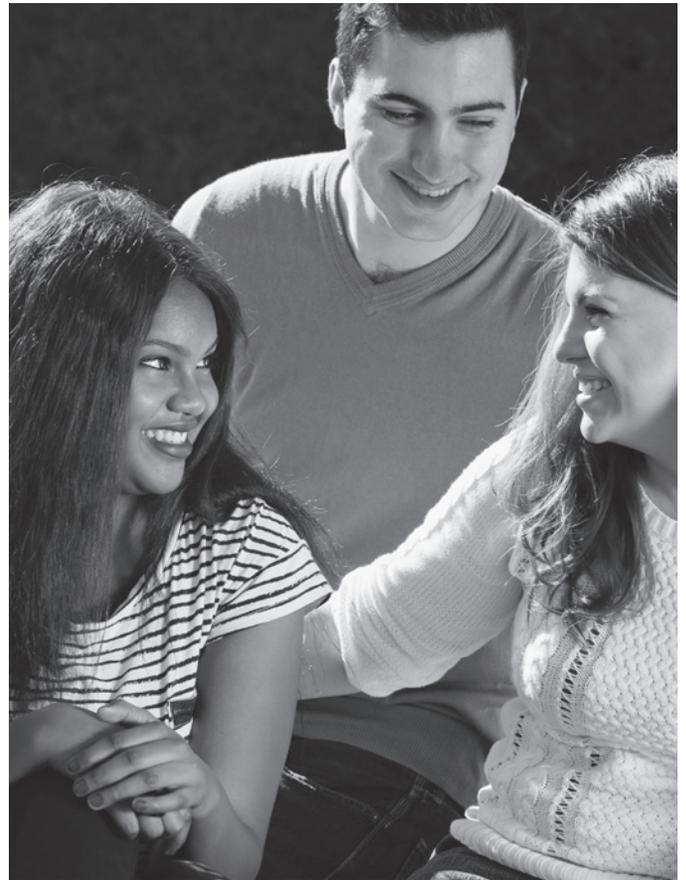
Initial Recommendations. Communities and systems can be complex and the FGDM model is not intended to be a one-size-fits-all solution. However, looking at the success of certain steps that REC took could be helpful to other communities seeking to enhance services for LGBTQ+ youth and their families. Agencies should:

(1) Take note of all possible systems of care that they are able to contract with through city, county or state. Based on the agency's relationship with the system, availability of contracts and the contract application or bid process, create a shortlist of systems to approach. REC built relationships with individual child welfare administrators who already had a record of serving LGBTQ+ youth in care. These individuals also understood the available funding structures and were able to make recommendations about where and when an application for a contract would be most likely to succeed.

(2) Examine potential referral sources in the system of care that would connect the most vulnerable LGBTQ+ youth and families to agency services. For REC, this was a Family Preservation contract intended to refer families via CPS and/or adoption cases at risk for disruption related to SOGIE rejection. The goal of REC's awarded contract was to keep children in the home with their families and families were referred to REC as an added element of support.

(3) Work with state child welfare systems to learn more about funded models of service. REC worked with the child welfare system at the state level to learn more about models of service within the framework of family preservation. The State of Michigan funded the aforementioned FDGM model, which REC implemented with the help of the Family Acceptance Project. Once the model was chosen, REC set up meetings at the county level to check in with child welfare leaders with the intention of educating them on the benefits the FGDM model could have on their counties.

(4) Match the state contract money with a foundation grant, which could make the application



for the contract more competitive. The Andrus Family Foundation also funded the REC pilot. This additional funding allowed REC to develop, implement and evaluate training for CPS workers, as well as to work with families referred through systems of care other than CPS. An unanticipated benefit of these trainings was that they led workers to refer more families to REC services. This also encouraged families to continue accessing services, possibly as a means to avoid further system involvement.

REC and the Family Acceptance Project will continue to evaluate the work of the Family Preservation program and share lessons and considerations moving forward. Family preservation to prevent or mitigate LGBTQ+ youth homelessness will look different in every community, but most agencies can engage in this vital piece of system work.

 **MOHAMMED**,¹⁹³ who is 15 years old and African American, was assigned female at birth but identifies as male. He was referred to REC through a primary care physician who specializes in transgender health care. Mohammed, who is excellent at advocating for his identity-based needs, contacted the physician because he desperately wanted to begin taking testosterone (T) to help him feel more like

himself in his body. He felt continuously traumatized by experiencing female puberty and knew T would relieve these symptoms. He believes taking T is necessary to affirm his gender identity.

Mohammed lives with his grandmother, who is his primary caretaker. His mother is his legal parent, but she struggles with addiction. The family loves Mohammed and wants him to be successful, but they have difficulty accepting his gender identity. They use *she/her* pronouns and the words *daughter* and *granddaughter* when referring to him. Mohammed's mother refuses to consent to Mohammed's medical transition, including his obtaining a prescription for T, due to her belief that he will "change her mind when she's older." Conflating sexual orientation and gender identity, his grandmother shared with a counselor that she believes "Homosexuality is grotesque and against nature... My granddaughter drawing thick eyebrows and facial hair on her face is ridiculous and embarrassing." However, Mohammed's family does demonstrate some accepting strengths, such as a willingness to provide him with gender-neutral clothing and agreeing to participate in the REC Family Preservation program.

According to REC, Mohammed is at a clear high risk for suicide and additional negative health and safety outcomes. Because a doctor referred the family to the Family Preservation program, the family was more open to the program, and to discussing the prospect of Mohammed medically transitioning, than they would have been if the referral had come from another source. While there are many barriers facing this family, they have attended a family group conference and set goals that aim to minimize their rejecting behaviors. With time, and with the maintenance of a strong support system that includes clergy, community and school, REC is hopeful that Mohammed's family will come to affirm his identity. Additionally, and critically, the REC intervention has provided Mohammed with the support he needs to continue living at home.

Mohammed has the following recommendation for professionals:

➤ ***Work with qualified and trusted providers.***

Mohammed recommends that family preservation programs work closely with clinical practitioners and those to whom families look as trusted sources in their area, including doctors, nurses, teachers, caseworkers and administrators, in order to ensure that referrals to their programming are met with appropriate weight from the family. He also recommends that these programs ensure families are connected with affirming resources in their communities and have access to external social supports.

B. Affirmation and Support in Congregate Care Settings



1. CHILD WELFARE

Around the country, child welfare systems range from being administered primarily at the state level to county-based systems and others that are almost completely privatized via government grants to providers. In all models, state child welfare or county or municipal agencies contract with non-profits to deliver programs and services, including housing. This section features an affirming agency, CHRIS 180, which contracts with the Georgia Department of Children and Family Services (DFCS) to provide a whole host of services to youth, including congregate care.

Following the profile of CHRIS 180, the report details recommendations from three young women, Ashley, Savannah and Jennifer, who are transgender and were or are in child welfare custody. While they all experienced discrimination at points during their time in care, they all had the experience of being affirmed and supported by placement in either an LGBTQ+-specific congregate care facility or a gender-specific congregate care facility in accordance with their gender identity. They share their recommendations for professionals working with TGNC youth in out-of-home care.



Overview. CHRIS 180 (formerly CHRIS Kids) helps children, adults and families who have experienced trauma change the direction of their lives to become more productive, self-sufficient members of the community. It does this through a combination of mental health counseling, training, self-housing and real world skill building. The CHRIS 180 mission is to heal children, strengthen families and build community. The organization's name is an acronym reflecting its core values: Creativity, Honor, Respect, Integrity and Safety. With multiple locations across Atlanta, Georgia and surrounding areas, CHRIS 180 provides a holistic bevy of services to children, adults and families. Their website states, "CHRIS 180 saves, serves, and protects children, young adults and families who have experienced trauma to help them change the direction of their lives."¹⁹⁴ The organization

focuses on trauma-informed care and recognizes the deep impact that trauma can have on a person's life, regardless of age.

CHRIS 180 offers counseling services for children, adults and families, as well as psychiatric support as appropriate. It is committed to keeping youth emotionally, psychologically and physically safe, from birth to young adulthood. Foster youth, particularly those with mental health diagnoses and many of whom are older, have compounded trauma and may be served by JourneyZ group homes. These homes provide safe and supportive housing for youth in the state child welfare system who are considered "highest need" and who cannot thrive in traditional foster homes. In JourneyZ, these youth receive individualized counseling, life skills coaching and

"HOW DO YOU MAKE CHANGE HAPPEN? THE IMPORTANT THING IS HAVING THE COURAGE TO TRY AND TO GIVE STAFF AND YOUTH THE OPPORTUNITY TO GROW AND LEARN."

– CINDY SIMPSON, CHRIS 180

safe, secure housing. Youth who have "aged out" of Georgia's child welfare system and left care can also access supportive housing through CHRIS 180's Summit Trail Apartment Community. There, youth ages 17-24 who have experienced homelessness, have lived in juvenile justice or mental health care facilities or are parenting can receive support and supervision while learning how to manage the responsibilities of adulthood. CHRIS 180's Gateway Foster Home program was designed to reunify siblings in foster care who were separated and to prevent their separation when possible, while providing stability in trauma-informed family environments that prepare them for adoption.

Additionally, CHRIS 180 offers community services designed to strengthen families and empower youth. Families are strengthened through the Keeping Families Together Program. Adoption support is provided for families adopting out of Georgia foster care and the CHRIS Clubhouse is a safe place where young adults ages 15-21 with mental health and substance use challenges can go to meet friends and learn important life skills in a fun environment. CHRIS 180 balances its service provisions with extensive community trainings. As with all of its services, CHRIS 180 trainings are based on trauma-informed care, "directed by an understanding of neurological, biological, psychological and social effects of trauma."¹⁹⁵ They train community partners

on issues ranging from child abuse prevention and anti-bullying work to the challenges of working with LGBTQ+ youth, trauma-informed care and workforce development.

CHRIS 180 makes a determined effort to ensure that the entire organization recognizes and embraces the cultural diversity of the youth they serve. Staff participate in a cultural diversity training annually and youth receive and participate in ongoing training as well. The organization fosters special community groups centered around ethnicity, culture and diversity, in addition to religion and spirituality. Youth who choose to practice a religion have the support of the agency and are taken to any religious venue or service they want to attend.

Affirming LGBTQ+ Youth. CHRIS 180 has a long history of LGBTQ+-affirming policy and practice dating back to 1988, when it added sexual orientation to its nondiscrimination policy. In 1999, it added gender identity. In 2001, it was the first organization in the Southeast to specifically target LGBTQ+ youth among homeless populations, and in 2015 it was designated as a Leader in Supporting and Serving LGBT Families and Youth by the Human Rights Campaign. This track record emphasizes CHRIS 180's longstanding commitment to offering effective and affirming services to youth and families across the state of Georgia.

CHRIS 180 has been working for some time to affirm TGNC youth and to place youth in accordance with their gender identity. Cindy Simpson, the organization's Chief Operating Officer, says, "We have really tried to create a space for them and allow them to articulate the best fit and what they need. We are guided by youth voices. Youth know that the decision they make at intake isn't necessarily where they have to remain and that they can always look at moving. During the interview process at intake we ask youth, 'Where will you be most comfortable?' Some youth are ready to live in a home that corresponds to their gender identity and some aren't quite ready. We talk about their options and they really get to make the choice."

Licensing and Housing. In years past, CHRIS 180 was met with resistance from the local county agency when seeking to place TGNC youth who were in foster care in housing settings consistent with their gender identity. In 2016, they took the important step of directly and proactively reaching out to the DFCS licensing unit on this matter. Simpson told licensing staff what CHRIS 180 wanted to do and asked if such placements were specifically prohibited. Licensing staff informed Simpson that they had no policy specifically addressing this question and instructed her to "do what [she] think[s] is best." This outreach opened up

a dialogue around transgender youth and, as Simpson stated, “got [the licensing unit] to think about this.” As part of the current intake process, CHRIS 180 personnel have a conversation with youth about whether they would like a single room or prefer to share with another youth. It’s also CHRIS 180 policy that after youth consult with staff and CHRIS 180’s therapist, they may choose to be placed in accordance with their gender identity. After that initial placement, staff repeatedly check in with youth to ensure that they continue to feel safe in their placements and youth know that they may always change their minds.

Hiring. In accordance with CHRIS values, CHRIS 180 sets expectations early by alerting job applicants that they will be working with LGBTQ+ youth and using scenarios and asking questions in the hiring process about how applicants would handle situations involving LGBTQ+ youth. Simpson notes that some applicants for positions at CHRIS 180 have left interviews when the agency’s commitment to LGBTQ+ youth was discussed. From her perspective, if an employee cannot support LGBTQ+ youth, then CHRIS 180 is “not the place [they] need to work.” The topic is discussed again during new hire orientation in order to clarify expectations and ensure additional screening. In addition to the interviewing and onboarding process, CHRIS 180 makes ongoing efforts to hire a diverse staff that represents the population of youth served through their programs. For example, they have a therapist on staff who is transgender.

Training. CHRIS 180 provides initial and ongoing training to all staff on working effectively with LGBTQ+ populations. Whenever a transgender youth joins a particular house, additional training is provided to staff before the youth’s arrival. Staff understand that it is up to the youth to share whether they are transgender or not and, if they do, to do so in their own time. Staff are there to offer support and work through any issues with peers. Simpson acknowledges that there are always challenges with direct care staff and that ongoing coaching is critical. Additionally, the youth who come to CHRIS 180 have experienced extensive trauma and discrimination and as a result many face mental health and behavioral issues. At times their behaviors can be challenging, and some of their peers have had issues with TGNC youth. However, by working with TGNC youth on such problems, staff have better understood their own biases and improved their ability to help other staff and young people. Simpson has found that non-LGBTQ+ youth raised by same-sex couples have often been important allies and sources of support for LGBTQ+ youth. Support groups, both general and LGBTQ+-specific, have offered staff and non-LGBTQ+ youth additional opportunities

to work through challenges and create a supportive environment. CHRIS 180’s commitment to trauma-informed care, acceptance, respectful behavior and a values-driven culture is behind its success at helping a range of children, adults and families change the direction of their lives toward positive futures and self-sufficiency.

 **ASHLEY**, a 17-year-old girl who is transgender, is in foster care in a southeastern state.¹⁹⁶ Ashley initially experienced rejection from her family because of her identity. In connection with that rejection, Ashley exhibited behavioral problems, used illegal substances and engaged in sex work to obtain money to purchase hormones. She entered care after her parents sought assistance from the local child welfare agency. While in care, Ashley experienced discrimination in multiple ways on account of her identity: Caseworkers and providers failed to respect her as female and she was placed in non-affirming housing and therapeutic services. While there, she was physically and emotionally victimized.

