

Practice Kit 10

LGBTQ Youth Advocacy

INTRODUCTION

Children’s Law Center is pleased to share its second edition of the Lesbian, Gay, Bi-sexual, Transgender, or Questioning (“LGBTQ”) Youth Advocacy Practice Kit with you. Experts estimate that there are approximately 175,000 youth ages 10-18 in foster care. Based on comparable estimates of people identifying as LGBTQ in the general population, at least 5-10 percent of those youth are LGBTQ.¹ These youth must generally cope not only with the trauma and loss typical of children in the foster care system but also with stressors that are unique to the LGBTQ population.² Given these additional stressors, it is important for those working with foster youth to be aware of the possibility of further challenges in advocating for these youth.

This Kit is intended to serve as a starting point for those working with foster youth who identify as lesbian, gay, bisexual, transgender, queer or questioning. Because the term “queer” is often used as an umbrella term for persons across the spectrum of sexual orientation and gender identity, it is used throughout this practice kit as a synonym for describing persons in the LGBTQ community.

LGBTQ youth in foster care face a number of obstacles in navigating services. They can experience barriers when the name on their documents suggest a person with a gender different from the gender he or she projects. LGBTQ youth face particular challenges when it comes to foster care placements and experiences in state custody. LGBTQ youth may experience discrimination when looking for jobs or seeking health care, and LGBTQ youth are at a high risk of becoming homeless, committing suicide, and falling through the cracks with respect to basic sexual health care. Attorneys representing LGBTQ youth can improve their advocacy by familiarizing themselves with the issues that impact these young people. This practice kit is designed to be a resource to educate child welfare and family law attorneys about the challenges LGBTQ youth in foster care face. It is our hope that the information contained in this kit will equip such practitioners to be proactive advocates on behalf of any LGBTQ youth on their caseloads.

This practice kit is divided into eight sections. The Introduction outlines the scope of the issues affecting LGBTQ youth. It contains best practices guidelines on working with queer youth, and provides information to dispel common misconceptions held about those who identify as LGBT or Q. The second section addresses issues surrounding name and gender change. The third section addresses housing and placement rights and the accompanying challenges. The next three sections address access to health care and education and the experiences of queer youth in the criminal justice section.

Lastly, this practice kit ends with a section filled with additional resources that you may want to access for more information on any of the topics presented in this practice kit, or on other collateral issues. Some of the resources you may want to share with youth on your case load. Others you may share with foster parents, social workers and the other team members involved on your case.

It is important for LGBTQ youth in foster care to have helpful and informed allies to help them navigate the system and ultimately experience permanence. It is our hope that this kit will help you be a valuable ally for the youth you serve. Children’s Law Center thanks you for ordering this Practice Kit and hopes that you will find it a useful and informative resource.

¹ Child Welfare Information Gateway, Supporting your LGBTQ Youth: A Guide for Foster Parents, found at <https://www.childwelfare.gov/pubs/LGBTQyouth.pdf>

² Id.



Supporting Your LGBTQ Youth: A Guide for Foster Parents



There are approximately 175,000 youth ages 10–18 in foster care in the United States.¹ Of these youth, an estimated 5–10 percent—and likely more—are lesbian, gay, bisexual, transgender, or questioning (LGBTQ).²

¹ The total number of youth in care comes from *The AFCARS Report* (<http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf>). It is based on the number of youth ages 10–18 in care on September 30, 2011.

² The estimate comes from the assumption that 5–10 percent of the general population is LGBT. John C. Gonsiorek & James D. Weinrich, "The Definition and Scope of Sexual Orientation," in *Homosexuality: Research Implications for Public Policy* (Newbury Park, CA: Sage Publications, 1991); Courtney, Dworsky, Lee, and Raap, (2009) found a much higher percentage of youth in foster care who identified as something other than fully heterosexual (see <http://www.chapinhall.org/research/report/midwest-evaluation-adult-functioning-former-foster-youth>).

What's Inside:

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Use your smartphone to
access this factsheet online.



Child Welfare Information Gateway
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Email: info@childwelfare.gov
<https://www.childwelfare.gov>

Like all young people, LGBTQ youth in foster care need the support of a nurturing family to help them negotiate adolescence and grow into healthy adults. However, LGBTQ youth in foster care face additional challenges. These include the losses that brought them into care in the first place, as well as traumas they may have suffered while in foster care. They also include stressors unique to LGBTQ youth, including homophobia or transphobia³ and the need to evaluate (often with little or no support) the safety of their communities, schools, social networks, and homes in order to decide whether to disclose their LGBTQ identity, when, and to whom.

Despite these challenges, LGBTQ youth—like all youth in the child welfare system—can heal and thrive when families commit to accepting, loving, and supporting them as they grow into their potential as adults. This factsheet was written to help families like yours understand what they need to know to provide a safe, supportive, and welcoming home for an LGBTQ youth in foster care.

In this factsheet, you will learn about LGBTQ youth in the child welfare system, the unique risks they face, and the important role that foster parents can play in reducing those risks. You will discover specific actions that you can take to create a welcoming home for all youth in your care and to promote your youth's health and well-being in the community. At the end of this factsheet are links to many resources for more information and support.

³ *Transphobia* refers to fear of people who are transgender.

About LGBTQ Youth

The acronym *LGBTQ* is a general term used to describe people who are lesbian, gay, bisexual, transgender, or questioning their gender identity or sexual orientation.

Definitions

Lesbian, gay, and bisexual describe a person's *sexual orientation*—emotional, romantic, or sexual feelings toward other people. *Lesbian* refers specifically to women who love women, while *gay* can refer to any person who is attracted to people of the same sex. (The term *homosexual* is considered outdated and offensive by many gay people.) Bisexual people are attracted to men or women regardless of their anatomy. People do not need to have any particular sexual experience (or any sexual experience at all) to identify as bisexual, gay, or lesbian, because sexual orientation and sexual behavior are not the same thing.

Transgender refers to a person's *gender identity*—an internal understanding of one's own gender. A transgender person's gender identity does not match the sex (a biological characteristic) assigned to him or her at birth. Many, but not all, transgender people choose to alter their bodies hormonally and/or surgically to match their gender identity. Some people's experience, perception, or expression of their gender evolves and changes over time. Gender identity and sexual orientation are separate aspects of a person's identity: A transgender person may be bisexual, gay, or straight (or may identify in some other way).

Some youth (and adults) identify as *questioning* when they start to recognize that they may be part of the LGBT community. This does not mean that sexual orientation or gender identity is a choice. These youth may need time to process what being LGBT means for them; to reconcile any anti-LGBT stereotypes they have internalized; and to decide if, when, and how they should identify themselves as lesbian, gay, bisexual, or transgender to others.

Some people's *gender expression* (meaning, the ways in which they express their gender identity to others) does not conform to society's expectations for their sex. This might include choices in clothing, mannerisms, names, hairstyles, friends, and hobbies. It is important to understand that society's gender expectations are cultural, not biological, and they change over time (for example, women used to be expected to wear only dresses; now teens of both genders wear jeans, sweatshirts, and tennis shoes). In any case, not all *gender-variant* (or *gender nonconforming*) youth will continue to express themselves this way into adulthood, and many will never identify as gay, lesbian, bisexual, or transgender.

In other words, it is best not to make assumptions. Respecting your youth's self-identification is very important. As youth grow to trust their foster families, many will eventually share their feelings about gender identity or sexuality more openly.

"Gaining that trust takes time, patience, and consistency. That's what [my foster mother] gave me."
— *LGBTQ youth in foster care*

Addressing Common Misconceptions

There is a lot of misinformation about sexual orientation and gender identity. Here are some things that are important for you to know about LGBTQ youth in your home:

LGBTQ youth are a lot like other youth. In fact, the similarities that LGBTQ youth in foster care share with other youth in care far outweigh their differences. Most, if not all, youth in foster care have been affected by trauma and loss; they require acceptance and understanding. Making sure your home is welcoming to all differences, including race, ethnicity, disability, religion, gender, and sexual orientation, will help ensure that all youth in your home feel safe and that the youth in your care grow into adults who embrace diversity in all of its forms.

This is not "just a phase." LGBTQ people are coming out (acknowledging their sexual orientation/gender identity to themselves and others) at younger and younger ages. Studies by the Family Acceptance Project have found that most people report being attracted to another person around age 10 and identifying as lesbian, gay, or bisexual (on average) at age 13. Gender identity may begin to form as early as ages 2 to 4.⁴ Someone who has reached the point of telling a foster parent that he or she is LGBTQ has likely given a great deal of thought to his or her own identity and the decision to share it.

No one caused your youth's LGBTQ identity. Sexual orientation and gender

⁴ Ryan, C. (2009). *Helping families support their lesbian, gay, bisexual, and transgender (LGBT) children*. Washington, DC: National Center for Cultural Competence, Georgetown University Center for Child and Human Development.

identity are the result of complex genetic, biological, and environmental factors. Your youth's LGBTQ identity is not the result of anything you (or a birth parent, or any other person) did. LGBTQ people come from families of all religious, political, ethnic, and economic backgrounds. Experiencing childhood trauma or reading about, hearing about, or being friends with other LGBTQ people did not "make" the youth become LGBTQ.

LGBTQ youth are no more likely than other youth to be mentally ill or dangerous. These unfortunate myths and stereotypes have no basis in truth. Gay or transgender people are not more likely than heterosexuals or gender-conforming people to molest or otherwise pose a threat to children. And although it is true that LGBTQ people experience higher rates of anxiety, depression, and related behaviors (including alcohol and drug abuse) than the general population, studies show that this is a result of the stress of being LGBTQ in an often-hostile environment, rather than a factor of a person's LGBTQ identity itself.⁵ Professional mental health organizations agree that homosexuality is not a mental disorder and is a natural part of the human condition.

Your youth's LGBTQ identity cannot be changed. Medical and psychological experts agree that attempting to change someone's sexual orientation or gender identity does not work and often causes harm.

⁵ Schlatter, E., & Steinback, R. (2010). 10 anti-gay myths debunked. *Intelligence Report*, no. 140. Retrieved from <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/winter>

Many religious groups embrace LGBTQ people. Some people fear that they will have to choose between their faith and supporting their youth's LGBTQ identity—but this is not always the case. Many religious communities welcome LGBTQ youth, adults, and their families. It may be important to know that there are other options if your family does not feel welcomed or comfortable at your place of worship.

LGBTQ Youth and the Child Welfare System

LGBTQ youth are overrepresented in the child welfare system: While approximately 5 to 10 percent of the general population is estimated to be gay, a study conducted in three Midwestern States found that a greater percentage of those aging out of the child welfare system reported a sexual orientation other than heterosexual (24 percent of females and 10 percent of males). These numbers are likely to be underreported because youth who come out often risk harassment and abuse.

Some LGBTQ youth enter the child welfare system for the same reasons that other children and youth enter care: Their birth families are unable to provide a safe, stable, and nurturing home for them due to a parent's incarceration, drug or alcohol abuse, mental illness, or other reasons unrelated to the youth's LGBTQ identity. Others, however, are rejected (and in some cases, neglected or abused) by their families of origin when their families learn that they identify as LGBTQ. Some youth experience

repeated losses—originally adopted as babies or toddlers, they are returned to the system by their adoptive families when they come out.

Youth who are rejected by their families may experience greater risks than other youth in care. Studies show that these youth have lower self-esteem and a much greater chance of health and mental health problems as adults. Compared to other LGBTQ youth, those who are highly rejected by their families because of their sexual orientation or gender identity are:

- More than three times as likely to use illegal drugs or be at high risk for contracting HIV and other STDs
- Nearly six times as likely to experience high levels of depression
- More than eight times as likely to attempt suicide⁶

Unfortunately, a high percentage of LGBTQ youth in foster care experience further verbal harassment or even physical violence after they are placed in out-of-home care. As a result, many of these youth experience multiple disrupted placements, compounding the trauma associated with leaving their families of origin. In one study, as many as 56 percent of LGBTQ youth in care spent some time homeless because they felt safer on the streets than in their

group or foster home.⁷ This maltreatment is partially responsible for the fact that LGBTQ youth make up as many as 40 percent of homeless teens.⁸ Homelessness, in turn, increases the youth's risk of substance abuse, risky sexual behavior, victimization, and contact with the criminal justice system.

The good news is that these risks can be mitigated by foster and adoptive families who are willing to nurture and protect the health, safety, and well-being of these young people. It is essential for child welfare agencies to identify and ensure access to family foster homes that can provide stable, supportive, and welcoming families for LGBTQ adolescents, where youth can develop the strength and self-confidence they need to become successful adults.

Creating a Welcoming Home for Youth

All youth in care need nurturing homes that provide them with a safe place to process their feelings of grief and loss, freedom to express who they are, and structure to support them in becoming responsible, healthy adults. Creating a welcoming foster home for LGBTQ youth is not much

⁷ Mallon, G. P. (1998). *We don't exactly get the welcome wagon: The experience of gay and lesbian adolescents in North America's child welfare system*. New York: Columbia University Press. Cited in Wilber, S., Ryan, C., & Marksamer, J. (2006). *CWLA Best Practice Guidelines: Serving LGBTQ Youth in Out of Home Care*. Washington, DC: Child Welfare League of America. <http://www.nclrights.org/site/DocServer/bestpracticeslgbtyouth.pdf?docID=1322>

⁸ Administration on Children, Youth and Families. (2011). *Information memorandum: Lesbian, gay, bisexual, transgender and questioning youth in foster care*. Washington, DC: U.S. Department of Health and Human Services.

⁶ Ryan, C. (2009). *Helping families support their lesbian, gay, bisexual, and transgender (LGBT) children*. Washington, DC: National Center for Cultural Competence, Georgetown University Center for Child and Human Development.

different from creating a safe and supportive home for any youth.

“The most important thing is to allow any youth to feel safe enough to blossom into whoever they are meant to be.”

— Foster parent

In fact, youth in care may have difficulty trusting adults (many with good reason), so you may not know a youth’s gender identity or sexual orientation until he or she has spent some time in your home and has grown to trust you. Avoid making assumptions about gender identity or sexual orientation. Any steps you take to make your home welcoming to LGBTQ youth will benefit all children and youth in your care—both by giving LGBTQ youth the freedom to express themselves and by helping heterosexual and gender-conforming youth learn to respect and embrace diversity.

Behaviors that openly reject a youth’s LGBTQ identity must be avoided and not tolerated. This includes slurs or jokes about gender or sexuality and forcing youth to attend activities (including religious activities) that are openly hostile or unsupportive of LGBTQ people. Well-meaning attempts to protect youth from potential harassment, such as “steering” them toward hobbies more typical for their sex (football for boys, for example) or isolating them for the sake of safety, also are experienced as rejection by LGBTQ youth and can have devastating consequences for their self-esteem and well-being.

Consider the following suggestions to make your home a welcoming one,

whether or not a youth in your care openly identifies as LGBTQ:

- Make it clear that slurs or jokes based on gender, gender identity, or sexual orientation are not tolerated in your house. Express your disapproval of these types of jokes or slurs when you encounter them in the community or media.
- Display “hate-free zone” signs or other symbols indicating an LGBTQ-friendly environment (pink triangle, rainbow flag).
- Use gender-neutral language when asking about relationships. For example, instead of, “Do you have a girlfriend?” ask, “Is there anyone special in your life?”
- Celebrate diversity in all forms. Provide access to a variety of books, movies, and materials—including those that positively represent same-sex relationships. Point out LGBTQ celebrities, role models who stand up for the LGBTQ community, and people who demonstrate bravery in the face of social stigma.
- Let youth in your care know that you are willing to listen and talk about anything.
- Support your youth’s self-expression through choices of clothing, jewelry, hairstyle, friends, and room decoration.
- Insist that other family members include and respect all youth in your home.
- Allow youth to participate in activities that interest them, regardless of whether these activities are stereotypically male or female.
- Educate yourself about LGBTQ history, issues, and resources.

“At [my foster mother’s] house, I was able to feel safe and focus on being who I was.”

— *LGBTQ youth in foster care*

If a youth in your care discloses his or her LGBTQ identity, you can show your support in the following ways:

- When a youth discloses his or her LGBTQ identity to you, respond in an affirming, supportive way.
- Understand that the way people identify their sexual orientation or gender identity may change over time.
- Use the name and pronoun (he/she) your youth prefers. (If unclear, ask how he or she prefers to be addressed.)
- Respect your youth’s privacy. Allow him or her to decide when to come out and to whom.
- Avoid double standards: Allow your LGBTQ youth to discuss feelings of attraction and engage in age-appropriate romantic relationships, just as you would a heterosexual youth.
- Welcome your youth’s LGBTQ friends or partner at family get-togethers.
- Connect your youth with LGBTQ organizations, resources, and events. Consider seeking an LGBTQ adult role model for your youth, if possible.
- Reach out for education, resources, and support if you feel the need to deepen your understanding of LGBTQ youth experiences.

- Stand up for your youth when he or she is mistreated.

LGBTQ youth in foster care need permanent homes; they do not need additional disrupted placements. If you are being asked to consider providing foster care to an LGBTQ youth and you feel—for any reason—that you are not able to provide a safe and supportive environment, be honest with your child welfare worker for the sake of both the youth and your family. If you are able to provide an affirming environment, remember that you can talk with your child welfare worker about any questions you may have or support you may need.

Supporting Your Youth in the Community

The support your LGBTQ youth receives in your home is important. However, you also must be prepared to advocate for your youth when needed to ensure that she or he receives appropriate child welfare, health care, mental health, and education services to promote healthy development and self-esteem.

Working With the Child Welfare System

The overwhelming majority of child welfare workers, like foster parents, have the best interest of the children and youth they serve at heart. However, workers are human, and they have their own feelings and biases. While there is no need to assume problems

will arise, it is important to be aware of your youth's rights.⁹ For example:

- **Your youth has the right to confidentiality.** Agencies should not disclose information regarding his or her sexual orientation or gender identity without good reason (e.g., development of a service plan) and the youth's permission.
- **Your youth has the right to an appropriate service plan.** This should include the same permanency planning services provided to heterosexual or gender-conforming youth: The youth's sexual orientation or gender identity alone should not be a reason for a worker to forego attempts to reunite the youth with his or her birth family or seek a permanent adoptive placement. It also includes helping the youth access LGBTQ community programs, if desired.
- **Your youth should be supported in expressing his or her gender identity.** The child welfare agency should respect your youth's preferred pronoun and name.
- **Your youth has the right to request that a new caseworker be assigned,** if the current worker is not addressing his or her needs appropriately.

Health Care and Mental Health Providers

Your youth, like all youth in foster care, has the right to health care and mental health services that address his or her individual needs. In the case of a lesbian, gay, bisexual,

⁹ For more information, see Wilber, Ryan, & Marksamer, 2006, in note on page 5.

or transgender youth, finding a competent, supportive provider may require some additional research. Consider the following:

- **Check with your youth to see whether he or she feels comfortable at agency-recommended service providers.** Although your agency may have preferred providers, you can inquire about other options that work better for your youth. Begin with those who accept Medicaid; however, if the provider your youth needs does not accept Medicaid, the child welfare agency may be able to authorize additional funding for necessary services.
- **Sexual health should be part of every youth's wellness exam.** Competent health-care providers will be able to offer frank, nonjudgmental, and comprehensive education about sexual health that is relevant to LGBTQ youth.
- **Transgender youth need health-care providers who are appropriately trained to address their health concerns.** This includes the ability to discuss, provide, and obtain authorization for medically necessary transition-related treatment, if desired.
- **Be aware of the possibility that your youth might benefit from mental health counseling** about issues that may or may not be related to sexual orientation or gender identity. In addition to typical adolescent concerns, many LGBTQ youth struggle with depression or anxiety as a result of experiencing stigma, discrimination, or harassment. If that is the case, seek a provider who is experienced and

competent in helping LGBTQ youth cope with trauma.

- **Under no circumstances should your LGBTQ youth be forced or encouraged to undergo “conversion therapy.”** Practices intended to change a person’s sexual orientation or gender identity have been condemned by every major medical and mental health association.

Your Youth at School

Unfortunately, bullying and harassment at school are everyday experiences for many LGBTQ youth. In many schools, negative remarks about sexual orientation or gender identity are common from other students, and even faculty or staff. A 2011 survey of more than 8,500 students between the ages of 13 and 20 found that nearly two-thirds of students felt unsafe at school because of their sexual orientation, and 44 percent felt unsafe because of their gender expression.¹⁰ School harassment can have devastating consequences for youth’s education and general well-being. Absenteeism and dropout rates are higher and grade point averages lower among LGBTQ youth experiencing harassment at school.¹¹

If your youth is being bullied or harassed, you may need to work with his or her caseworker, school administrators, school board, and/or PTSA to address the problem.

¹⁰ The Gay, Lesbian & Straight Education Network [GLSEN]. (2012). *The 2011 national school climate survey: Executive summary*. New York: Author.

¹¹ Ibid. Also see, for example, Lambda Legal. (n.d.) *Facts: Gay and lesbian youth in schools*. New York: Author; and Mental Health America (2012). *Bullying and Gay Youth* [webpage]. <http://www.nmha.org/index.cfm?objectid=CA866DCF-1372-4D20-C8EB26EEB30B9982>

The following practices have proven effective for preventing anti-gay harassment and improving school climate for LGBTQ youth:

- **Gay-straight alliances (GSAs).** Students at schools with GSAs hear fewer homophobic remarks, experience less harassment, feel safer at school, and are more likely to receive help when reporting bullying to school personnel.¹²
- **Anti-bullying policies that specifically reference sexual orientation and gender identity.** Students in States with comprehensive safe school laws report fewer suicide attempts.¹³
- **LGBTQ-friendly teachers, curriculum, and resources.** Students in schools with an inclusive curriculum were about twice as likely to report that classmates were somewhat or very accepting of LGBTQ people.¹⁴

Conclusion

The evidence shows that LGBTQ youth are overrepresented in the foster care system and that these youth face serious risks and challenges beyond those experienced by other youth. Rejection by their families and other caregivers exacerbates these risks. If LGBTQ youth are to reach their full

¹² GLSEN, 2012.

¹³ Espelage, D. L. (2011). *Bullying & the lesbian, gay, bisexual, transgender, questioning (LGBTQ) community*. Proceedings of the White House Conference on Bullying Prevention. Retrieved from: http://www.stopbullying.gov/at-risk/groups/lgbt/white_house_conference_materials.pdf

¹⁴ GLSEN, 2012.

potential and become healthy, happy adults, they—like all youth in care—need families who can provide permanent, supportive homes during their critical adolescent years. With a little additional education and training, your family can successfully provide a welcoming home to LGBTQ youth in need.

Resources

For Families

- **Helping Families Support Their Lesbian, Gay, Bisexual, and Transgender (LGBT) Children.** Research showing that families have a major impact on their LGBT children’s health, mental health, and well-being. http://www11.georgetown.edu/research/guchd/nccc/documents/LGBT_Brief.pdf
- **Family Acceptance Project.** A research-based, culturally grounded approach to help ethnically, socially, and religiously diverse families increase support for their LGBT children. <http://familyproject.sfsu.edu>
- **PFLAG.** A national nonprofit organization that supports families through more than 350 chapters in major urban centers, small cities, and rural areas in all 50 States. Selected resources include:
 - **Coming Out Help for Families, Friends, and Allies** <http://community.pflag.org/page.aspx?pid=539>
 - **Our Trans Children.** Answers to frequently asked questions and support for family members just learning of their loved one’s gender differences. http://www.pflag.org/fileadmin/user_upload/Publications/OTC_5thedition.pdf
 - **Be Not Afraid: Help Is on the Way!** A faith-based resource from PFLAG’s Straight for Equality program. <http://community.pflag.org/sfe-test/document.doc?id=649>
- **Advocates for Youth: GLBTQ Issues Info for Parents.** Tips for parents of LGBTQ youth, including resources on talking about sexuality. <http://www.advocatesforyouth.org/glbqtq-issues-info-for-parents>
- **LGBTQ Youth Resources for Families.** Resource list from the Maternal & Child Health Library at Georgetown University. http://www.mchlibrary.info/families/frb_LGBTQ.html
- **Centers for Disease Control and Prevention.** Education, information, resources, and health services for LGBTQ youth and adults. <http://www.cdc.gov/lgbthealth/>
- **American Psychological Association.** Answers to questions about...
 - **Transgender People, Gender Identity, and Gender Expression.** <http://www.apa.org/topics/sexuality/transgender.aspx>
 - **Sexual Orientation and Homosexuality.** <http://www.apa.org/topics/sexuality/orientation.aspx>

- **LGBTQ Youth in the Foster Care System and Legal Rights of Lesbian, Gay, Bisexual, and Transgender Youth in the Child Welfare System.** Factsheets from the National Center for Lesbian Rights.
http://www.nclrights.org/site/DocServer/LGBTQ_Youth_In_Foster_Care_System.pdf?docID=1341 and
http://www.nclrights.org/site/DocServer/LGBTQ_Youth_In_Child_Welfare_System.pdf?docID=1581
- **Getting Down to Basics.** Toolkit from Lambda Legal with resources for those supporting LGBTQ youth in foster care.
<http://www.lambdalegal.org/publications/getting-down-to-basics>

For LGBTQ Youth

- **Be Yourself: Questions & Answers for Gay, Lesbian, Bisexual & Transgender Youth.** Clear, straightforward answers for LGBTQ youth.
http://www.pflag.org/fileadmin/user_upload/Publications/Be_Yourself.pdf
- **Represent and YCteen Stories.** Personal stories from youth in foster care.
<http://www.representmag.org/topics/gay+slash+lesbian.html>
- **The Trevor Project.** Crisis intervention and suicide prevention services for LGBTQ youth.
<http://www.thetrevorproject.org>

- **It Gets Better Project.** Videos created to show LGBTQ youth that they are not alone and that they have the potential for happy, positive futures, if they can just get through their teen years.
<http://www.itgetsbetter.org>
- **Get Busy. Get Equal.** ACLU resources for LGBT youth about their rights at school and how to advocate for themselves effectively.
<http://www.aclu.org/lgbt-rights>
- **Know Your Rights: Youth.** Legal resources regarding out-of-home care and school issues for LGBTQ youth (from Lambda Legal).
<http://www.lambdalegal.org/issues/teens>
- **Gay, Lesbian, and Straight Education Network.** The leading national education organization focused on ensuring safe schools for all students.
<http://www.glsen.org/cgi-bin/iowa/all/student/index.html>

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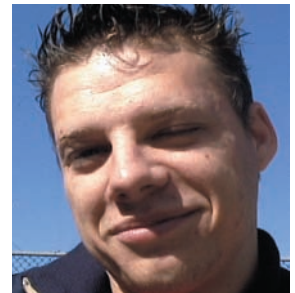
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U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau



LGBTQ YOUTH IN THE FOSTER CARE SYSTEM



NCLRIGHTS.ORG

NCLR
NATIONAL CENTER FOR LESBIAN RIGHTS

LGBTQ YOUTH IN THE FOSTER CARE SYSTEM

At any one time there are approximately 260,000 youth in the foster care system in the United States.¹ While it is impossible to precisely determine the number of lesbian, gay, bisexual, transgender, or questioning (LGBTQ) youth in this system, recent studies suggest that these youth make up between 5 and 10 percent of the total foster youth population.² The actual percentage may be higher since LGBTQ youth are over-represented in the foster care pool because of discrimination and abuse many of these youth face in their families of origin and in their schools.³ In a terrible irony, many of these youth – as many as 78% as indicated in a recent study – endure further harassment or abuse after being placed in out-of-home care.⁴ As a result, some LGBTQ youth runaway from their placements, preferring to live on the street rather than in homophobic or transphobic settings where they are in danger of harassment or violence.

HOW LGBTQ YOUTH ENTER THE FOSTER CARE SYSTEM

Because of homophobia and transphobia in their homes, schools, and social settings, LGBTQ youth enter the foster care system at a disproportionate rate.

- Many LGBTQ youth face neglect or abuse from their families of origin because of their sexual orientation or gender identity. A recent study found that over 30% of LGBT youth reported suffering physical violence at the hands of a family member after coming out.⁵
- Because of lack of acceptance and abuse by their families of origin, many LGBTQ youth are removed from their homes or found to be "throwaways" by child protection agencies and placed in the foster care system.⁶
- In addition, many LGBT youth – 26% according to one study – are forced to leave their families of origin as a result of conflicts with their parents regarding their sexual orientation or gender identity.⁷
- Some LGBTQ youth enter the system for skipping or dropping out of school – steps some youth take to avoid the pervasive harassment and discrimination they face in school.⁸ A recent study found that over 80% of LGBTQ students reported verbal harassment because of their sexual orientation or gender identity while at school and nearly 70% reported feeling unsafe.⁹ According to another recent study, 20% of LGBTQ youth reported skipping school each month because of fear for their own safety.¹⁰ And another study found that 28% of LGB youth dropped out of school due to peer harassment.¹¹
- As a result of lack of acceptance and abuse in the home and at school, a disproportionate number of youth living on the streets are LGBTQ. The National Network of Runaway and Youth Services estimates that between 20-40% of homeless youth are LGBTQ.¹²

LGBTQ YOUTH EXPERIENCES IN THE FOSTER CARE SYSTEM

Once in the foster care system, LGBTQ youth are often neglected and/or discriminated against by facility staff and peers, facilitated by inadequate policies, protections, support services and staff sensitivity.

Few foster care facilities have policies prohibiting discrimination on the basis of sexual orientation or gender identity or provide training for staff on how to create safe and welcoming environments for LGBTQ youth.

“Coming out as a lesbian in your teens isn’t easy no matter where you are, but in my group home, I was treated differently from other residents. My actions were monitored more closely. I was told not to talk about my personal life...I was told that I was confused, and I frequently heard anti-lesbian slurs, which staff members did not attempt to stop.”¹³

Many LGBTQ youth in the foster care system experience verbal harassment and physical or sexual abuse because of their sexual orientation or gender identity. In one of the only studies of its kind, 100% of LGBTQ youth in New York City group homes reported that they were verbally harassed while at their group home and 70% reported physical violence due to their sexual orientation or gender identity.¹⁴ This abuse is perpetrated not only by youth peers, but also by facility staff and social workers. When the abuse is between peers, it either is condoned by facility staff or goes unchallenged.

“I had at least two fights a day. The boys used to do stupid things like throw rocks at me or put bleach in my food because I was gay. Once I was thrown down a flight of stairs, and I’ve had my nose broken twice. They even ripped up the only picture of my mother that I had.”¹⁵

One study found that 78% of LGBTQ youth were removed or ran away from their foster placements as a result of hostility toward their sexual orientation or gender identity.¹⁶ 56% of LGBTQ youth interviewed in a New York City study of LGBTQ youth in foster care spent time living on the streets because they felt “safer” there than they did living in their group or foster home.¹⁷

“I left in the morning for school. When I came back to go to my room, somebody had spray painted the word faggot on the door...The staff didn’t do nothing much but laugh when I told them.” Afraid for his safety, this youth went AWOL and was homeless for a year.¹⁸

When LGBTQ youth are harassed or discriminated against, foster care facilities sometimes respond by moving the LGBTQ youth to another — often more restrictive — facility or isolating them rather than addressing the underlying homophobia or transphobia.¹⁹

LGBTQ youth are also sometimes segregated or put in isolation based on a myth that LGBTQ youth will “prey” on other youth.

“After my foster mother found out that I was a lesbian, she told my social worker that she didn’t want me in her house. She was afraid I would try something with her 12-year-old biological daughter.”²⁰

This segregation not only reinforces the notion that the LGBTQ youth is bad or to blame for harassment directed at them, but can also result in further denial of access to resources and support.

Facilities often discipline LGBTQ youth for engaging in age-appropriate conduct that would not be punishable if between two youth of different sexes.

*“A straight person could bring a girl over and take her to his room in the group home and nothing would happen. But if two gay kids got caught, it would be like somebody blew up the house.”*²¹

LGBTQ youth are sometimes subjected to reparative or conversion therapy (overt attempts to change one’s sexual orientation) by foster care staff and/or social workers.²²

*“They had a behavior modification kind of program. Like, I could get a day pass or a weekend pass if I spent the afternoon playing football. They knew I was gay and that was the lifestyle I wanted, but they thought maybe they could change me.”*²³

LGBTQ YOUTH IN THE FOSTER CARE SYSTEM

ENDNOTES

¹ According to the U.S Department of Health and Human Services, Administration on Children, Youth, and Families, and the Children’s Bureau on September 30, 2003 there were 523,000 kids in foster care in the United States. The median age for these kids was 10.9 years old. Approximately 50% or 258,470 were over the age of 11. Statistics available at: http://www.acf.dhhs.gov/programs/cb/stats_research/afcars/tar/report10.htm (last visited May 31, 2006).