Ultimately, Ashley was placed in a CHRIS 180 group home for girls, which respects her identity, and her situation rapidly improved. While a couple of Ashley’s placements had been affirming, CHRIS

“NOW THAT I FEEL SAFER, I DON’T HAVE TO WORRY ABOUT ALL OF THOSE OTHER THINGS. I’M ABLE TO FOCUS ON MY FUTURE AND DOING THE THINGS I NEED TO DO TO BE SUCCESSFUL.”

– ASHLEY,
transgender youth in care

180’s home is the first sustained supportive placement that Ashley has had. She and her parents have also benefitted from affirming family therapy, which has increased her family’s acceptance of her as transgender.

While Ashley has had some ups and downs at CHRIS 180, she is very happy to be in a place that affirms her identity. She says being at CHRIS 180 has caused a “complete turnaround” and describes the people who work at the counseling center as sweet and gender-affirming. At CHRIS 180 she feels “not even different” and “not [like] an outsider.” She says she is doing “everything a girl does.”

Ashley has addressed some issues with staff. At one point, she called a sit-down meeting and gave examples of things staff had said and done that made her feel uncomfortable. These things were hurting

her psychologically and causing her gender dysphoria to increase, she said. She was very pleased that they listened and things got better. Ashley let staff know that she needs a little advance notice about getting ready, for instance. For her to feel comfortable, she said, she needs time to shave properly and put on makeup. She said, “If I was forced to go out in the world when I didn’t look like how I felt, it increased my anxiety.” Ashley knows she can trust that Simpson “has her back” and said she has found others in CHRIS 180 leadership to be very supportive as well.

“Having someone at the top support you is amazing,” says Ashley. “Knowing that someone is in your corner makes you feel like you can address problems and they will be addressed in a way that is not punitive, but in a way that says, ‘[L]et’s work through this to understand what is going on and why it is important to do better.’” In sum, she says, “The good vibes at CHRIS 180 are really important.”

Ashley has the following recommendations for professionals:

► ***Provide affirming behavioral health and medical care.*** Ashley identifies another important component to her success: a supportive therapist. Ashley says that her therapist is “awesome” and “really understands what I am going through; really has my best interests at heart,” and is simply “on point.” Knowing that her program has a therapist on staff who is transgender sends an important message of inclusion to her. Ashley says that when she was able to get a prescription for hormones (this was before she went to CHRIS 180), she stopped doing sex work because she no longer needed to buy non-prescribed or “street” hormones. She says that before she began hormone therapy it was really difficult for her to get ready to go out into the community. She describes seeing so many things mentally that didn’t match what she saw in the mirror. “Now I love looking in the mirror,” Ashley says. “I’m happier and taking hormones and being able to be myself really helped.”

► ***Ensure placements are going to affirm identity.*** Ashley notes that in the past she was placed in facilities that were supposed to help her when she was contemplating suicide, but says on the contrary that they were actively harming her by failing to acknowledge her identity. Also, she endured harassment. She feels strongly that child welfare agencies should guarantee that youth are not placed in harmful settings, especially when they are at their most vulnerable. This requires solid feedback mechanisms such as follow-up by placement agencies, interviews with young people and ongoing coaching and training for staff to ensure supportive and affirming treatment for all young people in their care.

► ***Give people time to understand.*** “If people need

to take time to understand, that’s okay,” says Ashley. “Just be more careful what you say, because it really matters. At first it irritated me that I was teaching [the staff], because they should know this stuff. But I realized, as I was teaching them, that they were teaching me about being understanding. And I’m glad I was the one teaching them, because I am in a better place to do that than some other kids.”

 **SAVANNAH**, an 18-year-old girl who is transgender, is currently a ward of a state child welfare system in the northeastern part of the United States.¹⁹⁷ According to Savannah, her parents do not “agree” with her identity. While living in their home, Savannah experienced emotional distress and exhibited behavior problems, including self-harm and attempted suicide. After entering the child welfare system, the county child welfare agency and its contracted providers rejected her identity. Thus, Savannah was placed in foster homes that were not affirming. The county refused to allow Savannah to use her clothing stipend to buy female clothing, citing “agency policy.” Neither the county nor their contract agencies ensured that she was able to access trans-affirming behavioral health and medical care. While Savannah was still a minor, she was told that she would have to wait until she was 18 to begin hormone therapy. Because her parents were not supportive, Savannah understood that the agency felt its hands

“SINCE I HAVE BEEN IN AN ACCEPTING PROGRAM THAT AFFIRMS MY IDENTITY I FEEL LIKE A WEIGHT HAS BEEN LIFTED OFF MY SHOULDERS.”

– SAVANNAH,
transgender youth in care

were tied and she could not receive trans-affirming health care, even though a qualified psychologist had recommended that she see a doctor at a local children’s hospital to explore hormone therapy.

During the time she was not affirmed, Savannah said she did not even want to talk to other people involved in her case. She had as limited interaction as possible with her foster families because of how they treated her. Lack of support compounded other problems because Savannah did not want to discuss issues with her caseworker that arose due to conflict and lack of support from both her foster family and representatives of the state child welfare system.

One of Savannah’s caseworkers identified a girl’s

independent living program that accepts girls who are transgender. Eventually, Savannah was moved to a new agency and placed in the independent living program. She now has her own apartment with an efficiency kitchen in a large home divided up into individual units. The staff respect her identity and treat her well. Since placement, she describes her mood as being much better and says the supportive environment has made her feel less alone. She hopes her next move can be to her own apartment.

Savannah has the following recommendations for professionals:

► **Respect builds trust.** Savannah recommends that caseworkers work to create intentional climates of trust by truly listening to the concerns of young people they work with and then adjust their behavior based on the young people's feedback. After constant conflict around her gender identity with the county welfare agency and its contract provider during her initial time in care, Savannah felt completely "unmotivated to speak with [her] workers." She knew that every conversation would end up in conflict, so she wouldn't speak freely. Savannah reminds caseworkers that they should want to build relationships of trust with clients, so that clients will share with them when important things happen. By contrast, now that her identity is affirmed, the comfort and respect she feels at her current program allows her to open up and be herself and reach out when she needs something.

► **Don't replicate the harm.** Savannah recommends that professionals working with young people make sure their actions do not replicate the harm that initially resulted in a child's removal from their family of origin, particularly if that involved rejection of a transgender person's gender identity. Affirmation of gender identity should occur at all points in which young people come into contact with systems of out-of-home care. "Even though your clients are children, they still need to be treated with respect," she says. "Especially in this setting, the trans kids you work with are there for a reason and it's often because their identities were rejected by their parents. When the system is supposed to be there to help, it's critical that it doesn't replicate the situation that [a youth] is trying to get away from."

Savannah also has a recommendation for other youth:

► **Know your rights.** "Get informed and know what you can do about your situation. If you don't think you can do anything about it, you won't." Savannah says the only people who supported and affirmed her until her recent move to the independent living facility were her attorney and her attorney guardian *ad litem*. They helped advocate to the judge for a court order

requiring her prior agency to allow Savannah to use her clothing stipend to purchase feminine clothing.

 **JENNIFER** is an 18-year-old transgender woman who lives in a southern state.¹⁹⁸ During her childhood and adolescence, Jennifer experienced physical and emotional trauma, conflict between her parents and difficulty accepting her transgender identity. These experiences impacted Jennifer's mental health. After threatening to harm herself, she was admitted to an acute psychiatric facility. After a few weeks, Jennifer was stable enough for discharge from the facility, but her parents refused to take her home. They felt her behavior problems and mental health issues were too extreme for them to handle. The state child welfare agency took custody of Jennifer.

Although the facility had deemed Jennifer ready for discharge and the state was legally required to find a less restrictive placement for her since she no longer needed acute care, she remained there for several months. She understood the delay was because no home or facility across the state would accept her as a transgender girl and affirm her identity. Ultimately, due to lack of affirming placements in her state, the child welfare agency placed Jennifer in a residential treatment facility in a neighboring state. Staff at the facility affirmed her identity in most respects. She was able to wear her own clothes and groom herself in a manner consistent with her identity, staff were generally affirming and she had a supportive therapist. However, due to the facility's interpretation of licensing regulations requiring that children of a different gender not share rooms, Jennifer was required to share a room with a cisgender male. She felt very uncomfortable with this arrangement, because she and her roommate did not get along and he would sometimes beat her up. The regulation governing out-of-home placement in the state where Jennifer was staying does not define the term *gender*. According to agency policy, children in child welfare custody in that state are protected from discrimination on account of gender identity, but no statutory, regulatory or policy guidance exists regarding placement of transgender youth in accord with their identity.

While in care, Jennifer experienced additional discrimination due to the fact that her caregivers interpreted *gender* to mean her sex assigned at birth. Jennifer was unable to use her state clothing stipend for female clothing, because the state's "policy"¹⁹⁹ at the time was that "gender appropriate" clothing meant clothing consistent with a youth's sex assigned

at birth. In addition, when staff at one of the facilities got angry with her, they would intentionally misgender her as a punishment.

While Jennifer was placed out of state, Youth Oasis,²⁰⁰ a shelter in Baton Rouge for youth experiencing homelessness, opened an LGBTQ+-specific transitional living facility. The program, called Diversity House,²⁰¹ the first of its kind in the region, was designed to provide housing and support for LGBTQ+ youth experiencing homelessness, in foster care or transitioning from foster care and in need of supportive housing. Youth Oasis created Diversity House after noting staggering numbers of LGBTQ+ youth experiencing homelessness and seeing transgender youth come to the shelter because there were no affirming placements in the foster care system.

Jennifer was able to transition to Diversity House from her out-of-state placement and in many aspects did well there, but she says she became angry and damaged her apartment. Around the same time, Jennifer turned 18, the age at which foster care ends in her state of origin. Her permanency plan had been to transition to the non-state-funded beds for youth 18 to 22 years old at Diversity House, but due to her behavior she was hospitalized again and could no longer remain there. Upon discharge from the hospital, there was no place for Jennifer to go and she ended up at Covenant House, a homeless shelter in another city. Luckily, Jennifer was connected with a disability rights attorney, and through his advocacy around her diagnoses and needs, Jennifer was eventually able to access services and funding for an apartment of her own.

Jennifer's recommendations for professionals working with TGNC youth:

► **Develop affirming placements.** Jennifer recommends that states ensure they have an adequate number of placements that are affirming of transgender identities so that young people do not have to move out of state or away from their supportive communities to be accepted for who they are. At first Jennifer was excited to go out of state. She thought it would be a “fresh start” and could lead to some new opportunities. She appreciated that staff at the out-of-state facility affirmed her identity, but after a while, Jennifer began to miss her community back home. She had friends there and adults from her church who were supportive, but they were miles away. Also, she just missed the place she grew up and knew well and felt isolated out of state because she knew no one there. The placement out of state had effects on her self-esteem as well. Jennifer says that she knew she was sent away because “no one would accept me because of who I am,” and it made her feel

rejected and unwanted. Although she was glad to be transported back home for court appearances in her child welfare case—it was the only time she got to see her supportive attorneys—it was a long and exhausting trip back and forth.

Jennifer was excited to find out about Diversity House when it opened and excited when she was placed there and got to be closer to home. “It felt very good,” she says. “I loved it. People were more respectful in general and they really accepted you for who you are. I could be myself and not have to think ‘Do I need to be this other person today?’” She recalls an instance when staff at Diversity House took her and other residents to a Pride event in Baton Rouge and shielded them from anti-LGBT protesters. Jennifer also felt accepted in terms of her race and religion and had opportunities to participate in community events and to attend church if she wanted. She appreciated having her own place and liked the independent living programming at Diversity House, where she learned how to cook, clean and manage her own money. Covenant House was also affirming of Jennifer's gender identity and she says she “had a good experience” there. She says it felt great to have the option to “stay on the female floor.” Although she still had some problems in placements that were affirming, Jennifer felt they really made a difference for her, and she was especially glad that Diversity House allowed her to live closer to her community.

► **Promote well-being by accepting and affirming youth.** Jennifer recommends that professionals affirm and support transgender youth because it “really helps their mental health.” She says that when she experienced discrimination from caseworkers, staff at treatment facilities and other professionals in the child welfare system, it “made me feel disrespected and added to my feelings of self-harm and suicidal ideation.” She wasn't sure “what she was supposed to do” if she could not be herself and that felt “really overwhelming.” She emphasizes that “a lot of trans people aren't accepted, and it can make them feel bad about themselves.” She says it “felt weird for people who are supposed to be helping [me] to reject [me].” Jennifer believes that affirming treatment is especially important for youth in care, because “not a lot of people accept trans people.” She adds that when youth are affirmed, “they can actually focus on what the problem is... They can relate to you better and you are able to relate to them better.” Significantly, given that child welfare agencies are legally obligated to ensure safety, permanency and well-being for youth in their care, Jennifer noted that at Diversity House and Covenant House she felt “emotionally and physically safe and stable.”

► **Affirm identity in all aspects.** Jennifer recommends that states ensure continuity in services by adopting and enforcing affirming policy across all systems of care. When she was settling in to her placement out of state, she says, it “felt good... I got to wear female clothing and people were using my name.” She did not, however, like having a cisgender male roommate. It made her “feel uncomfortable and unsafe,” especially because they argue a lot and “he beat me up.” Also, it felt “like they weren’t treating me like a real girl, like all the other girls.” She would have preferred a female roommate and that would have helped make the experience at the facility affirming in all aspects. During her time at the acute psychiatric facility in her out-of-state placement, the state’s refusal to buy Jennifer female clothes impacted her negatively. She felt unsupported and confused, as she was respected in some aspects but not in others and by some of her caseworkers but not others. During her time in care, her state’s administration changed and the “policy” prohibiting the agency from purchasing clothing consistent with gender identity was eliminated. As a result, Jennifer was finally able to use her state-provided stipend to buy clothing that reflected her identity and that made her feel more respected and supported.