² See Lambda Legal Defense and Education Fund, *Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care* 11 (2001) [hereinafter *Youth in the Margins*].

³ See *id.*

⁴ See Urban Justice Center, *Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System* 16 (2001) [hereinafter *Justice for All*] (citing Joint Task Force of New York City’s Child Welfare Administration and the Council of Family and Child Caring Agencies, *Improving Services for Gay and Lesbian youth in NYC’s Child Welfare System: A Task Force Report* (1994) (hereinafter *New York Task Force Report*)).

⁵ See *Youth in the Margins*, at 11 (citing Philadelphia Lesbian and Gay Task Force, *Discrimination and Violence Against Lesbian Women and Gay Men in Philadelphia and the Commonwealth of Pennsylvania* (1996)).

⁶ See *Youth in the Margins*, at 11.

⁷ See *id.* See also Colleen Sullivan, *Kids, Courts and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems*, 6 *Law & Sexuality* 31, 57 (1996) (citing Paul Gibson, U.S. Dep’t Health and Human Serv., *Gay Male and Lesbian Youth Suicide, in Report of the Secretary’s Task Force on Youth Suicide* 113 (1989)).

⁸ See *Justice for All*, at 16-17.

⁹ 2001 National School Climate Survey released by Gay, Lesbian, Straight, Education Network. The survey is available at www.glsen.org

¹⁰ Massachusetts Department of Education, 1999 Massachusetts Youth Risk Behavior Survey [Electronic Version], available at http://www.doe.mass.edu/hssss/yrbs99/glb_rslts.html (last visited December 1, 2003).

¹¹ See RC Savin-Williams, *Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations With School Problems, Running Away, Substance Abuse, Prostitution, and Suicide*, 62 *J. Consult. Clin. Psychol.* 26 (1994). See also Sullivan, *supra* n. 7, at 57.

¹² See *Youth in the Margins*, at 11; *Justice for All*, at 1 (citing Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 *Berkeley Women’s L. J.* 40 (1999)).

¹³ See ACLU of Southern California publication, available at www.aclu-sc.org/news/releases/2001/100165 (last visited November 26, 2003).

¹⁴ See *Justice for All*, at 16 (citing *New York Task Force Report*).

¹⁵ Al Desetta, *In the System and In the Life: A Guide for Teens and Staff to the Gay Experience in Foster Care*, 46-47 (2003) (hereinafter *In the System*).

¹⁶ See *Justice for All*, at 16 (citing *New York Task Force Report*).

¹⁷ See *id.*

¹⁸ *In the System*, at 50.

¹⁹ See *Youth in the Margins*, at 15; Gerald P. Mallon, WE DON'T EXACTLY GET THE WELCOME WAGON: THE EXPERIENCES OF GAY AND LESBIAN ADOLESCENTS IN CHILD WELFARE SYSTEMS (1998).

²⁰ *In the System*, at 60.

²¹ *Id.* at 51.

²² See *Youth in the Margins*, at 9.

²³ Wendell Ricketts, LESBIAN AND GAY MEN AS FOSTER PARENTS 122 (1991).

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THE NATIONAL CENTER FOR LESBIAN RIGHTS—

YOUTH PROJECT has been advocating for LGBTQ youth in schools, foster care, juvenile justice settings, and the mental health system since 1993. The Project provides direct, free legal information to youth, legal advocates, and activists through a toll-free line; advocates for policies that protect and support LGBTQ youth in these different arenas; and litigates cases that are creating new legal protections for youth in schools, foster care, juvenile justice, and other settings.

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<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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	3. Originating Office: Children's Bureau	
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INFORMATION MEMORANDUM

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

SUBJECT: Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care

PURPOSE: To encourage child welfare agencies, foster and adoptive parents and others who work with young people in foster care to ensure that children are protected and supported while they are in foster care.

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act; 45 C.F.R. §1356.60

INFORMATION:

This Information Memorandum (IM) confirms and reiterates my 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. I encourage child welfare agencies, foster and adoptive parents and others who work with young people in foster care to ensure that their physical and emotional well-being are protected and supported while they are in foster care in order to thrive as adults.

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth are often overrepresented in the population of youth served by the child welfare system and in the population of youth living on the streets. Approximately 5-10 percent of the general population is estimated to be gay¹ yet in comparison, one study of youth aging out of the child welfare system in three Midwestern states found 23.8 percent of female respondents and 10.2 percent of male respondents reported a sexual orientation in a category other

¹ John C. Gonsiorek & James D. Weinrich, The Definition and Scope of Sexual Orientation, in *Homosexuality: Research Implications for Public Policy*, at 3-4 (John C. Gonsiorek & James D. Weinrich eds.), 1991.

than completely heterosexual.² Similarly, the National Network of Runaway and Youth Services has estimated that between 20 and 40 percent of youth who become homeless each year are lesbian, gay or bisexual;³ these youth often cycle through foster homes, group homes, and the streets. One study found that 65 percent of LGBTQ youth had lived in a foster or group home and 39 percent were forced to leave their home because of their sexual orientation or gender identity.⁴ Though it is often difficult to identify these youth because they are unwilling, unable or not ready to disclose their sexual orientation or gender identity to service providers,⁵ the data demonstrate that efforts to support these youth are warranted.

I am encouraged that increasingly title IV-E agencies and other stakeholders who are responsible for caring for and protecting all young people are creatively and actively addressing the unique and sometimes challenging needs of young people in foster care who are LGBTQ. For example, I am pleased to see that one State recently advised its counties about the importance of serving young people who are in foster care and are LGBTQ. The State reiterated the need to recruit prospective parents who can provide supportive care in a connected, nurturing environment to LGBTQ young people. Additionally, the U.S. Department of Health and Human Services (HHS) funded entities such as AdoptUSKids and the National Resource Center for Family and Permanency Connections (NRCFPC) have developed resources that are available to child welfare agencies that can provide useful information about serving and caring for young people who are LGBTQ and in foster care (see the section entitled “Resources” on the next page). I urge child welfare agencies to continue to explore the ways in which they may improve daily life and outcomes for young people who are involved in the foster care system and who are LGBTQ.

Workforce Development

Once a young person who is LGBTQ enters the foster care system, his or her caseworker is an important link to support and safety. It is therefore critical that a young person’s caseworker has the capacity, understanding and willingness to support the child’s social and emotional development while in foster care. It is the caseworker’s responsibility to assess and serve the needs of each child without bias and to ensure the safety of all children in foster care. I encourage title IV-E agencies to assess their training needs, and where appropriate, claim available title IV-E reimbursement for costs associated with training staff to increase their capacity to serve young people who identify as LGBTQ and to consider how the title IV-E agency can best serve young people and keep them safe.

²Courtney, M., Dworsky, A., Lee, J., & Raap, M. (2009) *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 23 and 24*. Chicago: Chapin Hall at the University of Chicago.

³Tremblay, P.J. (1994). *The gay, lesbian and bisexual factor in the youth suicide problem*. Retrieved from <http://www.youth-suicide.com/gay-bisexual/book.htm>.

⁴Berberet, H.M. (2006). Putting the pieces together for queer youth: A model of integrated assessment of need and program planning. *Child Welfare*, 85, 361-384.

⁵Jacobs, J., Freundlich, M. (2006). Achieving permanency for LGBTQ youth. *Child Welfare*, 85, 299-316.

Biological, Relative Legal Guardian, Foster and Adoptive Parent Training, Support and Recruitment

All children need loving and supportive care when they are not able to live with their families of origin. While young people who are LGBTQ have many of the same needs as other young people who are in foster care, they also may have specialized needs that relate specifically to their sexual orientation, gender identity or gender expression. As such, title IV-E agencies must be particularly attuned to placing young people who identify as LGBTQ with foster families who are committed to providing a safe, supportive and affirming environment for the young person while in care. Agencies that have not already done so should develop mechanisms to recruit, train and provide ongoing support to families, including LGBT individuals and families, who are able to provide a safe, loving family placement for young people who are LGBTQ and are involved with the child welfare system. LGBT foster and adoptive parents can provide a loving, stable home, responsive to the needs of LGBTQ youth in care, and are a largely untapped resource- an estimated 2 million LGB individuals are interested in adopting.⁶ Similarly, where reunification is part of a child's case plan, title IV-E agencies should support the families of young people to ensure that the parents or guardians develop the capacity to address the young person's needs in a healthy, understanding manner when the family is reunified. I note that Federal financial participation under the title IV-E program is available for many such training activities for foster and adoptive parents and relative legal guardians, and encourage agencies to avail themselves of it.

Safety of young people in foster care who are LGBTQ

I am aware and concerned that physical safety is a heightened concern for many young people who are LGBTQ and are in foster care, regardless of the setting in which they are placed. President Obama, Secretary Sebelius and I are clear that bullying based on an individual's actual or perceived sexual orientation, gender identity or gender expression is not acceptable under any circumstances. As such, the Administration is making active efforts to improve life for all American children, and particularly for the children and youth who are served by our programs in the HHS. As part of the "It Gets Better Project," the Secretary explained to children and youth in a video-taped message (<http://youtu.be/yXc-tc97XXA>) that America needs the talents of each individual, now and in the future. I reiterate the Secretary's message of support for all LGBTQ young people, and particularly for LGBTQ young people who are served by the child welfare system.

Children and youth who are in foster care are at a particularly vulnerable and inherently unstable time in their lives. I, therefore, urge every title IV-E agency to develop procedures that ascertain that young people in foster care who are LGBTQ are physically safe from harm and bullying whether they are placed in a foster family home or a congregate care setting with other children.

⁶Gates, G., Badgett, M.V.L., Macomber, J.E., Chambers, J. (2007). *Adoption and foster care by lesbian and gay parents in the United States*. Retrieved from <http://www.urban.org/publications/411437.html>.

Resources

LGBT parents should be considered among the available options for States and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes. To support States, the NRCFPC has developed multiple, downloadable print resources on LGBTQ issues and child welfare that are available on the NRCFPC website: <http://www.hunter.cuny.edu/socwork/nrcfcpp/>.

The NRCFPC also provides training and technical assistance to States and Indian Tribes on a wide variety of LGBTQ-related issues, including, but not limited to such topics as:

- Engaging foster and adoptive families who are LGBTQ;
- How to develop support for foster and adoptive families who are LGBTQ;
- Working with family support and preservation workers to support young people who are LGBTQ and remaining in their families of origin;
- Working to facilitate all forms of permanency (reunification, kinship, guardianship and adoption) for young people who are LGBTQ and
- Working with States and Tribes to develop LGBTQ affirming policies and practices.

Additionally, the NRCFPC has developed multiple resources on recruiting, engaging and working with LGBTQ foster and adoptive parents. These materials include, but are not limited to such topics as:

- Promoting the practice of family search and engagement strategies to identify all family members including LGBTQ family members for children and youth separated from their birth families;
- Retention and support of resource families and dual licensure issues for LGBTQ - headed foster and adoptive families;
- How to develop support for LGBTQ foster and adoptive families; and
- Materials from a participatory leadership symposium held in October 2010 that brought together LGBTQ foster and adoptive parents to discuss policies and best practices in adoption, fostering and kinship care for LGBTQ parents and families. The PowerPoints and proceedings from this event are posted on the NRCFPC website:
http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/LGBT.Symposium.Program.10.29.30.Final.pdf

Similarly, AdoptUsKids has collaborated with other entities to develop a number of valuable resources to support the efforts of States, Tribes and Territories in recruiting and retaining LGBTQ foster and adoptive parents. Additionally, AdoptUsKids provides services aimed at reducing the barriers encountered by prospective and current foster and adoptive individuals and couples who are LGBTQ. These services include, but are not limited to:

- Information, referral and support services for prospective LGBTQ families; and
- Providing mini-grants to LGBTQ parent support groups.

Publications and additional information on supporting LGBTQ foster and adoptive families can be located at AdoptUsKids' website:

<http://adoptuskids.org/content.aspx?k=LGBT-Resources>.

I look forward to continuing to work with title IV-E agencies to improve the daily lives and long-term outcomes for young people who are LGBTQ and who are involved with the foster care system, as well as for LGBTQ prospective foster and adoptive families. I encourage States, Tribes and child welfare agencies to take advantage of the resources that are available through our National Resource Centers and elsewhere. Working alongside our title IV-E partners and other stakeholders, we all can demonstrate to young people that things will be better in the future, and that we in the Administration for Children and Families are working to make that future better now.

/s/

Bryan Samuels
Commissioner

Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth

Whether you are aware of it or not, if you advocate for young people in the child welfare and juvenile justice systems, you work with young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (“LGBTQ”). Lawyers and youth advocates should develop an understanding of the unique issues faced by these clients and cultivate advocacy strategies that are sensitive to their needs.

BE A VISIBLE ADVOCATE FOR LGBTQ YOUTH.

You don't have to be LGBTQ yourself to be an effective advocate for LGBTQ youth. By standing up for LGBTQ clients facing harassment and discrimination and publicly supporting their rights you act as a visible, much-needed advocate for LGBTQ youth in care. Let all of your clients know that you will not judge them and will work hard for them no matter what they tell you. Display LGBTQ-friendly signs and posters for your clients and others to see. Never use anti-LGBTQ slurs or rely on negative stereotypes of LGBTQ people.

BE AWARE THAT LGBTQ YOUTH ARE IN OUT-OF-HOME CARE IN DISPROPORTIONATE NUMBERS.

Research shows that young people facing family rejection, harassment and school failure are more likely to enter the child welfare and juvenile justice systems. At home, LGBTQ youth and those perceived to be LGBTQ are more likely to face disapproval, abuse and neglect — including being thrown out of their homes — than their non-LGBTQ peers. It may be harder to find supportive permanent placements for LGBTQ youth once they are in the foster care system, extending their length of time in care. On the streets, LGBTQ teens may be forced into illegal activities, including

sex work, to support themselves. LGBTQ youth of color congregating in public places may face selective enforcement of “quality of life” offenses and “morals” regulations. Violations of age-of-consent laws among young people of the same sex are more likely to be criminally charged and punished more harshly than violations among young people of the opposite sex. These factors contribute to the disproportionate numbers of LGBTQ youth in out-of-home care.

BE AWARE THAT LGBTQ YOUTH IN OUT-OF-HOME CARE ARE VULNERABLE TO MISTREATMENT AND DISCRIMINATION.

While of course parents have the right to inculcate their values in their children, this doesn't extend to a right to subject children to harm and abuse. You should be prepared to advocate on behalf of a child who is not safe at home because of parental intolerance. Often misunderstood within the child welfare and juvenile justice systems as well, many LGBTQ youth face abuse, harassment and isolation once in care. In foster family homes and group care facilities, LGBTQ youth are often mistreated and even harmed by staff, caregivers and other young people. Some are forced to convert to anti-LGBTQ religions and practices. In the delinquency system, LGBTQ youth may be placed in more restrictive and punitive settings than their offenses warrant,

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



or isolated or segregated from the general population for their own protection or based on the misguided notion that others need to be protected from them. There currently is a serious dearth of LGBTQ-sensitive child welfare and juvenile justice services and placements. Your LGBTQ clients need your help to ensure they receive safe and appropriate treatment. Canvas the available resources in your community. Develop and maintain a network of LGBTQ-sensitive youth service providers to whom you can refer LGBTQ clients.

AS A ZEALOUS ADVOCATE, BE PREPARED TO CONFRONT ANTI-LGBTQ DISCRIMINATION AT ITS SOURCE.

Rather than simply advocating for the removal of an LGBTQ client from an unsafe placement, zealously advocate for an institutional response to the discrimination and mistreatment. Whether in a child welfare or juvenile justice facility, in a school or in the community, confront the bias or abuse at its source in order to ensure that it will not happen again to another child. Be prepared to file a grievance or complaint against an offending institution on behalf of an LGBTQ client. At the same time, advise your vulnerable clients of the realities of congregate care. Advocate for them in their decisions regarding dress and gender expression.

PROTECT THE PRIVACY OF YOUR CLIENTS.

Even if your client is open with you and others about his or her sexual orientation and gender identity, the client should always be treated as the gatekeeper of this information. Never “out” your client without their consent. Instead, be aware that just because a client is open with you about his or her identity does not necessarily mean that they are out to everyone. Object to this information being unnecessarily included in case management and service planning documentation.

BE AWARE OF THE LEGAL PROTECTIONS AVAILABLE TO YOUR LGBTQ CLIENTS.