2. JUVENILE JUSTICE

Juvenile justice systems across the country operate both long-term secure facilities and short-term detention facilities for youth charged with delinquencies who have met detention criteria such as being a flight risk or a danger to themselves or others. Youth are confined to long-term facilities when a judge has found, after adjudicating a youth as delinquent, that the delinquency is especially severe or that the youth has a long delinquency history. Depending on the type of facility, juvenile detention may be administered by the state, county or city, or by a contract provider. In addition, juvenile justice agencies may administer diversion programs and probation or parole.

Here the report features a short-term juvenile detention facility operated by the City of New York and recommendations from Lydia, a transgender girl who spent time confined in long-term facilities in a southern state and had a very supportive parole officer when she was released. The authors emphasize that most detention facilities pose extreme risk for TGNC youth. Placement in the community is preferred for all youth except when detention is absolutely necessary and strict statutory requirements are met.



Overview. New York City’s Administration for Children’s Services (ACS) oversees both the child welfare and juvenile justice systems in the city. Their website says, “[ACS] protects and promotes safety and well-being of New York City’s children and families by providing child welfare, juvenile justice, and early care and education services. In juvenile justice, ACS manages and funds services, including detention and placement, intensive community-based alternatives for youth and support services for families.”²⁰²

The agency has multiple initiatives, many of which overlap significantly. One area in which ACS is a national leader is the affirmation of LGBTQ+ youth and families who receive services. The agency’s Department of LGBTQ Policy and Practice meets quarterly with an Advocates Council made up of members from across the city. Multiple work groups meet under the oversight of the Department and the Council. The Commercial Sexual Exploitation of Children work group addresses the overlap of LGBTQ+ system-involved youth and those trading sex to meet their basic needs. The Data Collection work group focuses on methods to collect data on the numbers of LGBTQ+ youth in ACS care in a manner that is safe and affirming. The Juvenile Justice work group addresses the needs of LGBTQ+ youth in the justice system. The Training and Coaching Network promotes and facilitates effective training of child welfare workers and foster families citywide. Finally, the Youth Engagement Group invites LGBTQ+ young people from across the city to become involved in developing the service provisions designed to protect them. The Department hosts a yearly LGBTQ & Ally awards ceremony to honor service providers,

THE MOTTO OF ACS’S LGBTQ YOUTH ENGAGEMENT GROUP IS “NOTHING ABOUT US WITHOUT US.”

foster parents and young people who have made a difference on behalf of LGBTQ+ youth and families in New York City.

In 2008, ACS implemented its first policy prohibiting discrimination on a variety of grounds, including sexual orientation and gender identity. In 2012, the agency adopted one of the most comprehensive LGBTQ+ nondiscrimination policies

in the country, and in 2016 it began work with the Advocates' Council to update and refine the policy. The policy is detailed and addresses the rights of LGBTQ+ youth in care. A copy of it is presented to all youth, via a "Know Your Rights" palm card,²⁰³ upon entry into the system.²⁰⁴ In 2014 ACS issued a best practice guide for working with TGNC youth in care.²⁰⁵ Later, in 2015, ACS implemented a policy regarding the coverage of transition-related health care not covered by Medicaid for transgender youth in its care.²⁰⁶ The agency also maintains a resource page for LGBTQ+ youth²⁰⁷ and an LGBTQ+ support page²⁰⁸ where users can find agency nondiscrimination policies.

Affirming Identity in Detention Housing. Over a year ago, ACS began housing youth in detention in accordance with their gender identity. Jennifer Romelien, Executive Director of Program Services, Division of Youth & Family Justice, Detention

"IT'S OKAY TO FAIL AT FIRST WHEN TRYING TO MAKE CHANGE. GO IN WITH AN OPEN HEAD, OPEN HEART AND OPEN MIND, AND COME BACK TO THE TABLE AND FIGURE OUT WHAT WENT WRONG AND HOW TO MAKE IT BETTER."

– JENNIFER ROMELIEN, ACS

Services, in collaboration with others at ACS, helped lead the change in placement policy at detention. She notes that now, "Placing trans youth in accord with their identity is just what we do. It's normal course of business." Romelien views the shift as critical for protecting the emotional and physical safety of youth in their care. She emphasizes that "a big part of safety is cooperation and trust—respecting young people for who they are helps foster that relationship."

"Understanding that identity affirmation is critical to a youth's well-being and safety while at the facility was crucial to helping staff change the way they had always done business," she says. Youth sleep in single rooms and Romelien has not encountered any licensing regulation barriers in housing transgender youth in the section of the facility that corresponds to their identity. Agency policy dictates that transgender youth are to be respected in all aspects of their identity, and their efforts to affirm youth go beyond housing.

Intake. A social worker on the detention unit administers an intake questionnaire and asks youth how they identify in terms of their sexual orientation and gender identity, in an effort to determine

appropriate housing and potential services. Romelien acknowledges that asking SOGIE-related questions at intake was very challenging for staff at first and it took time for them to relax and feel comfortable. Ongoing practice and coaching was critical and helped staff feel more competent at conducting these intakes.

Culture Change. Romelien attributes a change in the environment in detention to an overall cultural shift in the way the agency did business. That shift to being transgender-affirming in housing classifications was driven, in large part, by policy change. Romelien advises other administrators that it is helpful to acknowledge that any change is going to be difficult in a structured environment, but it is essential that the message come from the top down and that all share the same philosophy of care.

Romelien has seen some tangible benefits. Creating an environment of respect has allowed staff to get to know and understand transgender youth better. Youth often have very short stays in detention, so it can be challenging to get to know them and build their trust. She says that once staff see that affirmation leads to more trust, less conflict and better peer-to-staff communication, it really helps to foster change. Romelien remembers being particularly proud when she witnessed staff helping a youth prepare for a visit with her parents, who were not accepting of her identity. They worked through how she would feel most comfortable presenting herself and supported her every step of the way.

Training and Coaching. Due to the nature of the city hiring process, Romelien does not have much ability to screen potential hires for their attitudes around working with LGBTQ+ youth. ACS does require training on the LGBTQ+ policy and, more generally, on how to work effectively with LGBTQ+ youth. Romelien feels that one key component for providers is to understand that a "one-off" training is not enough and administrators need to commit to ongoing coaching and support. "For some people, it is immediate," she says, while others need extra support and encouragement to "get them there."

Fair Application of the Rules. Romelien says that one challenge faced by her agency was how exactly to allow transgender youth to express themselves through clothing and grooming in a manner consistent with their gender identity. Staff would bring safety concerns to her, worried for instance that youth were hiding contraband within a weave or a bra. Romelien recommends constant but gentle questioning to address safety risks, always with the mindset that "We can be safe and affirm identity." She advises administrators, "If there is a perception of a safety issue, talk through how safety can be

"MY PAROLE OFFICER WAS PHENOMENAL. SHE ASKED ME HOW I IDENTIFIED AND WHETHER I WANTED TO DRESS FEMININE OR MASCULINE. I FELT APPRECIATED AND IT MADE ME WANT TO WORK WITH HER."

– LYDIA,
transgender youth in care

achieved and identity and expression affirmed" rather than taking an "it's-either-this-way-or-that-way approach."

In sum, Romelien finds it helpful to allow staff to share any frustrations they have and acknowledge how challenging some youth can be, but to always return to the overall goal of meeting the individual needs of the child. She reminds staff, "If anything, [TGNC] youth are the ones who are more vulnerable [in detention settings]. Our work must not be generalized but child-centered and specific to the individualized needs of the child."

 **LYDIA**, a 19-year-old woman who is transgender, lives in a southern state with her mother.²⁰⁹ Lydia experienced significant trauma while growing up, including physical and sexual abuse. She was special education-certified at a young age and was bullied at school on account of her gender-nonconformity. Lydia entered the juvenile justice system because of escalating behavior problems, which included fire-setting and assaults on a teacher and others. Ultimately, Lydia was sent to long-term secure juvenile justice facilities. While incarcerated, she experienced discrimination by some staff and volunteers (although some were supportive) and was harassed and assaulted by peers. This was often while on a safety plan because she was deemed to be at risk due to her sexual orientation and gender presentation.

Upon release, Lydia had a brief and problematic stint at a halfway house for young men, where she received death threats from peers and was prohibited from expressing herself as female. Ultimately, Lydia was released to her supportive mother's home and assigned a parole officer. Her experience with her parole officer was very positive. The officer affirmed Lydia's identity and provided her with helpful tools and resources.

When Lydia first met her parole officer, she was terrified because she thought the officer might judge her and not give her a chance. The officer immediately presented herself as supportive, however, and permitted LGBTQ+-affirming community advocates

to join Lydia for their first meeting.

Lydia says her parole officer was enthusiastic but serious, and her main concern "seemed to be making me comfortable with however I identified." In general, she says, "She gave positive advice about how to turn my negative experiences into positive change." Lydia successfully completed parole and is no longer under the supervision of the juvenile justice system.

Lydia wishes other professionals could learn from her former parole officer. She loved the way her parole officer asked Lydia what name she wanted to be called and what pronouns she used. "She didn't skip around it; she didn't assume anything," says Lydia. "She asked first."

Lydia offers the following tips for professionals working with TGNC youth:

► **Don't blame youth.** Lydia reminds staff working with young people that characteristics inherent to

LYDIA SUGGESTS THAT IF STAFF IS ABLE TO GET TO KNOW WHO YOUTH REALLY ARE THEN THEY CAN HELP THE YOUTH BE MORE SUCCESSFUL.

a young person's identity, including their gender identity and expression, are not the cause of their mistreatment; rather, abuse is caused by the refusal of adults to accept their gender identity and expression. The mistreatment Lydia experienced made her feel "pathetic," which was especially hard because she was sorting through questions regarding her gender identity. "It made me feel like the mistreatment was my fault," she says, "and I just wanted to kill myself and leave it at that."

► **Use resources wisely.** Lydia recommends that professionals focus their attention on providing affirming care rather than policing gender expression. She notes, "We would have saved a lot of trees [if staff] were more supportive and the facilities were safe. I had to write a lot of grievances about my mistreatment."

► **Allow youth to focus on important things.** Lydia recommends professionals help young people feel safe and affirmed in their surroundings so that they can focus on important things like school work. "While I was in the facilities, I wasn't able to focus on my classes and what I needed to learn. I was always more focused on who was out to fight me and who was going to jump me today. I was so busy paying attention to my surroundings that I couldn't pay attention to my work. Once I knew my parole officer was going to respect me and treat me fairly, I was able to focus on what I needed to do and working on positive things."

3. Programs for Youth Experiencing Homelessness

Many services for youth experiencing homelessness are provided by non-profit agencies that offer a range of programming, from drop-in centers and meals to storage and shower facilities, short-term housing in shelters and sometimes more long-term independent living arrangements. Many operate on a mixture of federal funding, grant funding and private donations. Featured here is a program in Spokane, Washington that receives funding through HUD in addition to other sources. Barrett, who resides at the shelter, shares his thoughts about being in an affirming place and recommendations for professionals who want to make positive change.



Overview. Crosswalk, part of Volunteers of America of Eastern Washington and Northern Idaho, is a youth serving agency in Spokane, Washington that has provided services to youth experiencing homelessness since 1985. Their website says, “Crosswalk is an emergency shelter, a school drop-out prevention program, and a group of lifesaving and life-changing programs dedicated to breaking the cycle of youth homelessness. In an average year, Crosswalk serves more than 1,000 youth. Emergency shelter is available 365 days a year and all services are free and voluntary.”²¹⁰ Their emergency shelter serves youth between the ages of 13 and 17, while their GED program and drop-in centers serve youth as old as 21. The program offers a plethora of services to address the needs of young people, ranging from the immediate (food to eat and a bed to sleep in) to long-term (independent living training and college scholarships). The compendium of care services offered by Crosswalk is holistic in nature and takes a multifaceted approach to assisting youth in crisis. All of its services are voluntary and free of charge.

Affirmation of LGBTQ+ Youth. Crosswalk seeks to affirm and validate all young people it serves. In the past six years, the program has made a concerted effort to more effectively serve LGBTQ+ youth, whether they arrive at Crosswalk after hearing about it from other youth, through a church referral or targeted by the program’s Street Outreach Team. Each young person coming through the facility doors seeking shelter is asked at intake about their sexual orientation and gender identity, as well as personal pronouns.

AS PART OF ITS HIRING PROCESS, CROSSWALK QUESTIONS APPLICANTS REGARDING THEIR EXPERIENCES WITH AND ATTITUDES TOWARDS LGBTQ+ YOUTH. ESTABLISHING THIS KEY STRENGTH UPFRONT ESTABLISHES THE AFFIRMING ENVIRONMENT FROM DAY ONE.

In order to provide a safe space for all youth who arrive at Crosswalk, it is essential that staff be safe and affirming. In this aspect, robust nondiscrimination policies and consistent training are the keys to success. Crosswalk also pre-screens its staff for affirming attitudes by asking potential hires in interviews about their experience with and perspectives about issues affecting LGBTQ+ youth. The organization also relies on a strong collaboration with community partners such as the YWCA and juvenile probation. In addition to training their own staff, Crosswalk conducts trainings for partner agencies as well, including the police force.

TGNC Youth Accessing Sex-Specific Facilities Consistent with Identity. The shelter is licensed through the State of Washington, which requires sleeping quarters for different genders to be separated by a visual barrier.²¹¹ Crosswalk’s 21 beds are divided between sections for boys and girls, and youth are assigned to the side that matches their gender identity, regardless of whether that aligns with their sex assigned at birth. In the case of a young person who is gender fluid, the place they sleep can vary from night to night. Rather than use separation by sex assigned at birth as a proxy for safety, Crosswalk applies a safety protocol across the facility. For example, youth must be fully clothed when outside of their bedrooms and may not sit or otherwise be on another youth’s bed when that youth is present. Program managers at Crosswalk have a working relationship with their licensing workers who certify that their protocol and sleeping arrangements are in line with the goals of licensing.

The facility’s bathrooms are similarly accessible. There are two of them, both single-user. They originally bore signs designating them as for men or women, but after Crosswalk staff talked with young people at the shelter about what kind of signs they’d prefer to see outside their bathrooms, they made a change. Now instead of gendered signs on the restroom doors, they have a hand-painted dragon above each one, in different colors, painted by young people. Likewise, their two showers, each single stall, are designated with either a sun or a moon.

Culture Change at the Agency. The consistent

and intentional affirming attitudes of Crosswalk have sparked a change in the culture of its service programs. Because they know they're in a safe space, young people are more likely now to identify themselves as LGBTQ+ at intake. Staff members who identify as LGBTQ+ are more likely to come on board, given that their work environment celebrates diversity. This has the additional positive effect of allowing these adults to serve as role models for the young people in their care. And because Crosswalk has worked so hard to train and collaborate with community partners, the community in general has shifted towards being affirming of people regardless of SOGIE. These changes have the end result of producing a healthier and more nurturing environment for all young people.