Federal law requires that a plan be developed for every child in state custody to assure “safe and proper care consistent with the child’s best interest and special needs.” 42 U.S.C. § 671(a)(16) and (5)(A). Ensure that the unique needs of your LGBTQ clients are addressed and met through the service plan. However, it is *not* necessarily appropriate that the plan include confidential information regarding your client’s sexual orientation or gender identity that could later be used against them by those harboring anti-LGBTQ bias. Under the Fourteenth Amendment to the U.S. Constitution, all young people in state custody have the affirmative right to protection

from harm. This right — the substantive due process liberty interest in safety — includes the right to appropriate services, medical care and safe placements. LGBTQ young people harmed or discriminated against while in state custody have brought successful civil rights lawsuits against state officials, some resulting in sizeable monetary damage awards (e.g., *R.G. v. Koller*, District of Hawaii, 2006, and

Rodriguez v. Johnson, Southern District of New York, 2006).

Some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply to those diagnosed with gender identity disorder, and that denying transgender youth the right to dress in ways that are consistent

with their gender identities in group homes is discrimination based on disability (e.g., *Doe v. Bell*, New York, 2003). Be aware of state nondiscrimination laws, particularly those that are LGBTQ-inclusive, and seek their enforcement on behalf of your clients in out-of-home care.

CONNECT WITH ADDITIONAL RESOURCES.

The American Bar Association’s Center on Children and the Law publication *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* offers advice for advocates representing LGBTQ youth in care. For more information, see www.abanet.org/child/lgbtq.shtml.

The many other components of Getting Down to Basics offer additional support.

This tool kit includes additional handouts covering a variety of topics addressing the needs of LGBTQ youth and adults involved with the child welfare and juvenile justice systems, such as *Foster Parents Caring for LGBTQ Youth*, *Basic Facts About Being LGBTQ*, *Caseworkers with LGBTQ Clients*, *Teaching LGBTQ Competence in Schools of Social Work*, *Working with Transgender Youth*, *Information for LGBTQ Youth in Care* and *LGBTQ Youth Resources*. To order free copies of the *Getting Down to Basics* tool kit, contact Lambda Legal at 1-866-LGBTTeen (toll free) or 212-809-8585, or download it for free at www.lambdalegal.org or www.cwla.org.

“ Many individuals and agencies are afraid to call attention to LGBTQ foster care issues because it may cause personal and professional backlash. ”

– *Child welfare professional*

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When Bullying Takes a Life: Advocacy Tips to Protect LGBTQ Youth

by Andrea Houry

Recent news headlines drew attention to the suicide deaths of three youth who were bullied because of their real or perceived sexual orientation and gender identity.

- **Seth Walsh**, 13 years old, hung himself after years of relentless bullying because he was gay.

“He started getting teased by the fourth and fifth grade,” his mother, Judy Walsh, reported. “By sixth grade, the kids were starting to get mean. By the seventh grade, he was afraid to walk home from school because he was afraid he would get harassed. As he was walking by a classroom, a kid yelled out, ‘Queer.’ Stuff like that.”

The bullying took every form. “It was eye to eye, over the telephone, personal, over the Internet,” says Judy. “He spent a lot of his life frightened.”¹

- **Asher Brown**, 13 years old, shot himself after being bullied at school for being gay.

Asher’s parents say that their son was bullied at school for countless reasons. In addition to being gay, their son was bullied for being small, not wearing name-brand clothing, not using iPods and choosing to read instead of listening to music.²

- **Billy Lucas**, 15 years old, hung himself after being tormented for years because his peers perceived Lucas to be gay.

All three of these youth showed signs of bullying well before their suicides. Their parents or peers observed teasing, name-calling, physical abuse, online harassment, and other forms of bullying. While no one could have predicted the youth would take their lives, that outcome emphasizes the need to carefully watch for signs of bullying

and to intervene to help youth who are in danger.

President Obama, Secretary of State Hillary Rodham Clinton, and the United States Department of Health and Human Services Secretary Kathleen Sebelius are calling more attention to the problem of bullying. They created YouTube clips in support of the “It Gets Better” Campaign started by the Trevor project.³ The clips encourage lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth to not give up and lets them know things will change when they get older and that there is help they can receive now.⁴

Signs of Bullying

Recent studies find that over 85% of LGBTQ students report being harassed because of their sexual orientation or gender identity and over 20% report being physically attacked.⁵ Students regularly hear antigay slurs like “faggot” and “sissy.” In fact, one study reported 97% of students hear gay or gender slurs on a daily basis.⁶

Children’s attorneys should be aware of signs that young clients are being harassed or bullied at school. Although not always signs of bullying, the following red flags should call for further investigation.

- **Skipping school.** Most youth who are being bullied in school will try to avoid their attackers by not going to school.⁷
- **Dropping out of school.**⁸
- **Substance abuse.** Some youth use alcohol and drugs to cope with the harassment they experience at school. There are higher rates of substance abuse among LGBTQ

youth than their peers.⁹

- **Poor academic performance.**¹⁰
- **School discipline issues.** If LGBTQ students are being bullied and harassed, it’s likely they will at some point retaliate and may be punished.

Investigating these red flags is easier if advocates have first established a trusting relationship with their clients and allow them to feel safe disclosing their sexual identities and any school problems. Advocates should also regularly check in with their clients about school, grades, and extracurricular activities. Advocates can also find information from social workers, foster parents, and school personnel and talk with their clients if any red flags are raised.

Advocates for parents and the child welfare agency should also look for warning signs. If the parent or foster parent notes a change in the child’s behavior or if the child exhibits any of the red flags, the advocates should immediately investigate further.

Intervening for Youth

If a child client is being bullied in school, the advocate has several options:

Let the school know. After getting consent from the client, the advocate should let the school know. Insist the school take immediate steps to stop the bullying. The United States Department of Education, Office for Civil Rights issued a letter to schools, colleges, and universities advising them on when student misconduct, sometimes characterized as bullying, “triggers responsibilities under one or more of the federal antidiscrimination laws enforced by the Department’s Office for Civil Rights.”¹¹ Although Title IX does not prohibit discrimination based solely on sexual orientation it does

protect all youth (including LGBTQ youth) from sex discrimination. If the harassment or bullying is based on the client's lack of gender conformity, it falls within the protections of Title IX.¹² The school is obligated to protect the client and depending on the level of bullying may have the obligations to prevent the continued hostile environment.¹³ These can include:

- reprimanding the perpetrators;
- notifying teachers and staff so they can protect the client and other similarly situated people;
- enhancing monitoring of places where harassment occurs;
- increasing staff training; and
- educating the school community on gender discrimination and harassment.¹⁴

Find out what actions the school will take to address the bullying. Ensure any action taken disrupts the client's schedule as little as possible. The intervention should not penalize the victim.

Identify school programs or activities that address bullying prevention. In most cases schools have a duty to address harassment on a systemic level.¹⁵ Ask the school to establish policies that protect victims of bullying.¹⁶

Pursue counseling. Encourage the client to participate in counseling to address his feelings about being a target. The school may provide counseling for the student being bullied. If not, request counseling by the child welfare agency. Bullying can have long-term impacts that are not easily recognizable (e.g., self-esteem, depression, substance abuse, etc). The counselor should have experience with LGBTQ youth.

Prevent retaliation. Insist that the school not allow any retaliatory action by the bully or the bully's peers on the client. Follow up with the client to ensure this does not happen and take

action with the school if it does.

Seek support. Bullying can result in the child feeling alone and isolated. Advocates should refer the client to the school's gay-straight alliance or other community organizations that support youth who identify as LGBT or Q.¹⁷ Other LGBTQ youth can offer support and help the client handle shame that often accompanies the coming-out process. Youth will develop a support structure and not feel so alone.

Intervening when your client is the offender

Child advocates should also be aware when a young person they serve is the person who is bullying other children. Some research shows that bullies are victims of abuse and neglect by their parents.¹⁸ Bullies usually lack parental involvement and supervision and suffer from harsh corporal discipline.¹⁹

If the client is perpetrating the bullying, the client should get counseling to address the underlying causes. If the school takes action against the client for bullying behavior, make sure counseling is part of any punishment. If the bullying is severe and the school attempts to suspend or expel the client from school, ensure the client is evaluated for mental health issues that may explain his behavior. The evaluations and subsequent treatment can be used to prevent the client from harsh penalties.

The advocate can also seek support from parents or caregivers. Ensure that they are aware of the bullying behavior and are taking steps to prevent it from continuing. They should explore extracurricular activities, sports, mentoring, or other activities that help the client recognize the negative effects of bullying.

Conclusion

Bullying based on LGBTQ identity or perceived identity has resulted in kids attempting and committing suicide. Simple interventions by professionals

who are sensitive to gender stereotypes can help stop this trend. A child welfare advocate who suspects a client is being harassed or bullied should take immediate action.

Andrea Khoury, JD, is director of the ABA Center on Children and the Law's Bar Youth Empowerment Project, which examines the needs of youth aging out of foster care. She is also a staff attorney for the Center's Opening Doors Project, which addresses the needs of LGBTQ youth in foster care.

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OPENING DOORS FOR LGBTQ YOUTH IN FOSTER CARE

A Guide for Lawyers and Judges

MIMI LAVER AND ANDREA KHOURY



American Bar Association





OPENING DOORS FOR LGBTQ YOUTH IN FOSTER CARE

A Guide for Lawyers and Judges

MIMI LAVER AND ANDREA KHOURY

Edited by Claire Chiamulera

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INTRODUCTION

The Opening Doors Project started with the idea that lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care are disadvantaged for many reasons and judges and lawyers can help them. We knew that a number of child welfare agencies and national organizations that work with agencies were improving the situation for LGBTQ youth in foster care, but little was being done to help judges and attorneys do their jobs better. We've created this book, and the trainings that go with it, to help judges and lawyers.

As we started our research, we learned some statistics like:

- 70% of LGBTQ youth in group homes reported violence based on LGBTQ status.
- 100% of LGBTQ youth in group homes reported verbal harassment.
- 78% of youth were removed or ran away from placement because of hostility to LGBTQ status.
- More than 4–10% of youth in state care identified as LGBTQ.
- 30% of LGBTQ youth reported physical violence by their family after coming out.
- 80% of LGBTQ students reported verbal harassment at school (70% feel unsafe; 28% dropped out).

LGBTQ youth are:

- Punished for expressing LGBTQ status
- Not allowed to participate in programming
- Told “you are going to hell”
- Not allowed to dress or groom as they prefer

We were moved by those numbers and convinced our project was going to make a difference for real kids. It was not until we met some of those “real kids” that we truly understood what happens for LGBTQ youth. One of the first steps we took in this project was to travel to five cities (Denver, Colorado; Jacksonville, Florida; Nashville, Tennessee; New York, New York; and Seattle, Washington) to conduct listening forums with LGBTQ youth who were in or recently out of foster care, and judges and lawyers from those cities. We talked with the participants for a couple of hours and heard some upsetting and inspirational things:

- We met a transgender young woman who felt safer at school than in her “temporary” shelter that she had been in for months.
- We talked to a young man who had been in 37 homes and was told he was gay before he even knew what the word meant.
- We met young people who felt disrespected by the judges who heard their cases, and youth who questioned why professionals in the child welfare system did not treat kids well.

- We also met a lesbian young woman whose lawyer was her best friend and the person she trusted the most.

You'll learn more about these and other young people we met later in the book.

During these forums we also met lawyers and judges who cared deeply about the youth on their caseloads. In every forum the professionals had honest questions for the youth and us, and they struggled with how to do their best for the LGBTQ kids with whom they worked. Some lawyers and judges already followed best practices and shared them with their colleagues. In each forum, we left feeling the people in the room had learned from each other — and taught us — and would make changes to their practices.

The results of the forums mirrored the results of a national survey we conducted with lawyers and judges. (See appendix B.) While our return rate was low, we learned that judges and lawyers across the country do not have the knowledge or resources they want to help the LGBTQ youth they serve.

We also conducted a “snowball survey” of people who are leaders in providing assistance for LGBTQ youth. We spoke to a state legislator, some judges, some provider agency staff from progressive state and private agencies, and others to learn about best practices. We've passed on some of their ideas throughout the book.

Finally, we conducted in-depth interviews with some youth, lawyers, and judges we met during the listening forums. They are included throughout this book and we think their experiences will help you better represent LGBTQ youth and make decisions about their lives.

After gathering this information, as well as information from books already written about LGBTQ youth in foster care, we wrote four articles for the ABA Center on Children and the Law's *Child Law Practice*, which are collected in this guide. They focus on improving practice and outcomes for LGBTQ youth. The first provides background and context for the issue. The second addresses negative attitudes professionals may have, and how they can overcome those attitudes to benefit youth. The third discusses building a strong lawyer–client relationship to provide the best possible representation. The last builds on the third and provides practice tools for judges and lawyers throughout the life of a case. Each article emphasizes improving practice to help youth overcome the statistics above.

We know this can be a difficult topic. Some judges and lawyers are uncomfortable thinking about LGBTQ issues. Others feel they have so many kids on their caseloads, and they are unable to pay special attention to a few. Some people we've talked to don't want to know anything about the sex lives of the young people on their caseloads, whether they are straight or LGBTQ. What we learned, though, is it is essential to consider whether a youth identifies as LGBTQ and if so, how that status is impacting his experience in foster care. LGBTQ youth are less safe in care than other kids. They have less of a chance of being reunified with their families or getting adopted, and their health, emotional health and educational needs are not being met. They need your help. We hope this book helps you offer that help in a meaningful way.

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We want to thank a number of people who helped make this project and this book a reality. First we wish to acknowledge our generous anonymous donor who made this project happen.

Thanks to our advisory board for all your help. You provided input on the project overall as well had helpful insights on the survey, article content, and the nitty-gritty details requiring clarification. An especially huge thanks to Rob Woronoff and Rudy Estrada who believed in us from the beginning and supported us every step of the way. Your warmth, enthusiasm, knowledge and energy have been an inspiration.

We want to acknowledge all of the people who made the listening forums a reality including those of you who organized and everyone who participated. We found the soul of our project in your generous sharing.

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There are no satisfactory words to thank Claire Chiamulera, our wonderful editor. She joined our small team enthusiastically and provided much of the project's creative energy. She is organized and focused and was able to keep us on task. She assisted us in conducting a web cast, knowing neither of us had a clue about the technology involved. Claire is kind, calm and unflappable. She has an amazing way with language and truly brought out the best in each of us.

Finally, we want to thank each other. We learned a lot and had tons of fun on this journey. Creating this book together was a pleasure.

We dedicate this book to all the LGBTQ youth in foster care and hope you can use this book to help them have positive experiences.

MIMI LAVER | ANDREA KHOURY

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DEFINING TERMS

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) people are a diverse group who have struggled with issues of sexuality and gender identity, and may therefore feel a sense of kinship. LGBTQ people are diverse in terms of race, ethnicity, age, education, political affiliation, income, and the degree to which they identify with other LGBTQ people.

Lesbian

A lesbian is a female whose primary sexual and romantic attractions are to other females. Some lesbians have romantic attractions to males and some don't. It is important to note that some females who have sexual or romantic attractions with other females, sometimes exclusively, may not call themselves lesbians.

Gay

A gay male is a male whose primary sexual and romantic attraction is to other males. He may have sexual and romantic attractions to males currently or in the past. Some gay males may never have had sexual or romantic attractions to other males for a host of reasons (age, societal pressures, lack of opportunity, fear of discrimination), but nonetheless realize that their sexual and romantic attraction is mainly to other males. Some gay males have sexual and romantic attractions with females and some don't. Note that some males who have sexual and romantic attractions with other males, sometimes exclusively, may not call themselves gay.

“Gay” is also used as an inclusive term encompassing gay males, lesbians, bisexual people, and sometimes even transgender people. In the last 20 years, this has become less and less common and “gay” is usually used currently to refer only to gay males. The term is still often used in the broader sense in spoken shorthand, as in “The Gay Pride Parade is at the end of June.”

Bisexual

Bisexual males and females have sexual and romantic attractions to both males and females. Depending upon the person, his or her attraction may be stronger to females or to males, or they may be equal. Some people who have sexual and romantic attractions to both males and females do not consider themselves bisexual. Bisexuals are also referred to as “bi.”

Transgender

People who identify more strongly with the other gender than the one to which they were assigned (e.g., females who feel like males, or males who feel like females) are called “transgendered.” Some transgendered people may “cross-dress” or “do drag” regularly or for fun (and many of these people are comfortable in their assigned gender). Other transgendered people may take hormones of the opposite gender and/or have surgery in order to change their bodies to reflect how they feel

inside. These people are also called “transsexual.” Transgendered people may identify as heterosexual, homosexual, or bisexual.