YOUTH AT CROSSWALK ELIMINATED GENDERED SIGNS ON SINGLE-USE RESTROOMS AT THE FACILITY BY PAINTING DIFFERENT COLORED DRAGONS ON THE DOORS. YOUTH MAY USE ANY BATHROOM THEY CHOOSE.

 **BARRETT**, who was born and raised in the northwest, is 16 years old and identifies as bi-gender (male and demi-girl).²¹² He has been a resident at Crosswalk for around 11 months. Prior to coming to Crosswalk, Barrett and his mother were not getting along well and were arguing a lot, in part due to Barrett's gender identity and expression. At some point, Barrett decided it was not safe for him there. A friend told him that Crosswalk was a good place and he decided to check it out.

Barrett heard from other youth that it was an affirming place for LGBTQ+ youth. When he arrived, he found "posters and signs all over the place" indicating that Crosswalk was a safe space. He says he felt awkward at first adjusting to the new environment but found staff very welcoming. During intake, he was given the option of living in the boys' or girls' section of the shelter. Staff affirmed his gender and were interested in communicating and problem solving, he says, making it easier for him to discuss things more openly. Barrett says Crosswalk truly feels like a home environment for him now. He has had one incident with another youth since being there, but staff intervened and helped them work it out peacefully.

For Barrett, having staff at Crosswalk affirm his identity made a big difference. He points out that "When everyone is upset at you for something you

"IF YOU DON'T GET THE SUPPORT THAT YOU NEED, IT CAN LEAD TO SELF-HARM AND IT IS REALLY IMPORTANT TO BE THERE FOR YOUTH."

– BARRETT,
bi-gender youth in care

don't have control over, it is really difficult to know how to handle that situation as a young person."

Barrett is working on his GED with classes at Crosswalk and hopes to get a job through the agency's employment placement program and to eventually emancipate. He enjoys writing, watching YouTube videos and taking pictures, and hopes to get a job in a creative field.

Barrett offers the following tips for professionals working with TGNC youth:

► ***Don't gender things.*** Barrett points out that many things are unnecessarily gendered, including restrooms, bedrooms and clothing options. Barrett has had a lot of anxiety and stress around accessing sex-specific restrooms. He suggests that if restrooms must be gendered for some reason, facilities should also offer a family restroom or some other gender-neutral option.

► ***If you see bullying, stop it.*** Barrett recommends addressing bullying through restorative justice practices rather than simply punishing those who bully others. Barrett doesn't want youth or adults who are engaging in bullying to get in trouble or be punished, but he does think it is important for adults to talk with youth who are bullying others and explain why it is harmful. Barrett had in the past been bullied at school and was often blamed for "getting in trouble" when conflicts erupted that were not his fault.

► ***Connect youth to LGBTQ supports.*** Barrett recommends that professionals working with young people take the time to familiarize themselves with LGBTQ+ supports and services, including LGBTQ+-affirming providers, social groups and networks, so that they can connect youth to these supports and services. Before living at Crosswalk, Barrett went to Odyssey, a drop-in center for LGBTQ+ youth nearby.²¹³ Barrett found lots of support and met people he liked. He said it was hard for him when he first came to Crosswalk, and having somewhere consistent where he felt connected and supported was really important.

V. CONCLUSION

The needs of TGNC youth in out-of-home care are straightforward and similar to those of their cisgender and gender-conforming peers: They need to be affirmed, protected and accepted for who they are, especially where they live. Out-of-home care systems exist to serve the most vulnerable of our society and are obligated to proactively and comprehensively serve the needs of the youth who access their services. As this report has detailed, despite the solid constitutional basis for TGNC youth to be protected from harm and treated fairly and despite increasingly explicit protections under federal law, comprehensive and explicit protections for TGNC youth in state statutes, regulations and policy are rare. And yet examples of model protections exist in a variety of places, and excellent work is being done by providers who have proactively pursued appropriate TGNC youth treatment through policy, practice, training and continuous quality improvement.

States should adopt comprehensive and explicit statutory, regulatory and policy protections for TGNC youth. The authors also recommend that agencies and providers follow models of appropriate TGNC youth treatment, including requiring affirming placement and classification procedures, promoting healthy gender identity development and expression, mandating affirming gender-responsive programming and activities while in care and providing clear and ongoing training and competency requirements for staff. Finally, the authors urge everyone reading this report to heed the voices of TGNC youth, those featured in this report and those they encounter in their work, because they are the most qualified to say what they need and because their courage and wisdom are beacons of hope for us all. ■

ENDNOTES

1. The authors use *LGBTQ+* as an abbreviation to encompass youth who may embrace identities that are not included in the identities reflected within the acronym *LGBTQ*. This report does not explicitly discuss the needs and experiences of intersex youth, but to the extent that those youth may identify along the *LGBTQ+* spectrum, their needs and experiences may be addressed. When referencing research or other reports, the authors use the terms and acronyms used in source material.
2. The authors use the terms *runaway and homeless youth* and *runaway and homeless youth systems* because the terms flow from federal statute and regulation and corresponding names of federal agencies. Where possible, the authors describe youth as *experiencing homelessness* or accessing programs and services, including shelters, for youth. The authors encourage professionals working with young people to emphasize this distinction in their practice, as young people are not defined by their housing status or a period of housing instability.
3. Bianca D.M. Wilson, et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, 6 (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf; Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming, and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. on Gender, Social Policy, & the Law 243, 247 (2016), available at http://impactjustice.org/wp-content/uploads/2016/07/irvine.canfield.jgsp1_2016.pdf; True Colors Fund & Nat'l LGBTQ Task Force, *At the Intersections: A Collaborative Report on LGBTQ Youth Homelessness* (2016), available at <http://attheintersections.org/>; See also Child Welfare League of Am. & Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care* (2012), http://www.lambdalegal.org/sites/default/files/gdtb_2013_complete.pdf; N.Y.C. Admin. for Children's Servs., *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), http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf; Jody Marksamer, Dean Spade & Gabriel Arkes, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth* (2011), http://www.nclrights.org/wp-content/uploads/2013/07/A_Place_Of_Respect.pdf; and Shannan Wilber, Caitlin Ryan & Jody Marksamer, *CWLA Best Practice Guidelines* (2006), <https://familyproject.sfsu.edu/sites/default/files/bestpracticeslgbtyouth.pdf>.
4. The authors use the term *transgender*—a person whose *gender identity* (i.e., their innate sense of being male, female or something else) differs from the sex they were assigned or presumed to be at birth—to include youth who identify at all points along the gender spectrum, including youth who identify as *non-binary* or *gender fluid*. As an example, the authors use the description *transgender girl* to describe a girl who identifies as female, but was assigned the sex of male at birth.
5. “*Gender-expansive* is a broad term referring to aspects of gender expression, identity and interests that go beyond cultural binary prescriptions of behaviors and interests associated primarily with boys or girls. Gender-expansive includes young people who do not identify with the sex they were assigned at birth as well as those who do, but may nonetheless find themselves barraged with questions based on their dress, appearance, or interests, such as, ‘Are you a boy or a girl?’ or ‘Why do you play with that? It’s a boy/girl toy!’ Other words with similar meanings include *gender diverse* and *gender creative*.” Nat’l Ass’n of School Psychologists & Gender Spectrum, *Gender Inclusive Schools: Overview, Gender Basics, and Terminology* (2016), <https://www.nasponline.org/resources-and-publications/resources/diversity/lgbtq-youth/gender-inclusive-schools-faqs/gender-inclusive-schools-overview-gender-basics-and-terminology>.
6. “Gender Non-conforming or Gender Variant—a person whose gender expression differs from how their family, culture, or society expects them to behave, dress, and act.” Substance Abuse & Mental Health Servs. Admin., *A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children* (2014), at 3, <https://store.samhsa.gov/shin/content/PEP14-LGBTKIDS/PEP14-LGBTKIDS.pdf>.
7. The authors use the abbreviation *TGNC* in this report because it appears most frequently in the literature and research. The authors emphasize that every individual is unique and there is no “correct” way to identify or express oneself. Here, the authors use *gender-nonconforming* to convey that cultural norms around gender still negatively impact youth who express themselves outside of those norms.
8. Sexual orientation, gender identity and gender expression are distinct concepts. A person who is transgender or gender-nonconforming may describe their sexual orientation as heterosexual, gay, lesbian, bisexual, or in other ways.
9. Wilson, et al. (2014), at 7; Irvine & Canfield (2016), at 248, 257-258; True Colors Fund & Nat’l LGBTQ Task Force (2016).
10. Although studies specific to the experiences of *TGNC* youth in care are relatively rare, some data do exist about the experiences of *LGBTQ* youth in care in general and the particular experiences of *TGNC* youth. Irvine, et al (2016), Soon Kyu Choi, et al., *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* (2015), 9-10, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf> (transgender youth are bullied, abused, and rejected by family at a higher rate than their cisgender LGB peers (90%, as compared to 70-75%)); Wilson, et al. (2014) (*LGBTQ* youth face higher rates of psychiatric hospitalizations, placement in congregate care, and juvenile justice involvement); Admin. for Children’s Servs. (2014).
11. See Susannah Cullinane & Jeremy Grisham, *2 Transgender Women Were Killed in New Orleans in 48 Hours*, CNN, Mar. 2, 2017, <http://www.cnn.com/2017/03/02/us/new-orleans-transgender-homicides/>; Bill Morlin, *Four Transgender Murders in a Week “Alarming Trend”*, Southern Poverty Law Ctr., Mar. 1, 2017, <https://www.splcenter.org/hatewatch/2017/03/01/four-transgender-murders-week-alarming-trend/>; Katy Steinmetz, *Why Transgender People Are Being Murdered at a Historic Rate*, TIME, Aug. 17, 2015, <http://time.com/3999348/transgender-murders-2015/>; Meredith Talusan, *Documenting Trans Homicides*, Mic Network, Inc., Dec. 8, 2016, <https://mic.com/unerased>; Human Rights Watch, *“Like Walking Through a Hailstorm”: Discrimination Against LGBT Youth in US Schools*, Dec. 7, 2016, <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools>.
12. In 2015, the National Coalition of Anti-Violence Programs (NCAVP) received reports of 24 homicides classified as hate crimes against *LGBTQ* people and people living with HIV, a 20% increase from the previous year. Of these, 62% were people of color and 67% were *TGNC* people. In total, 13 of the homicide victims (54%) were transgender women of color. 79% of victims

- were age 35 or younger. Nat'l Coal. of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015* (2016), at 9, 18, http://www.avp.org/storage/documents/ncavp_hvreport_2015_final.pdf. That same year, NCAVP received reports of 13 intimate partner-related homicides of LGBTQ people and people living with HIV. 46% of victims were transgender women, all of whom were women of color. Nat'l Coal. of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015* (2016), at 8-9, http://www.avp.org/storage/documents/2015_ncavp_lgbtqipvreport.pdf. These figures do not reflect the total number of hate-related homicides or intimate partner-related homicides perpetrated against these populations across the U.S.
13. Congregate care, including group homes in the child welfare system, non-secure and secure facilities in the juvenile justice system, and shelters for youth experiencing homelessness, is often sex-specific or divided between “male” and “female” units or sections. As explained in more detail below, regulations governing out-of-home care systems use the terms *sex* and *gender* frequently.
 14. “*Gender dysphoria* refers to the distress that may accompany the incongruence between one’s experienced or expressed gender and one’s assigned gender. Although not all individuals will experience distress as a result of such incongruence, many are distressed if the desired physical interventions by means of hormones and/ or surgery are not available. The current term is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2015).
 15. Am. Psychological Ass’n & Soc’y for the Study of LGBT Issues, *Fact Sheet: Gender Diversity and Transgender Identity in Adolescents*, http://www.apadivisions.org/division-44/resources/advocacy/transgender-adolescents.pdf?_ga=1.96201692.1901032196.1483638515; World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender and Gender Non-Conforming People* (7th ed. 2012), available at [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf); Am. Psychiatric Ass’n, *Position Statement on Access to Care for Transgender and Gender Variant Individuals* (2012), <https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2012-transgender-gender-variant-access-care.pdf>.
 16. *Cisgender*, or *cis*, describes a person whose gender identity corresponds with the sex they were assigned or presumed at birth.
 17. Ctr. for Am. Progress, et al., *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth* (2016), at 1 (LGBTQ youth represent 7-9% of the youth population nationally, but 20% of the population of juvenile justice facilities, and 40% of the population of girls’ facilities), <http://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>; BreakOUT! & Nat’l Council on Crime & Delinquency, *We Deserve Better: A Report on Policing in New Orleans by and for Queer and Trans Youth of Color* (2014), at 17-18 (Transgender respondents were more likely than cisgender respondents to report being approached by police (87% vs. 66%), being called homophobic or transphobic slurs by police (50% vs. 22%), feeling targeted by police because of their SOGIE (84% vs. 45%), being asked for a sexual favor by police (59% vs. 12%), and being presumed by police to be a sex worker (64% vs. 26%). LGBTQ respondents of color reported higher rates of negative interactions with police than white LGBTQ respondents, including the finding that 42% of respondents of color reporting that they have called police for help in the past and been arrested themselves, compared to 0% of white respondents.), <https://www.scribd.com/document/334018552/We-Deserve-Better-Report>; Angela Irvine, Shannan Wilber & Aisha Canfield, *Lesbian, Gay, Bisexual, Questioning, and/or Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide* (2017), at 3 (19% of detained youth surveyed in California facilities identified as LGB or TGNC, and 90% identified as youth of color)’ http://impactjustice.org/wp-content/uploads/2017/02/CPOC-Practice-Guide_Final.pdf.
 18. Child welfare: <http://www.lambdalegal.org/map/child-welfare>; Juvenile justice: <http://www.lambdalegal.org/map/juvenile-justice>.
 19. Additional data will be available soon. According to HHS Regulation 45 CFR Part 1355, by 2019, state child welfare agencies receiving federal funds will be required to include information regarding the sexual orientation of youth, aged fourteen and older, and foster and adoptive parents as part of demographic data sent to HHS. In addition, agencies must capture whether family conflict related to the child’s sexual orientation, gender identity, or gender expression (“SOGIE”) was a “child and family circumstance at removal.” Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90524 (Dec. 14, 2016) (to be codified at 45 CFR 1355), <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf>. The authors also recommend collecting information regarding gender identity even though the federal government does not require its collection. However, SOGIE-inclusive nondiscrimination policies, training on safely and respectfully gathering SOGIE-related data, and confidentiality protocols for managing and storing such data are critical prerequisites before beginning collection. See Angela Irvine, Shannan Wilber & Aisha Canfield, *Lesbian, Gay, Bisexual, Questioning, and/or Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide* (2017), at 10-13, http://impactjustice.org/wp-content/uploads/2017/02/CPOC-Practice-Guide_Final.pdf; see also Family Builders, Legal Servs. for Children, Nat’l Ctr. for Lesbian Rights & Ctr. for the Study of Social Policy, *Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems* (2013), available at <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.
 20. Andrea Beth Katz, *LGBTQ Youth in the Juvenile Justice System: Overrepresented Yet Unheard*, Seton Hall Law School Student Scholarship Paper 503, http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1503&context=student_scholarship.
 21. Megan Martin, Leann Down & Rosalynd Erney, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare Through Cross-System Collaboration* (2016), <http://www.cssp.org/pages/body/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>.
 22. Martin, et al. (2016), at 10.
 23. *Id.*
 24. *Id.*
 25. *Intersectionality* is an analysis that endeavors to capture how different aspects of a person’s identity, including race, gender, sexuality, class, and immigration status, interact and overlap to shape the ways in which that person experiences the world. See, e.g., African Am. Policy Forum, *A Primer on Intersectionality*, <http://www.intergroupresources.com/rc/Intersectionality%20primer%20-%20African%20American%20Policy%20Forum.pdf>.
 26. Wilber, et al. (2006), at 5-6. Note that the New York City study was conducted before New York City’s Administration for Children’s Services developed its comprehensive LGBTQ+-affirming policy in the city’s child welfare system and