Questioning

Refers to a person for whom a fixed sexual orientation and/or gender identity is not clear. Some questioning individuals may ultimately “come out” as LGBT, whereas others may be seeking additional resources to help address their internal questions. It is not developmentally uncommon for adolescents to question their sexual orientation or gender identity.

Heterosexual

A heterosexual male or female’s primary sexual and romantic attraction is to people of the other sex. She or he may or may not have had romantic contact with another person, but still realize that his/her sexual and romantic attraction is mainly to people of the other sex. Some people who consider themselves heterosexual have or have had romantic contact with people of the same sex. Heterosexual people are also referred to as “straight.”

Gender Identity

At birth, we are assigned one of two genders, usually based on our visible genitals. For many people this gender assignment fits and feels comfortable and they never think about it further. Others do not feel as comfortable with their assigned gender, either because they find the two-gender system too limiting or because they feel more identification with the gender opposite that to which they were assigned at birth. People deal with this discomfort in many ways, sometimes only in personal ways, and sometimes in ways visible to others.

Sexual Orientation

Sexual orientation refers to one’s sexual and romantic attraction. Those whose sexual orientation is to people of the opposite sex are called “heterosexual,” those whose sexual orientation is to people of the same sex are called “homosexual” (or lesbian or gay), and those whose sexual orientation is to people of both sexes are called “bisexual.” The term “sexual preference” is misleading because it implies that this attraction is a choice rather than an intrinsic personal characteristic. Sexual orientation is not necessarily the same as sexual behavior.

Queer

Some LGBT people, particularly young people living in the coastal U.S., use the term “queer” to encompass the entire LGBT community. For these people, the term “queer” is positive and empowering. Other LGBT people find this term degrading.

Source: These definitions were adapted from definitions prepared by the Seattle & King County, WA Public Health Department, and the Child Welfare League of America.



Chapter One

YOUR ROLE IN PROTECTING LGBTQ YOUTH

BY ANDREA KHOURY

- Some studies suggest lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are two times more likely to attempt suicide than their heterosexual peers.¹
- Between 11% and 40% of homeless youth are LGBTQ.² Over half of homeless youth have spent some time in foster care.³
- LGBTQ youth are two times as likely to be threatened or injured with a weapon at school and two times as likely to skip school because they feel unsafe.⁴ 69% of LGBTQ youth reported experiencing some form of harassment or violence.⁵

The reality is the statistics and stories are mostly grim for LGBTQ youth in foster care. Whether they enter foster care because their parents reject them due to their LGBTQ status or they disclose their LGBTQ status while in foster care, these youth face discrimination, harassment, and violence because of their sexuality or gender identity.

“Ignorance can only be remedied with knowledge. The system is broken; the only way to change it is through advocacy.”⁶

“I use gender-neutral language when asking my clients about their dating life.”⁷

“I have a folder on my bench with resources for different issues (e.g., domestic violence). If I had resources for LGBTQ youth, I would include them and give them to people that need it.”⁸

Lawyers and judges can help change these statistics. Lawyers who develop relationships with LGBTQ clients and provide appropriate representation can make a difference for these youth. Judges who ask the right questions and insist on appropriate services and fair and respectful treatment can protect this vulnerable population and help them become successful adults. This chapter discusses the risks facing LGBTQ youth in foster care. It also describes the roles judges and lawyers must play in these young people’s lives to protect them from these risks and help them succeed.

A Life of Risks

LGBTQ youth have special risks related to their sexual orientation and gender identity that set them apart from non-LGBTQ youth in foster care. The social stigma attached to LGBTQ people causes these youth to hide their identities, fear for their safety, and often turn to drugs to cope. Higher suicide rates and violence in schools are two of the many risk factors to be aware of when working with LGBTQ youth in foster care.

Suicide

Studies show LGBTQ youth are twice as likely as non-LGBTQ youth to attempt suicide. Others put the number closer to four times as likely.⁹ Aside from typical adolescent turmoil, LGBTQ youth face significantly greater conflict due to their sexual orientation or gender identity. They don't have the same feelings as their peers about sexual attraction or sense of identity. During adolescence, youth explore their identities and find where they fit. LGBTQ youth struggle with loneliness and feeling different: *"I knew that I was different, no one ever told me, but I just knew."*¹⁰ This feeling, coupled with being in foster care and having limited support, makes some youth think they have no way out. One youth explains it: *"As I got older through high school, it started to get even worse because I attempted suicide many times. It was too much. It was like at first I did it because I wanted people to say hey look, you know, look at me, pay attention to me. But after that I was placed at St. Jude's, and that's when I started to realize and accept that I was gay."*¹¹

Homelessness

When youth disclose their LGBTQ status to their parents or foster parents, the result is sometimes devastating. They are often rejected by people they rely upon for housing, food, and unconditional love and acceptance. Some youth voluntarily leave to escape the harassment or violence they experience at home. Some youth are forced to leave because the family does not accept their LGBTQ status: *"One day my father heard me talking on the telephone to a guy who I had met. When I got off the phone he just went crazy on me.... He told me to get out and literally threw me out the front door. I was devastated and didn't know where to go."*¹² Some youth travel from sofa to shelter to street corner. They often have no permanent place to call home. On the streets they are more susceptible to violence and crime.

School

Youth spend the majority of time at school. It is supposed to be a place to feel safe and accepted: *"Safety holds different meaning for LGBTQ kids: School is hard. Any situation can mean danger. Just because they are in stable placement doesn't mean they are safe. We are quick to assume that the world likes gay people. [The] simple fact of being queer puts people at risk (physically and mentally). Judges and lawyers should start with these understandings and then take the step to question safety."*¹³

School is the place where youth learn to interact with peers and form trusting relationships that often last into adulthood. LGBTQ youth in foster care have the added burden of moving from placement to placement and changing schools. They experience harassment and rejection through multiple school placements. They often do not

have supportive teachers or counselors to turn to for help. Many end up dropping out or doing poorly in their studies.

Prejudicial Treatment

Seventy-four percent of LGBTQ youth in foster care believe they experience prejudicial treatment by service providers because of their sexual orientation or gender identity.¹⁴ Youth often believe professionals accept people regardless of their differences. Sometimes they are wrong. Many youth in foster care find the professionals who work with them are just as harmful as the parents who abused them or the peers who harassed them. This realization is harmful because youth feel they have no where to go for support. The people who are supposed to support, care for, and provide treatment are often the perpetrators of the harassment, intolerance, and sometimes violence.

One LGBTQ youth reported that he was in a religious foster home where it was not OK for him to be gay: *“I had my own lock box with my stuff in it. They broke into it one day while I was at school. When I got home, they had me all packed up, because I was gay. I left town.”*¹⁵ Another youth reported: *“When I was in a group home, I was assaulted because I’m gay. I didn’t appreciate that I had to take it. The staff knew what was going on but they didn’t try to stop it.”*¹⁶

Still another youth reported that although most staff did not say anything to his face he overheard staff saying things like: *“That new fag kid that just came in. Why do they make us put up with these gay children? Why do they ship them here? No wonder their parents get rid of them.”*¹⁷

Substance Abuse

LGBTQ youth are twice as likely as heterosexual youth to abuse alcohol, and eight times as likely to use cocaine/crack.¹⁸ Using and abusing illegal substances is a common way that youth escape their troubles. LGBTQ youth in foster care have especially high rates of substance abuse due to their circumstances. Isolation, rejection, harassment, and violence can all be forgotten by getting high. *“...pot, acid, ecstasy, speed...I did it all. I just wanted to kill the loneliness I felt inside. I really didn’t care if I lived or died. Trying to deal with my identity was a really difficult time for me.”*¹⁹ They have limited exposure to positive coping tools and turn to substances to deal with the problems in their life.

By becoming aware of the risks associated with LGBTQ youth in foster care, lawyers and judges can take steps to address these issues. The fact that a youth is LGBTQ will factor into placement, permanency, services, advocacy, and court rulings.

Legal Roles

Youth in foster care interact with social workers, foster parents, mentors, court appointed special advocates (CASAs), therapists, teachers, and other professionals. These

A NATIONAL CALL TO END DISCRIMINATION

The following child welfare and mental health organizations condemn discrimination against LGBTQ youth and reject efforts to change their sexual orientation:

American Psychiatric Association

American Psychological Association

National Association of Social Workers

American Medical Association

American Academy of Pediatrics

American Counseling Association

professionals try to do what is in the child's best interests. Lawyers and judges have unique roles when the sexual orientation or gender identity of a client is an issue in a case. Judges and lawyers should not leave this issue up to the child welfare agency and other professionals to address.

Judges

The judge is the gatekeeper for a youth's safety, permanency, and well-being. Everyone follows the judge's lead. The judge is unbiased and objective and decides what is in the child's best interests. The judge decides whether the child comes into care, services for the child, visitation with parents and relatives, the child's permanency plan, and whether the agency has made reasonable efforts to prevent removal and finalize a permanency plan. If the judge creates an open and supportive courtroom for all youth (including LGBTQ youth), insists the agency keep the youth safe, finds an appropriate placement, and asks all parties to respect the youth, then other professionals will follow the judge's lead.

Lawyers

Lawyers or guardians ad litem (GAL) who represent children in dependency cases provide the voice of the child. The youth depends on the lawyer's ability to know the system and advocate for her. Lawyers meet with the child, establish a lawyer-client relationship, request services from the child welfare agency, negotiate with parents, and advocate for the youth in court proceedings.

Sometimes youth only disclose their LGBTQ status to their lawyers because they are the only ones whom youth trust. Lawyers can help normalize the youth's feelings, request LGBTQ-specific services, and address any unfair treatment. If the agency is not placing youth in supportive homes or getting appropriate services, lawyers can make reasonable efforts and cultural competency arguments. Finally, the lawyer can appeal unjust rulings. Lawyers need the tools to successfully address all issues that a youth may face. The youth must depend on the lawyer to have this knowledge and experience.

There is a problem when youth say: "*I never got to go to court, I never even saw my lawyer*" and "*I wanted to speak on my own behalf...but I did not get to go [to court]. If I'm not there, present, my words can get twisted...I felt I was in care for longer because of this woman (GAL).*" These youth need to be confident that their lawyers will advocate for them and that they will be involved in the process. One youth felt this way and revealed she had her lawyer's cell phone number and could call and rely on her for anything. Because of the trusting relationship with her lawyer, this youth could tell her she was a lesbian. She felt heard and supported.²⁰

LGBTQ youth endure out-of-home placement in foster care and the stigma of being LGBTQ. They cannot always rely on the agency to make things better. Judges and lawyers can make a difference in their lives.

Interacting With Youth

Judges and lawyers need to closely watch how they interact with LGBTQ youth. The following list is not exhaustive and should be supplemented based on your comfort level and knowledge of LGBTQ issues.

Attitudes

Whether known or not, lawyers and judges have preconceived notions when representing a child client or presiding over a dependency case. Some are appropriate, for example:

- Children shouldn't live in unsafe homes.
- Youth are generally better off in family-like settings.
- Children need stability and permanency in their lives.

These notions are based on knowledge of the child welfare field, child development, and the best interests of children.

“If a youth feels she is being judged based on her sexual orientation, or her advocate has negative beliefs about homosexuality, she is likely to withhold information that may jeopardize her safety and permanency.”

Some preconceived notions, however, can harm a youth and/or family. Some can be based on a lack of understanding and information. Judges must understand their own beliefs about sexual orientation and gender identity when presiding over dependency cases. They must learn the issues facing LGBTQ youth in foster care. Remaining objective does not require a judge to be free of these beliefs; it requires a judge to recognize them and to make rulings without imposing them on children and families. For example, a judge may feel uncomfortable with gender nonconforming behavior but have to remain objective when determining how to keep a transgender girl safe in a group home.

When interviewing and representing youth, lawyers should recognize their beliefs about sexual orientation and gender identity and not allow them to impact their representation. Developing a trusting relationship with a client is critical. If a youth feels she is being judged based on her sexual orientation, or her advocate has negative beliefs about homosexuality, she is likely to withhold information that may jeopardize her safety or permanency. For example, a youth who is being physically assaulted in her placement because she is a lesbian may not disclose the abuse to her lawyer if she thinks her lawyer has negative beliefs about homosexuality. She may become depressed and attempt suicide or run away to live on the streets instead of seeking a supportive environment with help from her lawyer. (See Chapter 2)

Language (verbal and nonverbal)

One way a youth decides whether to trust a person is by observing that person (and his surroundings) and listening to his words.

- Is he polite?
- Does he explain who he is and why he is here?
- Does he take time to ask the youth questions to get to know the youth?
- Does he encourage the youth to talk?
- Does he have pictures of children and family around?

- Does he have books and posters around his office that signal inclusion and respect?

Lawyers have the ability within the first several minutes to establish the base for a trusting relationship.

Judges often have the opportunity to speak with youth during court hearings. Like lawyers, they can quickly show a youth whether the courtroom is safe.

- Does the judge address the youth?
- Does the judge speak with the youth respectfully and understand what the youth has had to endure?
- Does the judge let the youth speak?

Lawyers and judges must tailor their language so youth will feel comfortable opening up and disclosing their LGBTQ status. Knowing a youth's LGBTQ status may help advocate for services and safety measures. (See Chapter 3 for more guidance on building trusting relationships).

Confidentiality

Children's lives in dependency cases are often publicized for many to examine. The social worker knows about the youth's home life, school progress, doctor appointments, test results, friends and social activities, and frequency of therapy appointments. Foster parents get reports about youth before they come into their homes. These reports are filled with details about the youth and the birth family. *One youth reported that his foster parents were given a report when he was placed in their home at age six stating that he was gay. He expressed dismay because at six years old he did not know what being "gay" meant.*²¹ The lawyers know most things that the social worker knows and have read and discussed the results of health professionals' reports. The judge hears it all. Although hearings may be closed, inevitably people who don't know the youth hear the most intimate details.

Sexual orientation and gender identity are intimate issues. Heterosexual youth have trouble discussing these issues. For LGBTQ youth, the situation is worse. Because stigma is often attached to LGBTQ people, youth may not disclose their status for fear of others finding out. Constantly living under this fear can spiral into any number of common risks facing LGBTQ youth. Lawyers and judges can help lift the fear and stigma by keeping communications confidential.

When representing a youth, the lawyer should explain that all communications (except a few circumstances) between the youth and lawyer are confidential and that the youth should feel comfortable telling the lawyer anything. The lawyer must stick to that promise. Many times lawyers with good intentions disclose information to social workers, foster parents, the judge, and others because they think it is in the best interests of the child. If youth are promised confidentiality, they may be more likely to disclose their LGBTQ status. The lawyer and the youth can then work together to decide if and when the youth should tell others.

If a youth is represented by a GAL or CASA, there is no confidentiality requirement. The GAL or CASA must discuss confidentiality with the youth and explain what communications will and will not be shared.

Conclusion

“I think foster care is hard enough in the best cases. LGBTQ youth already feel estranged and foster care does nothing to make them feel like they belong.”²²

LGBTQ youth experience harassment, violence, homelessness, and rejection. Lawyers and judges can ensure this does not continue by using the legal system to make LGBTQ clients safe, give them permanency, and ensure their well-being.

¹ Russell, Stephen T. and Kara Joyner. “Adolescent Sexual Orientation and Suicide Risk: Evidence From a National Study.” *American Journal of Public Health* 91(8), August 2001, 1276–1281.

² Wardenski, Joseph J. “A Minor Exception?: The Impact of Lawrence v. Texas on LGBT Youth.” *Journal of Criminal Law and Criminology* 95, Summer 2005, 1363.

³ Mallon, Gerald P. *We Don’t Exactly Get the Welcome Wagon: The Experience of Gay and Lesbian Adolescents in Child Welfare Systems*. New York: Columbia University Press, June 1998.

⁴ Massachusetts Department of Education. *2001 Massachusetts Youth Risk Behavior Survey Results*, September 2002. Available at www.doe.mass.edu

⁵ GLSEN National. *The 2003 National School Climate Survey: The School Related Experiences of Our Nation’s Lesbian, Gay, Bisexual, and Transgendered Youth*, 2003. Available at www.glsen.org

⁶ Judge statement, Opening Doors Project listening forum, Jacksonville FL, October 12, 2006.

⁷ Lawyer statement, Opening Doors Project listening forum, Denver, CO, July 28, 2006.