- its corresponding training and implementation. It is expected that new studies, currently under way, will reveal an improvement in the experiences of LGBTQ+ youth as a result of these improvements in policy and practice.
27. Irvine, et al. (2016), at 247.
 28. Nat'l Coal. for the Homeless, *LGBT Homeless* (2009), <http://www.nationalhomeless.org/factsheets/lgbtq.html>.
 29. Lance Freeman & Darrick Hamilton, *A Count of Homeless Youth in New York City* (2008), <http://www.racismreview.com/downloads/HomelessYouth.pdf>; Meredith Dank, et al., *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex* (2015), available at <http://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.
 30. Ctrs. for Disease Control & Prevention, *Lesbian, Gay, Bisexual, and Transgender Health: LGBT Youth* (2014), <https://www.cdc.gov/lgbthealth/youth.htm> (noting that LGBTQ+ youth are twice as likely as their heterosexual peers to attempt suicide). See also The Trevor Project, *Facts About Suicide*, <http://www.thetrevorproject.org/pages/facts-about-suicide>; Suicide Prevention Res. Ctr., *Suicide Risk and Prevention for Lesbian, Gay, Bisexual, and Transgender Youth* (2008), http://www.sprc.org/sites/default/files/migrate/library/SPRC_LGBT_Youth.pdf; Nat'l All. on Mental Illness, *Find Support: LGBTQ* (2017), <https://www.nami.org/Find-Support/LGBTQ>; See also *supra* notes 11-12.
 31. See Child Welfare League of Am., et al., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), <https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>; See also Child Welfare League of Am. & Lambda Legal (2012); Marksamer, et al. (2011), at 51-52; Wilber, et al. (2006), at 10-11; Hannah Hussey, *Beyond 4 Walls and a Roof: Addressing Homelessness among Transgender Youth* (2015) at 26, <https://www.americanprogress.org/issues/lgbt/reports/2015/02/02/105754/beyond-4-walls-and-a-roof/>; Katyoon Majd, Jody Marksamer & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009) at 137-138, 143, http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf; and Ctr. for Am. Progress & Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People* (2016), at 63-64, 115-116, <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>.
 32. Authentic youth engagement requires intentional decision-making by adults and professionals working with youth. Necessary elements of authentic youth engagement models must include: (1) co-design with young people in the planning, development, implementation and assessment of initiatives; (2) a plan for sustained engagement with young people throughout the project and a system of support in place for when the project is completed; (3) a plan for commensurate compensation for young people as well as intentional scheduling, child care, transportation compensation and communication considerations to fit young people's schedules and lives; (4) a plan for how adults will ensure young people are prepared and empowered to make informed decisions throughout the project and are able to share as much or as little of their experiences as they feel comfortable; and (5) measures for ensuring confidentiality of identifying information.
 33. See note 17 and accompanying text.
 34. The authors use the terms *sex* and *gender* interchangeably. In addition, the authors recommend, as discussed at length in this report, that *sex* and *gender* be defined as the same concept and determined by gender identity.
 35. See *infra* notes 39-43 and accompanying text.
 36. See *infra* notes 62-74, 104 and 108-114 and accompanying text.
 37. See *infra* note 69 and accompanying text.
 38. While the authors are focused here on explicit SOGIE protections found within statutory and regulatory schemes specific to child welfare, juvenile justice, and runaway and homeless youth systems of care, the authors also attempt to highlight places where protections may exist more generally, such as in states' and localities' public accommodation or human rights laws.
 39. See *Hernandez ex rel. Hernandez v. Tex. Dep't of Protective & Regulatory Servs.*, 380 F.3d 872, 880 (5th Cir. 2004) (holding that foster children enjoy a substantive due process right "to personal security and reasonably safe living conditions"); *Doe ex rel. Magee v. Covington Cty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 849 ("In the circumstances of . . . foster care, the state has . . . rendered the person in its care completely unable to provide for his or her basic needs and it assumes a duty to provide for these needs"); *Doe v. Taylor Indep. Sch. Dist.*, 975 F.2d 137, 146 (5th Cir. 1992) ("By removing the child from his home . . . the state thereby obligates itself to shoulder the burden of protecting the child from foreseeable trauma"); *M.D. v. Abbott*, 152 F. Supp. 3d 684, 696 (S.D. Tex. 2015) ("under the Fourteenth Amendment, the State owes its foster children 'personal security and reasonably safe living conditions'").
 40. See *K.H. through Murphy v. Morgan*, 914 F.2d 846, 848 (7th Cir. 1990) ("The extension to the case in which the plaintiffs mental health is seriously impaired by deliberate and unjustified state action is straightforward"); *Marisol A. by Forbes v. Giuliani*, 929 F. Supp. 662 (S.D.N.Y. 1996) *aff'd sub nom. Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir.1997) (children in foster care have a "substantive due process right to be free from unreasonable and unnecessary intrusions into their emotional well-being"); *M.D.*, 152 F. Supp. 3d at 696 (foster children have the right to protection from psychological abuse); *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1156 (D. Haw. 2006) (due process rights for juveniles in detention "encompass[] a right to protection from psychological as well as physical abuse"); *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1010 (N.D. Ill. 1989) ("The fact that the plaintiffs' injuries are psychological rather than physical is of no moment").
 41. See *K.H.*, 914 F.2d at 852; *M.D.*, 152 F. Supp. 3d at 696 (foster children have the right to be free from "unreasonable and unnecessary intrusions into their emotional well-being"); and *Marisol A.*, 929 F. Supp. at 674.
 42. See *Youngberg v. Romeo*, 457 U.S. 307, 315, 317 (1982); *Wyatt v. Aderholt*, 503 F.2d 1305, 1309 (5th Cir. 1974) (holding that state mental institution's failure to employ "qualified staff 'in numbers sufficient to administer adequate treatment'" violated the rights of class members); *M.D.*, 152 F. Supp. 3d at 696-8 (holding foster care children have right to minimally adequate care, treatment, and services such that it prevents unreasonable risk of harm).
 43. See *Johnson v. Collins*, 58 F. Supp. 2d 890, 904 (N.D. Ill. 1999) (recognizing "a clearly established substantive due process right to suitable foster care placement, which includes the right to adequate supervision and physical safety"), *vacated on other grounds*, 5 F. App'x 479 (7th Cir. 2001); *Camp v. Gregory*, 67 F.3d 1286, 1294-95 (7th Cir. 1995) (concluding that plaintiff stated claim for substantive due process violation where plaintiff asserted that caseworker returned foster child "to an environment he allegedly knew to be inadequate").
 44. See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 582 (2003) (O'Connor, J., concurring) ("[W]e have never held that moral disapproval, without any other asserted state interest, is a sufficient rationale

- under the Equal Protection Clause to justify a law that discriminates among groups of persons”); *Swidriski v. City of Houston*, 31 F. App’x 154, at *2 (5th Cir. 2001) (“Plaintiff alleges that it was the police department’s policy to afford less protection to a victim of domestic violence in a homosexual relationship; that animus was at least a motivating factor for the department’s disparate treatment; and that [the plaintiff] was injured by this conduct. That is sufficient to state an equal protection claim”); *Nabozny v. Polesny* 92 F.3d 446, 457 (7th Cir. 1996) (evidence indicated that Nabozny was treated differently and that administrators’ statements regarding his sexual orientation (i.e., that he should expect such harassment) were sufficient to allow a jury to find that “discriminatory treatment was motivated by the defendants’ disapproval of Nabozny’s sexual orientation”); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1136 (9th Cir. 2003) (holding that plaintiffs had proffered sufficient evidence to show that “defendants failed to adequately train teachers, students and campus monitors about the District’s policies prohibiting harassment on the basis of sexual orientation,” that trainings that did occur did not focus on issues concerning sexual orientation, and that “discrimination the plaintiffs faced was a highly predictable consequence of the defendants not providing that training”); *Gill v. Devlin*, 867 F. Supp. 2d 849, 856 (N.D. Tex. 2012) (citing Supreme Court precedent in *Romer* and *Lawrence* for proposition that “arbitrary discrimination on the basis of sexual orientation violates the Equal Protection Clause”).
45. *Evancho v. Pine-Richland School Dist.*, No. 16-CV-01537, 2017 WL 776019, at *13 (W.D. Penn. February 27, 2017).
 46. See, e.g., *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481-84 (9th Cir. 2014) (holding heightened scrutiny should apply to government classifications based on sexual orientation); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) (holding heightened scrutiny should apply to government classifications on the basis of sexual orientation); *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012) (holding heightened scrutiny should apply to government classifications on the basis of sexual orientation), *aff’d*, 133 S. Ct. 2675 (2013); *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (holding that “discrimin[ation] against someone on the basis of his or her gender non-conformity constitutes sex-based discrimination under the Equal Protection Clause”); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004) (finding that transgender firefighter stated sex discrimination claim under equal protection clause for “discrimination he experienced was based on his failure to conform to sex stereotypes by expressing less masculine, and more feminine mannerisms and appearance”); *Norsworthy v. Beard*, 74 F. Supp. 3d 1100, 1114 (N.D. Cal. 2014), *opinion amended and superseded*, 87 F. Supp. 3d 1104 (N.D. Cal. 2015) (“[T]he Court concludes that discrimination based on transgender status independently qualifies as a suspect classification under the Equal Protection Clause because transgender persons meet the indicia of a ‘suspect’ or ‘quasi-suspect classification’ identified by the Supreme Court”).
 47. *Evancho*, No. 16-CV-01537, 2017 WL 776019, at *13.
 48. Though no federal cases have yet applied these principles to LGBTQ+ youth in out-of-home care, these rights exist in case law for youth in child welfare custody in general. See, e.g., *Teen Ranch, Inc. v. Udow*, 479 F.3d 403 (6th Cir. 2006) (Sixth Circuit affirmed a district court finding that state placement of children in a residential facility that incorporated religious beliefs into its treatment program raised Establishment Clause concerns).
 49. See, e.g., *R.G. v. Koller*, 415 F. Supp. 2d at 1151 (noting that youth have the right to be free from state imposed religion in suit challenging treatment in facility where staff promoted certain religious ideas by allowing no personal items in cells apart from the Bible and discussing religion including that the “Bible says that being gay is ‘not of God.’”).
 50. See *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 570 (1995) (finding that the group’s participation in a parade “to celebrate its members’ identity as openly gay, lesbian, and bisexual descendants of the Irish immigrants” was protected speech); *McMillen v. Itawamba Cty. Sch. Dist.*, 702 F. Supp. 2d 699, 703 (N.D. Miss. 2010) (“[E]xpression of one’s identity and affiliation to unique social groups’ may constitute ‘speech’ as envisioned by the First Amendment” (citation omitted)); see also *Tester v. City of N.Y.*, No. 95 Civ. 7972 (LMM), 1997 WL 81662, at *4 (S.D.N.Y. Feb. 25, 1997) (noting that “[t]he expression of a person’s sexual orientation may, in certain circumstances, constitute protected speech,” but finding that plaintiff failed to allege any affirmative expression of his sexual orientation).
 51. See, e.g., *McMillen*, 702 F. Supp. at 705 (school’s conduct violated student’s First Amendment rights, reasoning that “Constance has been openly gay since eighth grade and she intended to communicate a message by wearing a tuxedo and to express her identity through attending prom with a same-sex date”); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) (denying defendants’ motion to dismiss the claims of a gay high school student for suppression of protected speech and retaliation).
 52. *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 441 (5th Cir. 2001) (“While the message students intend to communicate about their identity and interests may be of little value to some adults, it has a considerable effect, whether positive or negative, on a young person’s social development. Although this sort of expression may not convey a particularized message to warrant First Amendment protection in every instance, we cannot declare that expression of one’s identity and affiliation to unique social groups through choice of clothing will never amount to protected speech.”). See *Doe ex rel. Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. Oct. 11, 2000), *aff’d sub nom. Doe v. Brockton Sch. Comm.*, No. 2000-J-638, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000) (holding that a transgender student had free expression right to wear clothing consistent with her gender identity).
 53. 42 U.S.C. § 675(5)(a).
 54. 42 U.S.C. § 671(a)(10).
 55. *Id.*
 56. 45 CFR § 1355.34(b)(1)(ii); 45 CFR § 1355.34(b)(1)(i).
 57. Foster Care Independence Act of 1999, Pub.L. No. 106-169, 113 Stat. 1182 (1999).
 58. See § 477 of the Act.
 59. See § *Id.* at (a)(8).
 60. See § *Id.* at (b)(2)(E).
 61. See § *Id.* at (b)(3)(D).
 62. Health & Human Servs. Grants Regulation, 81 Fed. Reg. 89393 (Dec. 12, 2016) (to be codified at 45 C.F.R. pt. 75), <https://www.federalregister.gov/documents/2016/12/12/2016-29752/health-and-human-services-grants-regulation>.
 63. Section 1557 of the Patient Protection and Affordable Care Act, 81 F.R. 31375 (May 18, 2016) (to be codified at 45 C.F.R. 92).
 64. Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; <https://www.hhs.gov/civil-rights/for-individuals/section-1557/>; <https://www.hhs.gov/civil-rights/for-individuals/section-1557/>

ocr-enforcement-section-1557-aca-sex-discrimination/index.html?language=es; <https://www.hhs.gov/civil-rights/for-individuals/section-1557/>; [https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities](https://www.hhs.gov/civil-rights/for-individuals/section-1557/ocr-enforcement-section-1557-aca-sex-discrimination/index.html?language=es); <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf>; <https://www.gpo.gov/fdsys/pkg/USCODE-2010title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf>.

65. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), <https://www.acf.hhs.gov/program-topics/families-0>.
66. Section 1557 of the Patient Protection and Affordable Care Act, 81 F.R. 31375 (May 18, 2016) (to be codified at 45 C.F.R. 92); 42 U.S.C. § 1557; Dep't of Health & Human Servs., *Summary: Final Rule Implementing Section 1557 of the Affordable Care Act* (2016), <https://www.hhs.gov/sites/default/files/2016-06-07-section-1557-final-rule-summary-508.pdf>.
67. *Id.* At the time of writing, HHS, Office of Civil Rights has the following notice on their website: "On December 31, 2016, the U.S. District Court for the Northern District of Texas issued an opinion in *Franciscan Alliance, Inc. et al v. Burwell*, [Franciscan All., Inc. v. Burwell, No. 7:16-CV-00108-O, 2016 WL 7638311 (N.D. Tex. Dec. 31, 2016)] enjoining the Section 1557 regulation's prohibitions against discrimination on the basis of gender identity and termination of pregnancy on a nationwide basis. Accordingly, HHS' Office for Civil Rights (HHS OCR) may not enforce these two provisions of the regulation implementing these same provisions, while the injunction remains in place. Consistent with the court's order, HHS OCR will continue to enforce important protections against discrimination on the basis of race, color, national origin, age, or disability, as well as other sex discrimination provisions that are not impacted by the court's order." <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/>.
68. Catherine E. Lhamon, U.S. Dep't of Educ., & Vanita Gupta, U.S. Dep't of Justice, *Dear Colleague Letter on Transgender Students* (May 13, 2016), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>. The guidance issued by the Obama Administration did not make new law; it spelled out how federal law already protects transgender students from discrimination, bullying and harassment in school and detailed policies and practices that had been successfully implemented to support transgender students in schools, colleges and universities across the country. On February 22, 2017, the U.S. Departments of Justice and Education, now under the Trump Administration, withdrew the Obama guidance. See Sandra Battle, U.S. Dep't of Educ., & T.E. Wheeler, II, U.S. Dep't of Justice, *Dear Colleague Letter*, <https://www.justice.gov/opa/press-release/file/941551/download>.
69. See, e.g., *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 714-15 (4th Cir. 2016), *mandate recalled and stayed*, *Gloucester Cty. Sch. Bd. v. G.G. ex rel Grimm*, 136 S. Ct. 2442 (2016), vacated and remanded per *Gloucester Cty. Sch. Bd. v. G. G. ex rel Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017). (holding that transgender student barred from using boys' bathroom at school stated a claim for discrimination under Title IX); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) ("[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender."); *Barnes v. City of Cincinnati*, 409 F.3d 729, 737-38 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-73 (6th Cir. 2004) (holding that transgender plaintiff sufficiently stated sex discrimination claims based on his allegations that he was discriminated against because of his gender-nonconforming behavior and appearance); *Mickens v. Gen. Elec. Co.*, No. 3:16-CV-00603-JHM, 2016 WL 7015665, at *3 (W.D. Ky. Nov. 29, 2016); *Roberts v. Clark Cty. Sch. Dist.*, No. 2:15-CV-00388-JAD-PAL, 2016 WL 5843046, at *1 (D. Nev. Oct. 4, 2016); *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509 (D. Conn. 2016); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 U.S. Dist. LEXIS 31591, at *28 (D. Minn. Mar. 16, 2015); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 151-52 (N.D.N.Y. 2011); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-07 (D.D.C. 2008); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000); *Lusardi v. McHugh*, Appeal No. 0120133395, 2015 WL 1607756 (EEOC Apr. 1, 2015); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012). See also, *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, No. 2:16-CV 524, 2016 WL 5372349, at *2-*3 (S.D. Ohio Sept. 26, 2016), *appeal docketed*, No. 16-4107 (6th Cir. Sept. 28, 2016) (granting transgender plaintiff's motion for preliminary injunction and finding that plaintiff was likely to prevail on Title IX claims); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943-PP, 2016 WL 5239829, at *1 (E.D. Wis. Sept. 22, 2016) (same); *Carcaño v. McCrory*, ___ F. Supp. 3d ___, 2016 WL 4508192 at *13-16 (W.D.N.C. Aug. 26, 2016) (same). Courts have also found that other federal nondiscrimination provisions covering sex discrimination are applicable to discrimination based on stereotypes about sexual orientation and gender identity. See, e.g., *Hively v. Ivy Tech Cmty. Coll. of Indiana*, No. 15-1720, 2017 WL 1230393, at *2 (7th Cir. Apr. 4, 2017) (workplace discrimination based on sexual orientation is form of sex discrimination and violates federal civil rights law, Title VII of the Civil Rights Act of 1964, prohibiting employers from discriminating against employees on basis of sex, race, color, national origin and religion); *Smith v. Avanti*, ___ F. Supp. 3d ___, 2017 WL 1284723, at *4-5 (Dist. Colo. Apr. 5, 2017) (holding property owner violated federal Fair Housing Act when she refused to rent housing to same-sex couple, one of whom is transgender and their children, because Fair Housing Act's sex discrimination prohibitions apply to discrimination based on stereotypes about sexual orientation and gender identity).
70. *Doe v. Mercy Catholic Med. Ctr.*, No. 16-1247, 2017 WL 894455 (3d Cir. Mar. 7, 2017) (holding that education programs or activities covered by Title IX's nondiscrimination provision include federally funded programs whose mission is, at least in part, educational).
71. Bryan Samuels, Comm'r, Admin. for Children & Families, Info. Memorandum ACYF-CB-IM-11-03, *Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>.
72. *Id.*
73. Admin. for Children & Families, Children's Bureau, Child Welfare Information Gateway: *Resources for Families of LGBTQ Youth*, <https://www.childwelfare.gov/topics/systemwide/diverse-populations/lgbtq/lgbt-families/>.
74. RISE, "About RISE: Youth and Family Services," <https://lalgbtcenter.org/rise/about-rise/youth-and-family-services>; QIC ChildRep, "National Quality Improvement Center on the Representation of Children in the Child Welfare System," <http://www.improvechildrep.org/>.
75. *Alexander S. By & Through Bowers v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995), *as modified on denial of reh'g* (Feb. 17, 1995), at 797-798 (facilities must have a system for screening and separating

- aggressive juveniles from vulnerable juveniles); *R.G. v. Koller*, 415 F. Supp. 2d at 1145, 1158 (same).
76. See, e.g., *Alexander S.*, 876 F. Supp. at 798. See also *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080 (11th Cir.1986) (juvenile isolated for seven days was entitled to damages for violation of Fourteenth Amendment); *Milonas v. Williams*, 691 F.2d 931 at 941-42 (use of isolation rooms for periods less than 24 hours violated the Fourteenth Amendment); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973) (solitary confinement of young adults held unconstitutional); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972).
 77. See *Youngberg v. Romeo*, 457 U.S. 307 (1982); *Burton v. Richmond*, 276 F.3d 973 (8th Cir. 2002); *A.M. v. Luzerne Cty. Juvenile Det. Ctr.*, 372 F.3d 572, 585 n.3; *Jackson v. Johnson*, 118 F. Supp. 2d 278 at 289; *Alexander S.*, 876 F. Supp. at 788; *A.M.*, 372 F.3d at 584-85 (discussing lack of medical and mental health care for ward with mental illness); *Jackson v. Johnson*, 118 F. Supp. 2d at 289.
 78. See, e.g., *Allard v. Gomez*, 9 Fed. App'x. 793 (9th Cir. 2001); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987) (holding that "[t]here is no reason to treat transsexualism differently from any other psychiatric disorder"); *Kosilek v. Malone*, 221 F. Supp. 2d 156 (Mass. Dist. Ct. 2001); *Wolfe v. Horne*, 130 F. Supp. 2d 648 (E.D. Pa. 2001); *Phillips v. Michigan Dep't. of Corr.*, 731 F. Supp. 792 (W.D. Mich. 1990). In 2013, *gender dysphoria* replaced the diagnosis of *gender identity disorder (GID)* in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), the American Psychiatric Association (APA) manual used by clinicians and researchers to diagnose and classify mental conditions. The APA explained, "Replacing 'disorder' with 'dysphoria' in the diagnostic label is not only more appropriate and consistent with familiar clinical sexology terminology, it also removes the connotation that the patient is 'disordered.'" The APA said it was concerned that completely "removing the condition as a psychiatric diagnosis—as some had suggested—would jeopardize access to care . . . Many of the treatment options for this condition include counseling, cross-sex hormones, gender reassignment surgery, and social and legal transition to the desired gender. To get insurance coverage for the medical treatments, individuals need a diagnosis." See also note 14 and accompanying text.
 79. See *Canell v. Lightner*, 143 F.3d 1210, 1214 (9th Cir. 1998) (holding that a practice of condoning or failing to prevent known proselytizing or religious indoctrination by prison staff would violate the Establishment Clause if plaintiff could make requisite factual showing); *Bellmore v. United Methodist Children's Home and Dep't of Human Res. of Ga.*, settlement terms available at www.lambdalegal.org. See also *R.G. v. Koller*, 415 F. Supp. 2d at 1160-1161 ("[T]he court is concerned by the evidence that members of the HYCF staff have promoted certain religious teachings to the plaintiffs").
 80. *Id.*
 81. *R.G. v. Koller*, 415 F. Supp. 2d at 1155.
 82. *Id.*
 83. *Id.* at 1155-56 (internal citation omitted).
 84. *Id.* at 1156.
 85. *Id.*
 86. *Id.* at 1157.
 87. *Id.* at 1159.
 88. Office of Juvenile Justice & Delinquency Prevention, *Legislation/JJDP Act*, <https://www.ojjdp.gov/about/legislation.html>.
 89. Office of Juvenile Justice & Delinquency Prevention, <https://www.ojjdp.gov/>.
 90. Administrative authority, 42 U.S.C.A. § 5672(b) incorporating by reference prohibition of federal control over state and local criminal justice agencies; prohibition of discrimination, 42 U.S.C.A. § 3789d(c)(1).
 91. *Id.* (emphasis added).
 92. 42 U.S.C. ch. 46 § 3701.
 93. See *supra* note 69 and accompanying text.
 94. Prison Rape Elimination Act of 2003, 42 U.S.C. ch. 147 § 15601 et seq. (2003).
 95. Prison Rape Elimination Act, Juvenile Facility Standards; U.S. Dep't of Justice Final Rule, 28 C.F.R. 115 (May 17, 2012) (Do. No. OAG-131), available at <https://www.prearesourcecenter.org/sites/default/files/content/preafinalstandardstype-juveniles.pdf>.
 96. "A variety of conditions that lead to atypical development of physical sex characteristics are collectively referred to as *intersex conditions*. These conditions can involve abnormalities of the external genitals, internal reproductive organs, sex chromosomes, or sex-related hormones." Am. Psychological Ass'n, *Answers to Your Questions About Individuals with Intersex Conditions* (2006), available at <http://www.apa.org/topics/lgbt/intersex.pdf>.
 97. See Prison Rape Elimination Act Nat'l Standards, 28 C.F.R. Sec. 115.341(c)(2) (2012); Nat'l PREA Res. Ctr., *Frequently Asked Questions*, <https://www.prearesourcecenter.org/frequently-asked-questions>.
 98. Prison Rape Elimination Act National Standards, 28 C.F.R. § 115.341 (2012).
 99. *Id.* at §§ 115.342(d), (f) (2012).
 100. *Id.* at § 115.342(c) (2012).
 101. *Id.*
 102. *Id.* at § 115.342(g) (2012).
 103. *Id.* at § 115.315 (2012).
 104. Fed. Advisory Comm. on Juvenile Justice, *Recommendations of the LGBT Subcommittee: Advancing the Reform Process for LGBQ/GNCT Youth in the Juvenile Justice System* (2017), <https://facj.ojp.gov/ojpasset/Documents/LGBT-Recommendations-Final-FACJJ.pdf>.
 105. U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention, *OJJDP Listening Session Report: Creating and Sustaining Fair and Beneficial Environments for LGBQ Youth* (2016), <https://www.ojjdp.gov/pubs/245321.pdf>.
 106. *Id.*
 107. See *supra* notes 46-50 and accompanying text.
 108. Runaway and Homeless Youth, 42 U.S.C. 5701 (2012).
 109. Reconnecting Homeless Youth Act of 2008, Pub. L. 110-378, 122 Stat. 4069, codified as amended at 42 U.S.C. 5601, available at <https://www.gpo.gov/fdsys/pkg/PLAW-110publ378/pdf/PLAW-110publ378.pdf>.
 110. Dep't of Health & Human Servs., Admin. for Children & Fams., Runaway and Homeless Youth, 81 Fed. Reg. 244 (Dec. 20, 2016) (to be codified at 45 C.F.R. pt. 1351), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30241.pdf>.