⁸ *Ibid.*

⁹ Healy, P. “Suicides in State Top Homicides.” *Boston Globe*, February 28, 2001, citing Massachusetts Department of Public Health study, *cited above*.

¹⁰ Youth quoted in Mallon, Gerald P., 1998, 22.

¹¹ *Ibid.*, 28.

¹² *Ibid.*, 50.

¹³ Scheyd, Karey, Deputy Director of Parent Recruitment, New York Administration for Children’s Services.

¹⁴ Wilbur, Shannon, Caitlin Ryan, and Jody Marksamer. *CWLA Best Practices Guidelines: Serving LGBT Youth in Out of Home Care*. Washington, DC: Child Welfare League of America, 2006, 6. Available online at www.cwla.org/pubs/

¹⁵ Youth statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006.

¹⁶ Youth quoted in *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care*. Washington, DC: Child Welfare League of America and Lambda Legal Defense and Education Fund, 2006, 22.

¹⁷ Youth quoted in Mallon, Gerald P., 1998, 62.

¹⁸ CWLA/Lambda Joint Initiative. “LGBTQ Youth Risk Data.” Available online at <http://www.lambdalegal.org/take-action/tool-kits/getting-down-to-basics/risk-data.html> (citing Garofalo, R., Wolf, R., Kessel, S., Palfrey, J., DuRant, R. “The Association Between Health Risk Behaviors and Sexual Orientation Among a School-based Sample of Adolescents.” *Pediatrics* 101(5), 1998).

¹⁹ Youth quoted in Mallon, Gerald P., 1998, 30.

²⁰ Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.

²¹ Youth statement, Opening Doors Project listening forum, Denver, CO, July 28, 2006.

²² Lawyer’s quote from ABA Opening Doors Project National Attorney Survey, Fall 2006.

Raising Awareness of LGBTQ Issues

AN INTERVIEW WITH JUDGE WILLIAM POCAN

Judge William Pocan was appointed to the Milwaukee County Circuit Court in 2006. Although state law requires judges to rotate through different divisions, Judge Pocan has been inspired by his time in children's court. He now works on termination of parental rights (TPR) cases. Before his appointment, Judge Pocan spent more than 20 years in trial and appellate practice at a private firm, specializing in consumer and family law. Judge Pocan is also a founding board member of the Milwaukee LGBT Community Center.

How many child welfare cases do you carry that involve LGBTQ youth?

In TPR cases, there are none. Most of the children are just too young and sexuality is not an issue. However, I am aware that there is a higher percentage of LGBTQ youth represented in the child welfare system because these children have family difficulties more frequently.

What is your impression about the needs related to serving LGBTQ foster youth compared to their peers in foster care?

I can't pick up a publication and not hear that despite all the positive movement, the suicide level is higher for this segment of the population. I think Milwaukee is an urban island in a rural state. I can't imagine what it must be like in a northern Wisconsin town. I'm well aware that LGBTQ youth have additional difficulties, and that few services can be provided there. Community centers across the state are just beginning to develop services for these youth. One positive thing is that with any element of diversity, we help educate each other. Colleagues can really help each other raise the level of understanding and should be doing that.

What are some possible roadblocks to providing effective advocacy for LGBTQ youth? Have you observed any positive changes in the legal community's handling of LGBTQ foster youth?

We never hear about the positives — that needs more attention. So often, people doing good lack the resources or PR talents for photo ops or publishing positive stories that could be an inspiration to other advocates. The negative is that the system relies heavily on social workers. These social workers need to be trained because often

there's a limit to what judges do and therefore they rely on everyone else. The greater community needs to be aware of what services are out there and then advocate for what should be out there. One critical missing piece is the recruitment of LGBTQ families for adoptive and foster parents.

Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

I'm lucky to work in Milwaukee. Wisconsin in general is an enlightened area. The entire process is LGBTQ-friendly for the most part. One does not see a great deal of discrimination. People work hard for the best interest of the kids.

What advice do you have for other adults working with LGBTQ youth?

Listen to the kids. Listen to what their needs are. When in the courtroom, we all need to work hard for the best interest of the child. Even in 2007, people have strong feelings about this. You have to set aside your personal politics. Whether you're happy they're gay or not, we want happy kids. We need to have people keeping an eye on what the real issue is: *How can we create a system that cultivates well-adjusted, educated, and happy kids.* If we can just stay out of the political fray and consider what is good for real live breathing kids in our community, we'll all be better off. These youth are out there and they need their legal advocates to help them by providing information about mentors, gay-friendly organizations, and gay-friendly community centers.

Interview conducted by Melissa Fay Colangelo

Making It In and Out of Foster Care

AN INTERVIEW WITH DAVID AMBROZ

After graduating with honors in political science from Vassar College, David Ambroz studied for a year at Oxford, England, then to UCLA School of Law. As a practicing attorney in California, he worked on one of the largest child welfare class action lawsuits ever brought in California.

Mr. Ambroz has also served as Managing Director of EPG Inc., a consulting firm concerned with land use in Hollywood, and as Director of Public Policy for the Hollywood Chamber of Commerce. He is currently the Executive Director of the Los Angeles City College Foundation and continues to advocate for the welfare of foster care youth. Mr. Ambroz was in the foster care system from age 11 to 17. He has written about living on the streets with his mother and siblings, transitioning to life in foster care, and life after leaving the system.

Has your sexual orientation affected your foster care experience?

The nonexistence of something is powerful: homosexuality doesn't exist in foster care. There was never a box to check; I was never asked; I was never given support; I was never spoken of as a gay youth and my homosexuality was never discussed even though I knew I was gay. I was 11 years old when I entered foster care. Eventually, after a series of tests as part of my foster care therapy, I was diagnosed with gender identity disorder. They knew I was gay, but no one ever brought up the word gay. (I got my file when I was emancipated in 1997 and that is how I saw the diagnosis.) It was obviously an 'off' diagnosis, because it is usually reserved for transsexuals, but most foster care psychotherapists paint with a broad brush. They're underpaid, and if they last at all, it's for one to three years.

I've learned that in all foster group homes, sexuality is stifled. I saw many youth in same-sex relationships who weren't gay. Foster care forces people to grow up in homes where they can't express their sexual identity. You get a broad spectrum of sexuality in foster group homes, but we're not allowing these kids any privacy or any time to develop their own sexual identity at a time when their hormones are changing. This is an at-risk population, some of them coming from violent or sexually abusive homes. Then they enter a system in which they do not receive any sexual education that is age-appropriate or any opportunity to date in a normal setting. Sexuality in foster care is an issue for all youth. No one wants to talk about youth and sexuality, regardless of

whether it's same-sex relationships or not. This is a non-starter. No one wants to deal with this topic and it's not politically popular. (I wish I could offer a solution, but I think doctors and therapists would have to work together on this issue.)

Did you feel your sexual orientation should have affected your interaction with lawyers who represented you and gave you legal information?

We still live in a homophobic, racist society. Differences are differences and people do not feel comfortable facing them. Do best practices even really exist? Maybe, but many foster parents aren't well equipped to deal with this issue and don't want to deal with sexuality of the children in their homes. Ultimately, they don't have to deal with it, they just have to be good people.

We need to question if we really want the teen's lawyer to know everything about a kid, or just work with the social worker. We don't want attorneys pressuring kids to come out in court. It's too much to ask them to do that on the record. Attorneys need to support any kid who is willing to do it. That youth needs to be directly connected to support services and the lawyer needs to follow up with a placement that is gay-friendly. The youth must immediately connect with other resources. If they're willing to come out, you need to honor and respect their dignity and privacy. Remember, you don't accompany these youths home at the end of the day. These kids are going to a largely inhospitable world. Any issues of difference create conflict, and so attorneys should tread carefully in this arena.

What advice can you give on improving legal representation for LGBTQ youth?

The best skill you can give these youth is the ability to advocate for themselves. Adults should be empowering these youth. Teach them to advocate and that skill will have tentacles that bleed out into other subjects, although you don't have to start with such a sensitive subject as sexuality.

Don't endanger them. Best practices and reality are mine fields apart. I have heard social workers say out loud, without fear of reproach, that they wouldn't place a kid because he was gay. I know that I felt outing myself in foster care would be suicide. The bottom line is no one wants to project differences in an inhospitable space. Remember, the road to hell is paved with good intentions: outing someone, thinking you're helping them, could be dangerous. Attorneys should be cautious and remember that half the time, at age 11, 12, even 16, teens really aren't sure what they are or where they are on the spectrum of sexuality. Once a youth is labeled as gay, that is a tough label to shake, and of course, no one ever has a hearing about heterosexuality! Sexual identity may not even be appropriate to discuss in an open courtroom, but *it should* have a place for safe discussions and it needs to be dealt with.

This problem is going to take a long time to fix: homophobia will pass as time passes. One can parallel this struggle with integrated schools and racism. We'll get there, but this will take time. Let the youth have safe spaces now. Organizations such as Green Chimneys are great for right now and there are far too few of them. It takes people continually asking for space in those homes to start the conversation about *why* these separate places are desperately needed.

Interview conducted by Melissa Fay Colangelo



Chapter Two

EXAMINING YOUR ATTITUDES AND BELIEFS

BY MIMI LAVER

We come to our jobs with ideas and attitudes about many topics. We reach these ideas based on how we were raised, religious beliefs, politics, interactions with people, and books we've read. As child welfare professionals, we bring these ideas and attitudes to our relationships with children, youth, and their families. Young people know when the adults who are working with them don't like them or are uncomfortable with them, and they react to those negative feelings. It is important to explore our attitudes about people who differ from us based on race, gender, socioeconomic class, sexual orientation or gender identity. Once we identify those attitudes, we must consider whether they have a negative impact on our relationships with children and youth.

When speaking about staff at his group home, Maurice said:

“The best staff are those that respect you for who you are, rather than judge you for what you do. They don't have to be gay, they don't have to be straight, they just have to listen without judging. People who are nasty and have nasty attitudes make me feel uncomfortable, you know the people who just work for the money, not to help the kids.”¹

This chapter explores the attitudes child welfare lawyers and judges expressed about LGBTQ youth during five listening forums held around the country. It discusses how attitudes and words can impact LGBTQ youth and suggests ways we can all try to be the people who work to help the kids, not make them feel uncomfortable.

Acknowledging Attitudes

You've heard the terms “we're only human” and “no one is perfect.” These are so true. Everyone makes mistakes, does or says things they feel sorry for after, forgets things, or holds beliefs that others find troubling. Being human may explain certain attitudes, but it cannot excuse actions or words that hurt others, especially if the others are children. LGBTQ youth report a high level of verbal and physical abuse. They are often belittled by the adults around them, including parents, foster parents, caseworkers, group home staff, judges and lawyers. All of these adults are human and many believe being gay is “wrong,”² but they may not want to harm the youth. Even those who don't share that belief can learn to be more caring of the LGBTQ youth.

ON POINT

Lawrence v. Texas Prohibits Judicial Bias Based on Sexual Orientation

In 2003, the United States Supreme Court decided *Lawrence v. Texas*,¹ a landmark case that should make judges more aware of their attitudes and actions towards LGBTQ people. *Lawrence* overturned a Texas sodomy law because it infringed on a homosexual individual's constitutional right to make personal choices. It overturned *Bowers v. Hardwick*,² which framed the issue as one of public morality. Its tone and language differed from *Bowers* and its effect was to permit judicial decision making on the basis of a party's sexual orientation. *Lawrence* took the issue away from public morality and reframed it to one of individual choice and privacy.³

Lawrence should result in less biased decisions by judges. Tobin Sparling writes, *Lawrence*: Amends the Code of Judicial Conduct of every state that does not already plainly enumerate sexual orientation bias as a violation of a judge's ethical duties. No longer can any judge lawfully brand a homosexual person as a criminal because of that person's sexual orientation alone. No longer can any judge lawfully treat a homosexual litigant any less respectfully than he or she would treat a heterosexual person standing in the same shoes. No longer is there any excuse for a judge to demean or slur homosexual persons by his or her out-of-court actions or words...⁴

There are still cases in which LGBTQ individuals suffer discrimination by judges. In family cases, such as custody and adoption, LGBTQ parties continue to lose rights to children because of their LGBTQ status.⁵ The *Lawrence* case, though, can help when bringing a judicial bias claim and can be used when discussing attitudes toward LGBTQ youth with judges and lawyers.

¹ 539 U.S. 558 (2003).

² 478 U.S. 186 (1986).

³ Sparling, 2004.

⁴ *Ibid.*, 307.

⁵ See Fedders, Barbara. "Coming Out for Kids: Recognizing Respecting and Representing LGBTQ Youth." *Nevada Law Journal* 6, Spring 2006, 774, 799-801 for discussion of post-*Lawrence* cases.

From our Listening Forums

This project involved five listening forums with LGBTQ youth, children's lawyers, and child welfare judges.³ At a forum in one southern state, a group of child welfare professionals explained the reasons that LGBTQ youth were having difficulties. One lawyer said, "*Honey, you are in the buckle of the bible belt.*" She explained she was not surprised that a foster parent refused to adopt a child once she came out as a lesbian or that other youth did not want to reveal their LGBTQ status to the adults in their lives. Putting the common attitude "on the table" was useful and helped the group address the issues honestly. A first step in any group discussion about working with LGBTQ youth in foster care is sharing attitudes held generally by the community and by individuals.

This is not an isolated example. During another listening forum we heard that a judge told a lesbian youth that he was surprised that both the youth's birth parents and adoptive parents were interested in her given her lesbian identity. A different judge belittled a gay young man by implying in open court that the youth's identity was just "a fad" by saying "*So you're gay now.*" More typically, our listening forums revealed lawyers and judges lack enough information to adequately address the needs of

LGBTQ youth and wanted to learn more about working with them. Some participants had questions about how they should interact with these youth, and were open to learning.

Impact of Negative Attitudes

When talking about the adults in his life during foster care, Carl said, “*Do you know how it feels? I mean I couldn’t live at home with my own family because of who I am and then to get treated like that by people who are suppose[d] to be professional and deal with kids. I just don’t think it’s fair. It’s just not right.*”⁴

We heard similar outrage by youth at our listening forums. They were confused and hurt that the lawyers and judges who they viewed as experts in dealing with kids either ignored them, or worse, were disrespectful. LGBTQ youth often feel beaten down. They try different strategies to cope, but outcomes for these youth are poor compared to heterosexual youth in foster care. Many of them have been verbally harassed by enough adults and peers that they hide their sexual orientation or identity. But hiding one’s identity can only go on for so long and often leads to low self-esteem or low self-worth. For many, this leads to increased drug abuse, prostitution, aggressive behaviors, or suicide attempts. Many LGBTQ youth leave their foster or group homes and live on the streets. They report feeling safer on the streets than in their placements.⁵

GROUND RULES FOR DISCUSSION

This listening forum is a **SAFE** place to be whoever and or whatever you want to be. The forum offers a **NONJUDGMENTAL** environment.

All participants have the **OPPORTUNITY** to talk in the forum. Whether a person chooses to talk or not to talk is okay.

Complete **CONFIDENTIALITY** is kept by everyone. No names, words, or stories are told to anyone outside the group.

Members show **RESPECT** for each other and for what is said in the forum.

Personal information is shared **VOLUNTARILY** without pressure from other members.

Members use **“I”** statements, taking **RESPONSIBILITY** for their own feelings, actions, thoughts, and words.

And Remember...

THE OUCH RULE – If you are upset by something someone says, say “ouch” and explain.

STEP UP AND STEP BACK – If you talk a lot, step back and give others a chance to speak. If you have not spoken, step up and let your voice be heard!

AGREE TO DISAGREE

Source: Adapted from the Jacksonville Area Sexual Minority Youth Network, Inc. (JASMYN, Inc).

THE GLBT YOUTH SUPPORT PROJECT PERSONAL COMFORT ASSESSMENT TOOL

	AGREE	DISAGREE	NOT SURE
I am comfortable using the words "gay," "lesbian," "bisexual," and "transgender."			
I am comfortable addressing and talking about GLBT issues in general.			
I address homophobic behavior/language exhibited by colleagues.			
I address homophobic behavior/language exhibited by youth/clients.			
I make an effort to use GLBT-inclusive language in conversation.			
I would be comfortable having a GLBT co-worker.			
I would be comfortable having a close friend who is GLBT.			
I would be comfortable if my child, niece, or nephew "came out" to me as GLBT.			
I ask GLBT co-workers or clients about their partners or families just as I ask heterosexual co-workers or clients about their partners or families.			
I do not assume that a gay, lesbian, or bisexual client or co-worker is attracted to me.			
I would be comfortable if a client came out to me as GLBT or questioning.			
I make an effort to use a person's preferred gender pronoun and name, even if I previously knew him or her by a different pronoun or name.			
I would be comfortable displaying a GLBT Safe Space sticker or other visible sign of support for GLBT people.			
I would be comfortable if someone thought I was GLBT.			
I feel that being GLBT is a healthy expression of human sexuality.			
I am willing to put aside my personal beliefs to help a client find the best solution for his or her own life.			