111. *Id.*
112. U.S. Dep't of Housing & Urban Dev., Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 23. (Feb. 3, 2012) (to be codified at 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891, 982), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf>.
113. *Id.*
114. U.S. Dep't of Housing & Urban Dev., Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs, 81 Fed. Reg. 183. (Sept. 21, 2016) (to be codified at 24 C.F.R. pt. 5), available at <https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>.
115. See U.S. Dep't of Housing & Urban Dev., *HUD LGBTQ Resources*, https://portal.hud.gov/hudportal/HUD?src=/LGBT_resources_and_Admin_for_Children_&_Families,_LGBT:_ACF_Programs_and_Services_for_LGBT, <https://www.acf.hhs.gov/program-topics/lgbt-0>.
116. U.S. Dep't of Housing & Urban Dev., *Community-Wide Prevention of LGBTQ Youth Homelessness*, <https://www.hudexchange.info/resources/documents/LGBTQ-Youth-Homelessness-Prevention-Initiative-Overview.pdf>. Effective March 10, 2017, HUD withdrew two notices seeking comment regarding "Implementation Phase Review of the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Youth Homelessness Prevention Initiative" and stated, "[T]his information collection is being withdrawn immediately while HUD further considers the need for the information collection." <https://www.gpo.gov/fdsys/pkg/FR-2017-03-10/pdf/2017-04788.pdf>.
117. See Section VII. Appendix B: Additional Resources for a list of additional research, recommended practice and curricula for professionals and additional sample policy, statute and regulation.
118. See Ctr. for Am. Progress & Movement Advancement Project (Feb. 2016); Child Welfare League of Am., et al. (2012); Majd, et al. (2009); Marksamer, et al. (2011); Lambda Legal & Child Welfare League of Am., *Getting Down to Basics: Tools to Support Youth in Care*, "What the Experts Say: Position & Policy Statements on LGBTQ Issues from Leading Professional Associations" (2015), available at http://www.lambdalegal.org/sites/default/files/what_the_experts_say_2015.pdf.
119. Some state and local human rights and public accommodation laws and ordinances are broad enough to cover out-of-home care systems. These laws and ordinances offer critical protection in jurisdictions where SOGIE-inclusive protections specific to the child welfare, juvenile justice and runaway and homeless youth systems do not exist.
120. See Brief of *Amici Curiae* States of New York, Washington, California, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont and Virginia, and the District of Columbia in Support of Respondent, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 369 (2016), *vacated and remanded*, *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017) (listing in appendix state public accommodation laws with protections for transgender people); available at https://www.aclu.org/sites/default/files/field_document/16-273_bsac_states_corrected.pdf.
121. Due to the large number of counties and municipalities in the United States, the report does not attempt to collect and analyze all policies at the county and municipal level. Content accessible via the linkable maps includes local policies of which the authors are aware.
122. Wilber, et al. (2006), at 10-13.
123. S.B. 731 (Ca. 2015), Cal. Welf. & Inst. Code § 16006.
124. A.B. 99 (Nev. 2017) (not yet codified), Nevada https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB99_EN.pdf.
125. Va Code Ann. § 63.2-1709.3(A); Michigan, M.C.L.A. 722.124(e); North Dakota, N.D. Cent. Code § 50-12-07.1; and South Dakota, S.B. 149 (S.D. 2017) (not yet codified) also have religious exemption laws in the context of child welfare services. Note: These laws are vulnerable to legal challenge as unconstitutional; see generally Movement Advancement Project, *Issue Brief: License to Discriminate: How Religious Exemption Legislation for Social Service Agencies Harms Children* (2017), <https://www.lgbtmap.org/file/policy-brief-adoption-discrimination.pdf>.
126. M.C.L.A. 722.124(e); See also text accompanying note 125.
127. S.B. 149 (S.D. 2017) (not yet codified); See also text accompanying note 125.
128. Karen B. Gunderson & Sergio Ramirez, Ca. Dep't of Soc. Servs., All County Information Notice I-81-10 (Oct. 20, 2010), available at http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acin/2010/I-81_10.pdf.
129. See *supra* note 69 and accompanying text describing how courts have held that discrimination based on sex, a protected class in some federal laws, includes both sex stereotyping and gender identity-based discrimination.
130. Sex is a protected class in North Dakota policy, but not in state regulation. See also text accompanying note 125.
131. In the context of independent living services, Arizona policy requires "every effort [be made] to ensure a diverse array of services and resources are identified to assist teens to address their needs, including any special needs or concerns related to their sexual orientation and/or gender identity." Ariz. Dep't of Child Safety, *Policy & Procedure Manual*, ch. 5, sec. 35, "Independent Living Services and Supports," <https://extranet.azdes.gov/dcyfpolicy/> (Choose Chapter 5, Section 35 from the drop-down menu).
132. See note 125.
133. N.M. Admin. Code 8.26.5.15.
134. R.I. Code R. 14-3-101:1(II).
135. Lambda Legal, *Transgender Rights Toolkit: A Legal Guide for Trans People and Their Advocates*, ch. VIII, "Transition-Related Health Care," 31 (2016), http://www.lambdalegal.org/sites/default/files/transgender_booklet_-_trans-related_healthcare.pdf; World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, ch. VI, "Assessment and Treatment of Children and Adolescents with Gender Dysphoria" (7th ed. 2011).
136. Available at [http://dhr.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2017-08%20Working%20with%20Lesbian,%20Gay,%20Bisexual,%20Transgender,%20and%20Questioning%20\(LGBTQ\)%20Youth%20and%20Families.pdf](http://dhr.maryland.gov/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2017-08%20Working%20with%20Lesbian,%20Gay,%20Bisexual,%20Transgender,%20and%20Questioning%20(LGBTQ)%20Youth%20and%20Families.pdf).
137. Available at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6500-ENG>.
138. Available at http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf.
139. In some states, some or all juvenile justice services are located under the state Department of Health and Human Services. In

- others, they are standalone agencies or under the state Department of Corrections or another agency.
140. N.Y. Comp. Codes R. & Regs. tit. 9, § 180.5(a)(6) (emphasis added).
 141. Cal. Code Regs. tit. 15, § 1324 (emphasis added).
 142. July 1, 2014. Available at <http://www.equityprojects.org/wp-content/uploads/2014/10/MA-DYS-LGBTQ-Youth-Policy-Guidelines-1-29-14.pdf>.
 143. *Id.*
 144. Sept. 15, 2014. Available at <https://drive.google.com/file/d/0B6RNEF9DYEdYbDdNVHRyWJGcFU/view>.
 145. *Id.* Colorado's policy provides that a youth who has already been provided hormones shall, in consultation with a qualified provider, continue to receive those hormones. The policy does not explicitly state that a youth may begin hormone therapy while in custody, but does state youth shall meet with qualified providers. Any interpretation of this policy as one that only allows youth who have begun hormones to have access to them (if recommended by a physician) is not recommended policy.
 146. *E.g.* Hawai'i's Homeless Programs Office is part of the Hawai'i Department of Human Services (DHS), <http://humanservices.hawaii.gov/bessd/home/hp/>. DHS has a SOGIE-inclusive nondiscrimination policy, <http://humanservices.hawaii.gov/wp-content/uploads/2014/10/Policy-4.10.1-Disc-Complaint.pdf>.
 147. Cal. Code Regs. tit. 22, § 84072; D.C. Mun. Regs. tit. 29, § 6203; N.Y. Comp. Codes R. & Regs. tit. 9, § 182-1.5.
 148. D.C. Mun. Regs. tit. 29, § 6203, Note that gender identity is not listed as a protected class in the regulation, but is in the District of Columbia Human Rights Act ("It is the intent of the Council of the District of Columbia, in enacting this chapter, to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense and place of residence or business."). D.C. Code Ann. § 2-1401.01 (formerly cited as D.C. Code Ann. 1981 § 1-2501).
 149. Opportunities to further this research may investigate local- and county-level practices and policies, state administrative policies and the work of nongovernmental organizations that have proven promising in improving outcomes for transgender and gender-nonconforming youth involved in intervening public systems.
 150. As of June 2016.
 151. Many states' juvenile justice systems are accredited by the American Correctional Association and participate in the Office of Juvenile Justice and Delinquency Prevention Performance-based Standards (PbS). The research presented here highlights where states have expanded upon PbS in state regulation.
 152. This research is limited in scope in that it was conducted as a single point-in-time survey that reflects only codified state regulations and is not a complete survey of state-, county- and local-level practice or statements of administrative policy. Additionally, many states rely on local or county-administered systems that may or may not build upon existing state regulatory frameworks.
 153. See M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science Is Key to Transgender Rights*, 39 *Vt. L. Rev.* 943 (2015), http://lawreview.vermontlaw.edu/wp-content/uploads/2015/05/39-4-06_Levasseur.pdf; See also Brief of *Amici Curiae* The Equality Federation in Support of Respondent, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 369 (2016), *vacated and remanded*, *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017) ("Both medical science and courts have recognized that a variety of characteristics—including gender identity—collectively make up a person's sex."), available at <https://www.aclu.org/legal-document/gloucester-county-school-board-v-gg-equality-federation>.
 154. See Marksamer, et al. (2011), at 11, 25.
 155. See Brief of *Amici Curiae* American Academy of Pediatrics, American Psychiatric Association, American College of Physicians and 17 Additional Medical and Mental Health Organizations in Support of Respondent, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 369 (2016), *vacated and remanded*, *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017), available at <https://www.aclu.org/legal-document/gloucester-county-school-board-v-gg-american-academy-pediatrics-et-al>.
 156. Tenn. Code Ann. § 7-51-1801; 2011 Tenn. Pub. Acts 278; 2011 Tenn. HB 600.
 157. 775 Ill. Comp. Stat. Ann. 5/1-103(O).
 158. Am. Psychological Ass'n & Soc'y for the Study of LGBT Issues; World Prof'l Ass'n for Transgender Health (7th ed. 2012); Am. Psychiatric Ass'n (2012).
 159. N.Y. Civ. Rights Law § 79-n; 2010 Sess. Law News of N.Y. Ch. 227 (A. 529).
 160. Fla. Admin. Code Ann. r. 65C-14.001.
 161. *E.g.*, Nevada defines *gender identity or expression*, in the context of its statute requiring foster youth to be treated in accordance with their gender identity, as "a gender related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth." Nevada A.B. 99 (not yet codified) (https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB99_EN.pdf).
 162. Wilber, et al. (2006), at 42-43, 47-48.
 163. The Illinois Department of Children and Family Services provides the right "[t]o be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records" in its *Illinois Foster Child and Youth Bill of Rights* policy, available at https://www.illinois.gov/dcf/aboutus/notices/Documents/CFS_496-1_Illinois_Foster_Child_and_Youth_Bill_of_Rights.pdf.
 164. A.B. 99 (Nev. 2017) (not yet codified), https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB99_EN.pdf. DCFS must also consult with representatives of child welfare agencies, detention facilities and juvenile and family courts; attorneys and advocates for children; and other persons deemed appropriate by the DCFS.
 165. Other states, pursuant to PREA, may address placement of LGBTQ+ youth in juvenile justice facilities in agency policy. *E.g.*, State of Tennessee Department of Children's Services, Administrative Policies and Procedures 20.20, *Guidelines for Managing Children/Youth in DCS Custody Related to Sexual Orientation, Gender Identity and Expression* (Jan. 30, 2015), <https://files.dcs.tn.gov/policies/chap20/20.20.pdf>.
 166. S.B. 731 (Ca. 2015), Cal. Welf. & Inst. Code § 16006. California Department of Social Services issued an implementation plan

- pending development of implementing regulations. See www.cclid.ca.gov/res/pdf/16APX-18.pdf at 14, 15. Interim regulations have been proposed and are pending. See <http://www.dss.cahwnet.gov/ord/PG5060.htm>.
167. Fla. Admin. Code Ann. r. 65C-14.040.
 168. 67 La. Admin. Code Pt V, 7513(G)(4).
 169. 3 Colo. Code Regs. § 708-1:81.9.
 170. S.B. 731 (Ca. 2015), Cal. Welf. & Inst. Code § 16006.
 171. See Wilber, et al. (2006), at 49-50; Marksamer, et al. (2011).
 172. Cal. Code Regs. tit. 22, § 89372(2)(B).
 173. Wilber, et al. (2006), at 29-30.
 174. Ohio Admin. Code 5101:2-9-19(C)-(E).
 175. See The Moss Group, Inc., U.S. Dep't of Justice Bureau of Justice Assistance & Nat'l PREA Resource Ctr., *Guidance in Cross-Gender and Transgender Pat Searches* (2015), available at https://www.prearesourcecenter.org/sites/default/files/content/guidance_on_cross-gender_and_transgender_pat_searches_facilitator_guide.pdf.
 176. The Moss Group, Inc., et al. (2015), at 41.
 177. Minn. R. 2960.0150.
 178. 89 Ill. Adm. Code 411.195.
 179. Or. Admin. R. 413-215-0761.
 180. Idaho Admin. Code r. 05.01.02.227.
 181. 7 Alaska Admin. Code 52.405(b).
 182. Ctr. for Am. Progress & Movement Advancement Project (2016), at 115.
 183. In Rhode Island, "sexual orientation and expression" is included in a list of potential training subjects to fulfill eight of the minimum sixteen required continuing education hours for direct care staff working in residential child care facilities (R.I. Code R. 14-3-101:3(II)(C)(3)).
 184. Washington requires foster parents to connect a child with resources that meet their needs regarding sexual orientation and gender identity, including cultural, educational and spiritual activities in their home or community, and provides assistance through their licenser, the child's social worker or case manager to connect foster families with those resources (Wash. Admin. Code 388-148-1520(7)-(8)).
 185. See Dev. Servs. Group, Inc., *Gender Specific Programming* (2010), http://www.ojjdp.gov/mpg/litreviews/Gender-Specific_Programming.pdf.
 186. By including providers in this report, the authors do not represent that their existing service delivery is perfect or that their work on improving services for TGNC youth is complete, but that the featured providers have taken significant steps to provide affirming programs and services to LGBTQ+ youth and are committed to continuous learning and improvement in this area.
 187. Interviews conducted for this report were for the sole purpose of agency improvement and public policy reform and are not held as a representative study or research. Interviews from youth are provided with their consent and where necessary, specific identifying information has been removed to protect their confidentiality. Some youth profiled here are clients of Lambda Legal and some youth were contacted through the agencies profiled in this section. Youth contributors were either compensated for their time and expertise or are current pro bono clients of Lambda Legal. Of the six youth profiled in or contributing to this report, one identifies as White, three as African-American, one as White and Pacific Islander, and one as White and Asian Pacific Islander. The authors have decoupled racial identity from each youth's contribution to further ensure anonymity, but include information here given the over-representation of youth of color in out-of-home care systems compared to their representation in society as a whole and because youth face discrimination or mistreatment on account of multiple aspects of their identity in care and in society. As an example, in New York, while 51% of the child population are children of color, children of color comprise 73.8% of young people in juvenile detention, residential and/or correctional facilities, and 72% of children in foster care. Annie E. Casey Foundation, *Kids Count Data Center* (2017), <http://datacenter.kidscount.org/>.
 188. Caitlin Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346 (2009), available at <http://pediatrics.aappublications.org/content/123/1/346>.
 189. Family Acceptance Project, *Overview*, <https://familyproject.sfsu.edu/overview>.
 190. Ryan, et al. (2009), at 350.
 191. *Id.*
 192. 45 C.F.R. 1356.21; 42 U.S.C. § 629.
 193. Mohammed is a pseudonym. Mohammed's circumstances were described by REC based on its work with him and his family. Due to the confidentiality of his child welfare case, the authors did not speak with Mohammed directly. REC provided the description of Mohammed's circumstances here, and the information shared is provided with the consent of Mohammed and his family members.
 194. CHRIS 180, *Changing Directions. Changing Lives*, <http://www.chris180.org/>.
 195. CHRIS 180, *What We Do: Trauma Training*, <http://www.chris180.org/training/trauma-training/>.
 196. Lambda Legal represents Ashley. The information provided from Ashley was obtained through interviews with her and is included with her consent. Ashley's parents have reviewed and consented to inclusion of her contribution and recommendations.
 197. Lambda Legal represents Savannah. Her contribution and recommendations are provided through interviews with Savannah and with her consent.
 198. Jennifer's contributions are based on interviews with Jennifer and contact with professionals who were involved in her child welfare case. The authors also had contact with staff at Youth Oasis during and after the creation and implementation of Diversity House. Jennifer was provided with a stipend for her time contributing to this report.
 199. The authors use the term "policy" here to refer to uncodified statements of agency policy that interpret and implement state statute and regulations.
 200. Youth Oasis Children's Shelter, <http://www.youthoasis.org/>.
 201. Diversity House, *About the Program*, <http://www.diversityhouse.org/about/>.