Source: The GLBT Youth Support (GLYS) Project, a program of Health Care of Southeastern Massachusetts, Inc. www.hcsm.org/glys.htm
Ph.: 800/530-2770; E-mail: glys@hcsm.org

When describing the harassment he endured at a group home, Angelo said, “*That’s when I decided to leave. They had me to the point where I was crying inside, but I wouldn’t let them see it.*”⁶ No child in the foster care system should be crying inside, and it is the professional’s job to end not cause it.

Youth hope child welfare lawyers and judges will be open to hearing their wishes and accepting them for who they are. At our listening forums we heard about the good and the not so good. The latter was expressed by a youth who said, “*The judges aren’t welcoming if they know you’re gay. No one seemed interested in working with me.*”⁷ Even if a judge has negative feelings for LGBTQ youth, it is the judge’s duty to welcome the youth and find out what services or assistance the youth needs. “*Judges and attorneys are in positions of power. They need to communicate with kids in a way that will allow kids to be honest so the judges and lawyers can do their work.*”⁸

Projecting Positive Attitudes

In responding to a question about the unique needs of LGBTQ youth, one lawyer said: “*Their sexual identity has to be nurtured, not suppressed and they should never be made to feel ashamed of their orientation in foster care.*”⁹ Another lawyer, in answering a question about why LGBTQ youth have more placements than other youth answered: “*Youth often experience rejection or mere tolerance instead of nurturance and celebration from foster care family members and sometimes parents and sometimes their sibs.*”¹⁰ What can you as judges and lawyers do to nurture and celebrate a LGBTQ youth’s identity?

Examining our attitudes, deciding to change those attitudes, and actually changing them takes time. It takes courage and honesty to admit to ourselves and others that there are things we want to change. Sometimes, changing attitudes is not as important as changing behavior and working more closely with LGBTQ youth and their families.

Two studies of counselors in training show how analyzing attitudes leads to change. In the first study, a student moved from never wanting to work with a gay or lesbian couple to understanding her feelings and being more open to counseling such a couple.¹¹ Through written dialogue with her professor, the student realized her beliefs conflicted with her professional ethics and discriminated against LGBT families.¹² Once she realized this, she was able to find ways to treat gay couples. The study concluded that dialogue, while requiring patience and continuous effort, helps challenge biases.¹³

In the second study, 10 heterosexual counselors-in-training joined a year-long course in which they heard speakers, discussed readings, and shared their beliefs about sexuality, homophobia, and gay and lesbian development.¹⁴ By studying their own sexuality and sexual differences, many of the students came to value LGB people and understand their struggles. The study concluded that creating a safe and trusting environment for self reflection about biases and sexual identity promotes change.¹⁵

Identifying and Changing Attitudes

To promote positive attitudes, the child welfare community must create a setting where child welfare professionals examine their views of LGBTQ youth and how they

can become more affirming. At first, this may be difficult and feel uncomfortable, especially for lawyers and judges who may not want to acknowledge that feelings can affect their job performance. Several tools are available to help this process.

Before using these tools or other approaches such as training, creating task forces or having brown bag lunches on this topic, it helps to establish rules for discussion. The Jacksonville Area Sexual Minority Youth Network (JASMYN) read several statements at the start of each meeting to remind participants to respect and listen to one another. As you engage in group discussions about your attitudes about LGBTQ youth, consider reviewing the statements in the box on page 21, or creating your own set of “norms” to guide your way.

The following three tools may help you identify and discuss your views with others as you start to explore and improve your attitudes and actions toward LGBTQ youth:

ABA Codes of Conduct

In drafting the Model Code of Judicial Conduct and the Model Rules of Professional Conduct, the ABA has acknowledged that judges and lawyers are human, but they may not let their attitudes impact their cases. Discussing these sections of the codes may assist judges and lawyers understand that improved practice toward LGBTQ youth is rooted in their ethical responsibilities.

Canon 3 of the Model Code of Judicial Conduct is entitled **A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently** and in part reads:

Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. . . . In the performance of these duties, the following standards apply.

Adjudicative Responsibilities

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, . . . sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge’s direction and control to do so.

Similarly, Rule 8.4 Misconduct, Model Rules of Professional Conduct, reads in part:

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;

The comment to this section says:

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, . . . sexual orientation . . . violates paragraph (d) when such actions are prejudicial to the administration of justice.

While states must enact specific rules to make the model rules enforceable, most jurisdictions have incorporated at least the general language about prohibiting bias and prejudicial words or conduct.¹⁶ Lawyers and judges may think and believe what they want, but those thoughts may affect their treatment of clients and litigants.

ATTITUDE CHECKLIST

Read the statements below and respond according to how you personally feel about the suggested situations. Circle the letter under the description of the response you feel most closely represents your current attitude – or in some situations, your projected future attitude.

For Me Personally

	ACCEPTABLE	NOT SURE	UNACCEPTABLE
1 To have an openly gay, lesbian, bisexual or transgender person as a close friend would be:	A	NS	U
2 To allow an openly gay, lesbian, bisexual or transgender person to serve in the military is:	A	NS	U
3 A constitutional amendment banning gay marriage is:	A	NS	U
4 To have gay, lesbian, bisexual and transgender people be encouraged to be parents or to adopt is:	A	NS	U
5 To have an openly gay, lesbian, bisexual or transgender teacher or bus driver for my child would be:	A	NS	U
6 Supporting gay, lesbian, bisexual and transgender people who “come out at work is:	A	NS	U
7 Confirming an openly gay, lesbian, bisexual or transgender person to serve as a leader in my church mosque or synagogue would be:	A	NS	U
8 To have an openly gay, lesbian, bisexual or transgender child is:	A	NS	U
9 To share a room overnight with an openly gay, lesbian, bisexual or transgender person would be:	A	NS	U
10 To have an openly gay, lesbian, bisexual or transgender person as a physician would be:	A	NS	U
11 To have an openly gay, lesbian, bisexual or transgender person serve as President would be:	A	NS	U
12 To have an openly gay, lesbian, bisexual or transgender supervisor or boss would be:	A	NS	U

Riddle Scale

One useful tool to guide this exploration is the *Riddle Homophobia Scale about Lesbian/Gay/Bisexual Identity*.¹⁷ The scale involves four homophobic levels and four positive levels of attitudes about LGB people. (See box, p. 27) As you review and discuss the scale, you could identify actions to take at each level to improve outreach toward LGBTQ youth in your system. As you continue your discussions, perhaps you

and others would move up the scale, and take more steps toward nurturance. For example, for someone at the following levels:

Repulsion or Pity — The youth will know. They will see you rolling your eyes, moving away, refusing to shake hands, using derogatory labels and language, ignoring their basic needs and showing other signs of disrespect. Recognize the limits these attitudes place on your advocacy and decisions. Despite these attitudes, try to represent your client competently as a lawyer and make impartial decisions as a judge. If you cannot, refer clients/cases to others without expressed bias.

Tolerance — Learn about the joys and struggles LGBTQ youth face and acknowledge there are LGBTQ youth on your caseload. They may be hiding because they are uncomfortable discussing their identities with you, but LGBTQ youth live in your jurisdiction. Think about the Model Rules of Professional Conduct and the Model Code of Judicial Conduct and be sure personal attitudes do not compromise representation of LGBTQ clients, or impartial decision making if you are the judge. Resist attempts to make those youth invisible, and do not ignore their needs for safety, caring environments, and due process.

Acceptance — Let your clients, or the youth appearing before you, know you are interested in them. Be open to talking about any part of their life that is important to them and respond without bias. Learn the difference between sexual identity/homosexuality and sexual molestation (pedophilia).

Support — *Lawyers:* Develop trusting relationships with your clients. Advocate for your client to be in a safe setting, even if that means going against the recommendation of the child welfare agency. Know who in your community provides services in an LGBTQ-affirming manner and advocate with the agency and the court to have your client receive services from these providers.

Judges: Have resources ready to share with LGBTQ youth, their families, and their lawyers. Insist the agency care for the youth in an affirming way and if it does not, consider making a “no reasonable efforts” finding against the agency. Challenge the tendency to label age-appropriate sexual activity as predatory. Avoid the double standard for behavior between LGBTQ youth and heterosexual sexually active youth.

Admiration — Use gender-neutral language when talking with the youth. For example, ask about the youth’s partners or important relationships in the youth’s life, romantic and otherwise. Use the youth’s name and pronoun of choice. Encourage the youth to dress as he or she wishes.

Appreciation — Display hate-free zone, rainbow flag or triangle signs in your courtroom or office.¹⁸ Speak out when you hear colleagues, youth, family members, court officers, and others make homophobic or inappropriate anti-gay comments, especially in front of kids. Learn about gender identity and gender expression. Learn about the developmental needs of all young people, including sexual development, and integrate LGBTQ youth into this understanding.

Nurturance — *Lawyers:* Visit your clients in their placements including in LGBTQ group homes or get to know their friends. Be available by cell phone or by quickly returning calls for anything your client wants to discuss. Help them through crises and celebrate positive events with them. Work with their birth families to accept their

RIDDLE HOMOPHOBIA SCALE ABOUT LESBIAN/GAY/BISEXUAL INDENTITY

In a clinical sense, homophobia is defined as an intense, irrational fear of same-sex relations that becomes overwhelming to the person. In common usage, homophobia is the fear of intimate relationships with persons of the same sex. Below are four negative homophobic levels and four positive levels of attitudes towards lesbian and gay relationships/people. They were developed by Dr. Dorothy Riddle, a psychologist from Tucson, Arizona.

HOMOPHOBIC LEVELS OF ATTITUDE

Repulsion: Homosexuality is seen as a “crime against nature.” Gay/lesbians are sick, crazy, immoral, sinful, wicked, etc. Anything is justified to change them: prison, hospitalization, negative behavior therapy, electroshock therapy, etc.

Pity: Heterosexual chauvinism. Heterosexuality is more mature and certainly to be preferred. Any possibility of “becoming straight” should be reinforced, and those who seem to be born “that way” should be pitied, “the poor dears.”

Tolerance: Homosexuality is just a phase of adolescent development that many people go through and most people “grow out of.” Thus, lesbians/gays are less mature than “straights” and should be treated with the protectiveness and indulgence one uses with a child. Lesbians/gays should not be given positions of authority because they are still working through their adolescent behavior.

Acceptance: Still implies there is something to accept. Characterized by such statements as “You’re not a lesbian to me, you’re a person!” or “What you do in bed is your own business,” or “That’s fine with me as long as you don’t flaunt it!”

POSITIVE LEVELS OF ATTITUDES

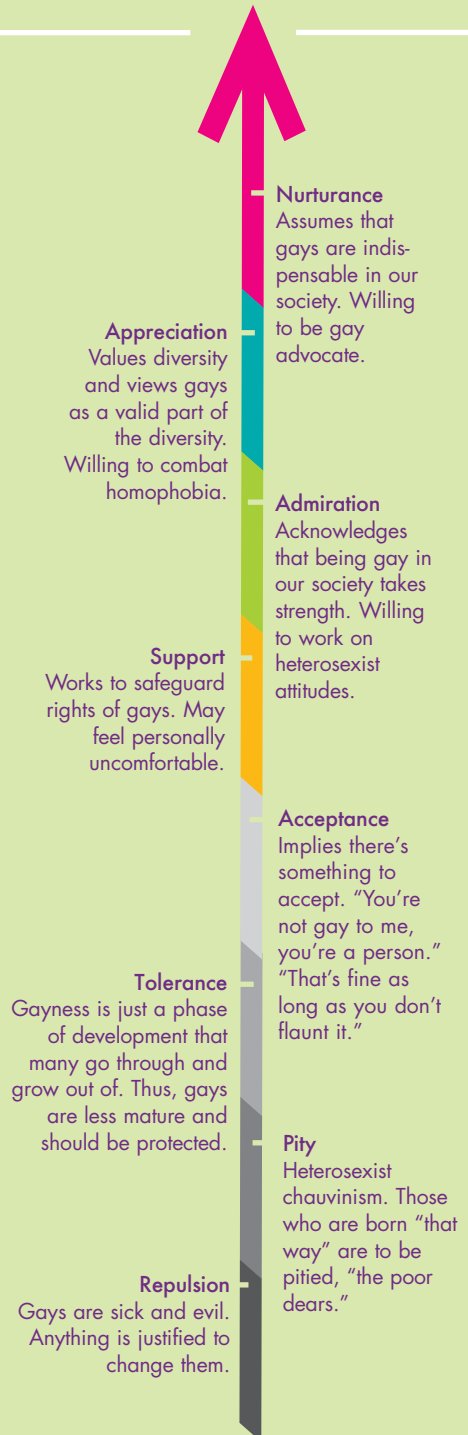
Support: Work to safeguard the rights of lesbians and gays. People at this level may be uncomfortable themselves, but they are aware of the homophobic climate and the irrational unfairness.

Admiration: Acknowledges that being lesbian/gay in our society takes strength. People at this level are willing to truly examine their homophobic attitudes, values, and behaviors.

Appreciation: Value the diversity of people and see lesbians/gays as a valid part of that diversity. These people are willing to combat homophobia in themselves and others.

Nurturance: Assumes that gay/lesbian people are indispensable in our society. They view lesbians/gays with genuine affection and delight, and are willing to be allies and advocates.

CONTINUUM OF ATTITUDES REGARDING LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE



children back into their homes, rather than assuming the youth will finish his or her childhood in foster care. Work to understand and advocate for safe and healthy services for transgender youth.

Judges: Support the youth and his or her family. Ensure the youth knows when you are proud of accomplishments and show understanding when there are problems. Talk to colleagues about the importance of nurturing all young people, including those who identify as LGBTQ.

Checklists

Use the *Attitude Checklist*, p. 25, and the *Personal Comfort Assessment Tool*, p. 22, to examine your attitudes and start discussions with others. These checklists can be used to determine your own comfort with LGBTQ issues. You might identify some topics, such as gay marriage, adoption by LGBT adults, or gays in the military, that you are interested in, and then follow up by reading books and articles on the topic or talking to LGBT individuals for their assessment. They may also be used to identify where you fall on the Riddle Scale (discussed above) and suggest actions to take. You don't need to agree with all statements in the tools to support LGBTQ youth, but rather use the lists to identify your comfort with LGBTQ youth and how you might increase your ability to effectively represent them and make unbiased decisions about their care.

Conclusion

As Jill Jacobs, executive director of Family Builders said, “*Judges should be especially active at letting the youth that come before them know that their courtrooms and chambers are hate-free zones To do this, judges need to be more culturally competent.*”¹⁹

Understanding and advocating for youth whose culture differs from your own is essential to being an effective child's lawyer or child welfare judge. LGBTQ youth live in your community and need your understanding. There is plenty to celebrate about their lives, but many of them have challenges to overcome. They need you to understand and nurture them so they feel comfortable trusting and relying upon you. They need you to set aside any negative attitudes about LGBTQ people and focus on their needs. You can make a difference for a young person if you can see them for who they are.

¹ Mallon, Gerald P. *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in the Child Welfare Systems*. New York: Columbia University Press, 1998, 59.

² Response to ABA Opening Doors Project National Lawyer Survey, Fall 2006.

³ These listening forums included Denver, CO, July 28, 2006; Jacksonville, FL, October 12, 2006; Nashville, TN, November 14, 2006; New York, NY, November 29, 2006; and Seattle, WA, December, 14, 2006.

⁴ Mallon, Gerald P., 1998, 82.

⁵ *Ibid.*, 110-118.

⁶ *Ibid.*, 96.

⁷ Youth comment, Jacksonville, FL Listening Forum, October 12, 2006.

⁸ Interview with Marisa Howard-Karp, Program Director, The GLBT Youth Support (GLYS) Project, April 10, 2007.

⁹ Opening Doors Survey, Fall 2006.

¹⁰ *Ibid.*

¹¹ Charles, Laurie L., Dina Thomas, and Matthew L. Thornton. “Overcoming Bias Toward Same-Sex Couples: A Case Study From Inside an MFT Ethics Classroom.” *Journal of Marital and Family Therapy*, July 2005, 239.