202. N.Y.C. Admin. for Children's Servs., *About ACS*, <http://www1.nyc.gov/site/acs/about/about.page>.
203. N.Y.C. Admin. for Children's Servs., *Know Your Rights: LGBTQ Youth in Foster Care and Juvenile Justice Systems*, https://www1.nyc.gov/assets/acs/pdf/lgbtq/ACS_Palmscard.pdf.
204. N.Y.C. Admin. for Children's Servs., Policy #2012/01, *Promoting a Safe and Respectful Environment for LGBTQ Youth and Their Families Involved in the Child Welfare, Detention and Juvenile Justice Systems* (Nov. 21, 2012), https://www1.nyc.gov/assets/acs/pdf/lgbtq/LGBTQ_Policy.pdf; N.Y.C. Admin. for Children's Servs., *LGBTQ Incident & Inquiry Reporting*, <https://www1.nyc.gov/site/acs/about/lgbtq-incident-inquiry-reporting.page>.
205. N.Y.C. Admin. for Children's Servs. (2014).
206. See N.Y. State Comm'r of Health, *Transgender Related Care and Services* (Mar. 11, 2015), available at https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/2015-03-11_transgender_related_care_and_services.pdf; N.Y. Dep't of Health, HLT-40-16-00030-A, *Transgender Related Care and Health* (2016).
207. N.Y.C. Admin. for Children's Servs., *For Youth: LGBTQ Youth Empowerment Group (YEG)*, <http://www1.nyc.gov/site/acs/about/for-youth.page>.
208. N.Y.C. Admin. for Children's Servs., *LGBTQ Support*, <http://www1.nyc.gov/site/acs/about/lgbtq-support.page>.
209. Lydia is a client of Lambda Legal. Lydia's contributions and recommendations are included through interviews with Lydia and with her consent.
210. Volunteers of Am., Eastern Wash. & Northern Idaho, *Reclaiming Futures: Crosswalk Teen Shelter*, <https://www.voaspokane.org/crosswalk>.
211. Wash. Admin. Code 388-145-2105(1)(a).
212. Barrett uses the pronouns *he*, *him*, and *his*. Barrett's contributions and recommendations are included through interviews with Barrett and with his consent. Barrett was provided with a stipend for his time contributing to this report.
213. Odyssey Youth Movement, *Welcome to Odyssey Youth Movement*, <http://www.odysseeyouth.org/>.

VI. APPENDIX A: STATE-BY-STATE LICENSING AND OTHER REGULATIONS

50 State Survey: Licensing Regulations in Child Welfare, Juvenile Justice, and Systems Serving Runaway and Homeless Youth Relating to Sexual Orientation, Gender Identity and Gender Expression, http://www.lambdalegal.org/sites/default/files/50_state_survey_licensing_regs.xlsx

VII. APPENDIX B: ADDITIONAL RESOURCES

RESEARCH AND REPORTS

Movement Advancement Project, *Issue Brief: License to Discriminate: How Religious Exemption Legislation for Social Service Agencies Harms Children* (2017), <https://www.lgbtmap.org/file/policy-brief-adoption-discrimination.pdf>

Columbia University, What We Know: The Public Policy and Research Portal, *What does the scholarly research say about whether conversion therapy can alter sexual orientation without causing harm?* (updated 2017), <http://whatweknow.law.columbia.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-whether-conversion-therapy-can-alter-sexual-orientation-without-causing-harm/>

Columbia University, What We Know: The Public Policy and Research Portal, *What does the scholarly research say about the link between family acceptance and LGBT youth wellbeing?* (updated 2017), <http://whatweknow.law.columbia.edu/topics/lgbt-equality/%20what-does-the-scholarly-research-say-about-the-acceptancerejection-of-lgbt-youth-2%20/>

Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (2016), <http://www.ustranssurvey.org/report>

True Colors Fund & Nat'l LGBTQ Task Force, *At the Intersections: A Collaborative Report on LGBTQ Youth Homelessness* (2016), <http://attheintersections.org/transgender-gender-expansive-youth/>

Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender*

Nonconforming, and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population, 24 J. on Gender, Social Policy, & the Law 243 (2016), http://impactjustice.org/wp-content/uploads/2016/07/irvine.canfield.jgspl_.2016.pdf

Meredith Dank, et al., Urban Inst., *Access to Safety: Health Outcomes, Substance Use and Abuse, and Service Provision for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex* (2016), http://www.urban.org/research/publication/access-safety-health-outcomes-substance-use-and-abuse-and-service-provision-lgbtq-youth-ymsm-and-ywsw-who-engage-survival-sex/view/full_report

Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015), <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>

Shannan Wilber, Annie E. Casey Found., Juvenile Det. Alts. Initiative 11: *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* (2015), http://www.nclrights.org/wp-content/uploads/2015/09/AECF_LGBTinJJS_FINAL2.pdf

Meredith Dank, et al., Urban Inst., *Locked In: Interactions with the Criminal Justice and Child Welfare Systems for LGBTQ Youth, YMSM, and YWSW Who Engage in Survival Sex* (2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000424-Locked-In-Interactions-with-the-Criminal-Justice-and-Child-Welfare-Systems-for-LGBTQ-Youth-YMSM-and-YWSW-Who-Engage-in-Survival-Sex.pdf>

Meredith Dank, et al., Urban Inst., *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex* (2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000119-Surviving-the-Streets-of-New-York.pdf>

Hannah Hussey, Ctr. for Am. Progress, *Beyond 4 Walls and a Roof: Addressing Homelessness Among Transgender Youth* (2015), <https://www.americanprogress.org/issues/lgbt/reports/2015/02/02/105754/beyond-4-walls-and-a-roof/>

BreakOUT! & Nat'l Council on Crime & Delinquency, *We Deserve Better: A Report on Policing in New Orleans by and for Queer and Trans Youth of Color* (2014), <https://www.scribd.com/document/334018552/We-Deserve-Better-Report>

Bianca D.M. Wilson, et al., the Williams Inst., et. al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles* (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf

getR.E.A.L., *State Policies Concerning LGBTQ Youth* (2014): <http://www.cssp.org/reform/child-welfare/get-real/State-Child-Welfare-Policies-Concerning-LGBTQ-Youth.pdf>

Am. Psychological Ass'n & Soc'y for the Study of LGBT Issues, *Fact Sheet: Gender Diversity and Transgender Identity in Adolescents* (2013), http://www.apadivisions.org/division-44/resources/advocacy/transgender-adolescents.pdf?_ga=1.96201692.1901032196.1483638515

Andrew Cray, Katie Miller & Laura E. Durso, Center for Am. Progress, *Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth* (2013), <https://www.americanprogress.org/issues/lgbt/reports/2013/09/26/75746/seeking-shelter-the-experiences-and-unmet-needs-of-lgbt-homeless-youth/>

World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender and Gender Non-Conforming People* (7th ed. 2012), [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf)

Jerome Hunt & Aisha Moodie-Mills, Center for Am. Progress, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBTQ Youth in the Juvenile Justice System* (2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf

Katyoona Majd, Nat'l Juvenile Defender Ctr.; Jody Marksamer, Nat'l Ctr. for Lesbian Rights & Carolyn Reyes, Legal Servs. for Children, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf

BEST PRACTICE GUIDELINES AND CURRICULA

Angela Irvine, Shannan Wilber & Aisha Canfield, Impact Justice & Nat'l Ctr. for Lesbian Rights, *Lesbian, Gay, Bisexual, Questioning and/or Gender Nonconforming and Transgender Girls and Boys in the California Juvenile Justice System: A Practice Guide* (2017), http://impactjustice.org/wp-content/uploads/2017/02/CPOC-Practice-Guide_Final.pdf

Ctr. for the Study of Soc. Pol'y, *Out of the Shadows: Supporting Youth LGBTQ Youth in Child Welfare Systems Through Cross System Collaboration* (2016), <http://www.cssp.org/pages/body/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfare-through-cross-system-collaboration-web.pdf>

- Ctr. for the Study of Soc. Pol'y, *National LGBT Curricula and Training Materials* (2016), <http://www.cssp.org/reform/child-welfare/get-real/resources-and-training/national-curricula>
- getR.E.A.L Cal., Family Builders, Ctr. for the Study of Soc. Pol'y & Nat'l Ctr. for Lesbian Rights, *Transgender and Gender Nonconforming Children in California Foster Care* (2016), <http://www.cssp.org/reform/child-welfare/get-real/what-we-do/body/TGNC-Children-in-CA-Foster-Care-Feb-2016.pdf>
- Southern Poverty Law Ctr., *Entitled to Treatment: Medical Care for Transgender Adolescents in the Juvenile Justice System* (2016), <https://www.splcenter.org/20160408/entitled-treatment-medical-care-transgender-adolescents-juvenile-justice-system>
- Lambda Legal, *Transgender Rights Tool Kit: A Legal Guide for Trans People and Their Advocates* (2015), <http://www.lambdalegal.org/publications/trans-toolkit>
- GLSEN, *The 2015 National School Climate Survey* (2015), <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>
- Jeffrey M. Poirier, Am. Insts. for Research, *Recommended LGBTQ Children, Youth and Families Cultural Competence Tools, Curricula, and Resources* (2015), <http://docs.cmhnetwork.org/download.php?id=895>
- N.Y.C. Admin. for Children's Servs., *Safe and Respected: Policy, Best Practices, and Guidance for Serving Transgender and Gender Non-Conforming Children and Youth in the Child Welfare, Detention and Juvenile Justice Systems* (2014), http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf
- Aisha C. Moodie-Mills & Christina Gilbert, Ctr. for Am. Progress, *Restoring Justice: A Blueprint for Ensuring Fairness, Safety, and Supportive Treatment of LGBT Youth in the Juvenile Justice System* (2014), <https://www.americanprogress.org/issues/criminal-justice/report/2014/12/17/103488/restoring-justice/>
- Family Builders, Legal Servs. for Children, Nat'l Ctr. for Lesbian Rights & Ctr. for the Study of Soc. Pol'y, *Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems* (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>
- Child Welfare Info. Gateway, *Supporting Your LGBTQ Youth: A Guide for Foster Parents* (2013), <https://www.childwelfare.gov/pubPDFs/LGBTQyouth.pdf>
- Human Rights Campaign, *Caring for LGBTQ Children and Youth: A Guide for Child Welfare Providers* (2013), <http://www.centerforchildwelfare.org/kb/cultcomp/CaringForLGBTQYouth2013.pdf>
- Child Welfare League of Am. & Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care* (2012), <http://www.lambdalegal.org/publications/getting-down-to-basics>
- Child Welfare League of Am., et al., *Recommended Practices to Promote the Safety and Well-Being of LGBTQ Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), <http://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>
- Kristin M. Ferguson-Colvin & Elaine M. Maccio, Nat'l Res. Ctr. for Permanency & Family Connections, *Toolkit for Practitioners/Researchers Working with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Runaway and Homeless Youth (RHY)* (2012), http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/LGBTQ%20HRY%20Toolkit%20September%202012.pdf
- Jody Marksamer, Nat'l Ctr. for Lesbian Rights, & Dean Spade & Gabriel Arkles, Sylvia Rivera Law Project, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth* (2011), http://www.nclrights.org/wp-content/uploads/2013/07/A_Place_of_Respect.pdf
- Diane Elze & Robin McHaelen, Nat'l Ass'n of Soc. Workers & Lambda Legal, *Moving the Margins: Curriculum for Child Welfare Services with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Out-of-Home Care* (2009) http://www.lambdalegal.org/sites/default/files/publications/downloads/mtm_moving-the-margins_1.pdf
- Am. Bar Ass'n, *Supporting LGBTQ Youth: A Judicial Bench Card* (2009), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/OpeningDoorsBenchcards.authcheckdam.pdf
- Mimi Laver & Andrea Khoury, Am. Bar Ass'n. Ctr. on Children & the Law, *Opening Doors for LGBTQ Youth in Foster Care* (Claire Chiamulera ed., 2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/lgbtq_book.authcheckdam.pdf



*We are grateful to the
May and Stanley Smith Charitable Trust
for their support of this project.*

*The authors thank
Lambda Legal, Children's Rights
and Center for the Study of Social Policy staff
for their contributions to this report and
Sally Chew and Natalie Pryor for their
fantastic editing and graphic design.
Most importantly, the authors sincerely thank
the youth and service providers who
contributed their time and expertise
to the creation of this report and without whom
this report would not be possible.
We would also like to thank all of the transgender
and gender-expansive youth in care who are
contributing to system change
every day by bravely being
themselves.*