¹² *Ibid.*, 247.

¹³ *Ibid.*, 248.

¹⁴ Dillon, Frank R., et al. “On Becoming Allies: A Qualitative Study of Lesbian-, Gay-, and Bisexual-Affirmative Counselor Training.” *Counselor Education & Supervision*, March 2004, 162, 164.

¹⁵ *Ibid.*, 176.

¹⁶ Sparling, Tobin A. “Judicial Bias Claims of Homosexual Persons in the Wake of Lawrence v. Texas.” *South Texas Law Review*, Winter 2004, 266.

¹⁷ Riddle, Dorothy Ph.D., Tucson, AZ.

¹⁸ The rainbow flag and triangle signs are demonstrations of LGBT pride.

¹⁹ Interview with Jill Jacobs, Executive Director Family Builders, Fall 2006.

Representing LGBTQ Youth: Challenging Assumptions

AN INTERVIEW WITH KRISTA PREDAGOVICH

Krista Predragovich is a trained licensed mental health counselor and recently became a volunteer GAL. She has been appointed to represent children in the dependency system, advocating for their best interests. She has also worked with the Department of Children and Families and volunteers at JASMYN, a shelter for LGBTQ youth.

How many child welfare cases do you carry? How many involve LGBTQ youth?

I generally have two cases at a time. Millie is the only LGBTQ youth I have worked with and she is transgender. I observed Millie attempting to access resources and gain support in our rural county (a county that is not very liberal and where it was really a challenge for adults to even conceptualize what transgender meant). The staff at the shelter where she was living did not allow her to dress in female clothing or express her sexual identity. In a desire to support Millie, I connected Millie with JASMYN, which helped a great deal. Millie has been attending drop-in there for a number of months and is now more involved at JASMYN. I consulted with the staff there and I've become more involved at their drop-in center.

When working with a LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional, health, education, medical, developing relationship with family)?

The LGBTQ youth stand out in that, although all youth in the dependency system have greater needs than the average child, usually child welfare agency staff members are in consensus about how a child might be helped. With Millie, there was no consensus on what her needs might be.

My experience has been that the staff who have come into contact with Millie operate under a broad continuum of acceptance and even conceptualization of what her issues and challenges are. In her case, there was infighting, heated discussions, and staunch position-taking about homosexuality. People were allowing their own beliefs and values, rather than objectivity, to dictate how they handled Millie.

How were you made aware of this tension?

When Millie first came in, I specifically heard a supervisor on her case say, "Biologically this child is a boy, and that is how I will address him, refer to him, and

those are my expectations for his appearance and dress, etc.” For me, that was a clear statement of value and belief.

Do you have a LGBTQ specialty? Did you look for these kids or are judges seeking you out for appointments?

Millie had been in the foster care system for about eight months when a GAL was assigned. My case coordinator approached me about the case because of my background and training, thinking I might be more open and accepting than some other guardians.

Describe a situation or two in which you’ve worked with LGBTQ youth. What are some highlights and frustrations?

Right now, the frustrations stand out more. When Millie wanted to attend JASMYN’s alternative prom last year, she needed to request financial assistance to buy a dress. The supervisor of JASMYN was not willing to even put that request through because he did not want the record to show that he bought a prom dress for a boy. So even the LGBTQ shelters are not willing to give the higher-ups the opportunity to say yay or nay, or really challenge their conceptions. I understand that at times we’re already pushing the envelope, so not rocking the boat too much can be important to maintaining the support we do have.

Also, placement has been an incredible challenge. Millie burnt some bridges early on with her extended family members, and so what we continually hear is that there is no available placement for her. I still have a hard time believing there is no foster parent in this network that would be willing to raise this child.

How much attention is given to foster parent training regarding LGBTQ youth is a serious issue. There needs to be top-down training. Foster parents need to be made aware that this is the kind of child you could have come into your home: medically fragile, LGBTQ, or a different race.

How have you made a positive difference for an LGBTQ youth? Have you faced any roadblocks?

Lack of awareness about these issues and about available resources is a huge burden. There is an extreme lack of resources in our area. I know of no resources in Clay County for these youth, let alone for a GAL. Duval County is a half hour drive, but it’s too easy for staff to say “We can’t do that; too far away; someone would have to stay late.” We now have JASMYN as a fantastic resource for future LGBTQ kids coming through the system. Transportation and communication could make using that facility even easier. Millie would have had a different experience had she been in a different county. If, for example, she lived in New York City or Los Angeles she may have had a different experience. Geography seems to make a big difference in what kind of care these youth can receive and that is very troubling.

Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

The first time we went in front of the magistrate for judicial review of a case, the judge said, “Well if the father doesn’t want the child to dress as a female in the house, then the youth is breaking the rules of the house.” What got lost in there was the reason the child came into system. He had been in a physical fight with his father over dressing as a female. They were calling the child defiant rather than addressing or acknowledging the underlying issues. Never in the case was there a plan that directed the father to attend a PFLAG meeting or get some support around the fact that child was transgender. That was a huge hole in their case planning. If the goal is to reunify, which it should be, then you need to support the father in learning about special needs of the child. Millie’s family did not want her back and 18 months later, Millie came back in front of that magistrate dressed as a female. Although the magistrate did not address Millie’s choice of clothing, he wasn’t any more sympathetic or helpful. It was clear the judge had never had a transgender youth in front of him before and it was crucial for him to see a distinction between a boy in a dress and the strong young woman that Millie is.

What advice do you have for other adults working with LGBTQ youth?

All adults working in the legal system need to challenge their assumptions. We need to be willing to get some education and learn about new resources so we can address our own prejudices and biases. People were frustrated with me early on because I had never encountered a transgender youth before. And so I am a little embarrassed to admit I was not necessarily breaking down the door saying “Okay we need to meet this child’s needs!” It took me a while to embrace that this was not Millie’s choice, and that I needed to support her. I really grew personally throughout this process. It’s not simple; it’s not easy; and if a child does not want to open up fully right away, even though you may be doing everything right, give them time. Now I’m so glad to be a part of her case, as another adult who loves and supports her. She’s 17 now, and I look forward to watching her progress.

Interview conducted by Melissa Fay Colangelo

Chapter Three

BUILDING STRONG CLIENT RELATIONSHIPS

BY ANDREA KHOURY

Knowing a youth's LGBTQ status is key to strong advocacy on behalf of LGBTQ youth in the child welfare system. As the child's lawyer, you won't know the youth's status unless you have built a solid relationship. The youth must trust you to share such personal information. She won't make an appointment, come to your office, explain why she needs a lawyer, and provide supporting documents. You must forge a relationship with your client for trust to develop so communication occurs. This chapter explains how to build solid relationships that lead to strong advocacy for LGBTQ youth.

Knowing the Client's LGBTQ Status

"I don't care who they are sleeping with, I'm just concerned with their safety and permanency."

"I don't talk to my straight clients about their love life."¹

Sound familiar? Legal advocates may be reluctant to explore sexuality and gender identity. They aren't normally considered when representing youth in foster care and they may seem irrelevant to the court's focus on safety and permanency.



Why does knowing a client's LGBTQ status matter for good representation?

In some cases, a client's sexual orientation or gender identity will have little impact on the lawyer's relationship with the child or advocacy. Consider a gay youth who has been out for a number of years and comes into foster care because his stepfather beat him because of his bad grades. His parents and extended family accept his sexuality. He attends a progressive school that has a policy against sexual orientation and gender identity discrimination. He is placed with supportive relatives and the family is working on reunification. Although the lawyer may want to ask a few questions to ensure his parents are supportive, the focus of the advocacy will be on reunification

efforts, such as parenting and anger management classes for the parents, and whether the youth feels safe returning to the home.

In most cases, however, the fact that a child has identified or thinks they may be LGBTQ will play a major role in their well-being. Consider a gay youth who is beginning to experiment with his sexuality and comes into foster care because his mother beat him for hanging out with the wrong crowd. He is only out to some of his close friends and he is scared of what his parents will think. He is placed in a group home where the other boys pick on him because they think he is gay. The social worker does not know of any LGBTQ-friendly placements or counseling services. His grades are starting to fall because he can't concentrate in school. The youth's LGBTQ status impacts his placement, reunification services provided to him and his family, his school situation, and his over all well-being. A lawyer who does not establish a relationship where the youth is comfortable enough to talk about his sexuality can not zealously advocate for her client.

As stated in the first chapter, and shown in this example, the child may have suffered discrimination, harassment, or confusion about why they differ from their friends. These issues and feelings affect the child's services, placement, and safety. Service providers, foster parents, social workers, and the legal community may have strong beliefs about sexual orientation and gender identity. Their feelings may impact the provision of services.

Lawyers are stronger advocates for their clients if they have essential information about their clients.

- Why is the court system involved?
- What happened in their home of origin?
- What negative school experiences have they had?
- Where do they want to live?
- Who is important in their lives?
- Where is the best placement that will keep the youth safe?

For LGBTQ youth, sexual orientation and gender identity play a large role in answering these questions. The youth will be better protected and achieve permanency sooner if they share their LGBTQ status and any effects it has had on the youth's life with the lawyer. The way to get a youth to answer these questions, including those about sexual orientation and gender identity, is to be diligent, communicate effectively, keep confidences, advise properly, and advocate without bias.



Do I ask the youth straight out whether she is LGBTQ or Q?

In several listening forums for this project, professionals wanted to know how they would find out their client's LGBTQ status. Should they ask their client? Most youth responded that the lawyer needs to build a trusting relationship before raising sexual orientation and gender identity issues. Sometimes it is obvious and the child client is

out and everyone knows. When that's not the case, lawyers must build the relationship and get the child to trust enough to disclose this potentially sensitive aspect of their life.

It's also important to realize that LGBTQ status does not define the child and other areas of the child's life should also take priority. Most LGBTQ youth in foster care just want to be treated like everyone else.

Relationship-Building Skills for Lawyers

The ABA Model Rules of Conduct discuss skills that lawyers must have when representing clients. These skills are especially important when the child is or may be LGBTQ.

Competent Representation²

In addition to basic federal and state abuse and neglect laws, including the Adoption and Safe Families Act and the Foster Care Independence Act, lawyers who represent youth in the child welfare system should also be familiar with laws, regulations, and policies related to LGBTQ youth. For example, a child's lawyer should know if:

- a state has a law against discrimination or harassment on school property for sexual orientation or gender identity;³
- a child welfare agency has a policy prohibiting discrimination by foster parents based on LGBTQ status of the youth;⁴
- a child welfare agency has a specific policy on training social workers to address LGBTQ youth's needs;⁵
- a child is going to be placed in a group setting, whether the setting has a nondiscrimination policy and whether they have restrictions on clothing or discussions about sexual orientation; and
- there are group care settings exclusively for LGBTQ youth.⁶

Beyond laws and regulations lawyers should know whether there are:

- mental health services aimed at youth dealing with and disclosing their LGBTQ status;
- service providers that are sensitive to LGBTQ youth;
- foster homes that have a reputation for being open and sensitive to LGBTQ issues;
- family counseling services that address reunification when the youth is LGBTQ;
- Parents and Friends of Lesbians and Gays (PFLAG) organizations.⁷

Knowing about issues that are likely to develop in the life of a child who is LGBTQ is key to developing a relationship with the LGBTQ child client.

Diligence⁸

For lawyers to adequately represent a client, the client has to trust the lawyer enough to share very personal information. A lawyer cannot represent someone he

doesn't know well. Diligence and consistency helps establish that trust. A child will not initially trust the lawyer; the lawyer's job is gain that trust. One way to do that is to show commitment and dedication when advocating for the child regardless of sexual orientation or gender identity. When a child sees her lawyer working hard to give her a voice, the child is more likely to trust the lawyer.

An LGBTQ client is in a unique situation because she likely has not disclosed her LGBTQ status to her lawyer. Sometimes she will not have disclosed it to anyone. When the lawyer is aware of a client's LGBTQ status, trust is still important to learn whether her safety or well-being has been harmed by her LGBTQ status. This information may be embarrassing or difficult for a child client to disclose. If the child is in the process of coming out to her family, friends, and those around her, her situation may change and she may be able to discuss her options with her lawyer. Trust is essential.

Communication⁹

Communication is also essential for a child to trust her lawyer. Lawyers must meet with every child to discuss the case in a safe, private environment, preferably not in the court hallway before a hearing. Meeting in a private place shows that the lawyer considers this case important and aids open communication.

Depending on the jurisdiction, the lawyer's initial meeting with a client may happen before or after the removal hearing. During the first meeting (and later meetings) the lawyer should show his openness by:

- Displaying materials or signs that signal it is safe to discuss LGBTQ issues (e.g., hate-free zone sticker, LGBTQ pride flag, and LGBTQ ally button).
- Using neutral (nongender-specific) language when asking about the child's social life.
- Avoiding assumptions about LGBTQ status based on dress.
- If your client discloses LGBTQ status, assure her that you will keep her confidences (see section below) and thank her for trusting you with that information.

The lawyer should meet (or otherwise communicate) consistently with his client throughout the case. Most children who are not out are not likely to disclose their LGBTQ status after the first meeting. Ongoing contact and communication are essential in creating the trust necessary for a child to disclose her LGBTQ status. Even if the child doesn't explicitly come out to her lawyer, if there is continued contact and discussions about the child's life, school issues, weekend plans, social life, friends with whom she associates, the child may imply her LGBTQ status. Some lawyers may feel comfortable sharing a little about their own private life to demonstrate familiarity and build mutual trust.



Where should you meet your client to build communication and trust?

The *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* advise lawyers to meet with their clients in a safe environment that is most

conducive to developing a good relationship.¹⁰ Most lawyers with high caseloads and little time choose to meet their clients in the courthouse, their offices, or a foster home. Although lawyers should engage their clients in these environments, establishing trust and a relationship is more likely if the meeting is in a location where the child can speak openly.

If your client is LGBTQ, investigate whether there is a LGBTQ-friendly environment to meet. Not only may this make your client comfortable but it shows you are comfortable discussing sexuality and gender identity with your client. Discuss this option with your client and call the location in advance to ensure you can meet somewhere private. Some examples of places where LGBTQ youth congregate are:

- JASMYN¹¹
- Tennessee Youth Advisory Council Oasis Center¹²
- Seattle's LGBTQ Community Center¹³

There are places like these in most jurisdictions where youth will feel comfortable discussing these sensitive issues.

Another way to pick a place to meet is to give your client options that include one LGBTQ-friendly environment, one neutral place, and your office. This gives your client some control over where to meet and also shows your willingness to meet in an LGBTQ-friendly place.

Confidentiality

Protecting your child client's confidences is one of the most important ways to establish trust. Youth often state that the lawyer should not disclose the youth's LGBTQ status without their permission.¹⁴ If you are the child's guardian ad litem, be clear about your role and whether your client can expect you to keep what she says confidential. If you are the child's lawyer, not only do you have an ethical duty to maintain your client's confidences but your client will be more likely to give you information that will assist your advocacy if she trusts you to keep her confidences.

A child's LGBTQ status can be sensitive. Talk with your client about who you can talk to about her status. Do not disclose this status unless your client gives you permission. However, use your advisor role to help your client feel comfortable coming out if it would lead to a positive result in her case.

Do I disclose my client's LGBTQ status if it presents safety concerns?

If you have a traditional attorney-client relationship with your client you must adhere to Model Rule 1.6 and not disclose your client's status if she opposes absent several exceptions. Ideally, there are other ways to address the safety concerns.

- If your client is being harassed in her placement, you could talk to the social worker about a change of placement and not be specific about your concerns.
- If your client's peers at school are causing her harm, you could speak with the principal about the harassment.

- You could also ask the court to change your client's placement.

If alternative strategies do not rectify the safety concerns, the best course of action to maintain the integrity of your relationship with your client is to counsel her about consequences of not disclosing her status and what she may gain if she does disclose. Let her know that she may be able to change placements or get help at school if she shares her status and the negative treatment she is receiving. Discuss ways to limit the disclosure and allow your client to control how the information is disclosed.

If your client is unwilling to disclose and you feel strongly that she is at risk of physical harm, one exception to maintaining confidentiality is to protect your client against substantial bodily harm. You should disclose this exception at the beginning of your representation so your client is aware of the possibility. You must make it clear to her why you are disclosing and attempt to minimize the number of people who know.

Lawyer as Advisor¹⁵

Beyond advocating to a social worker or in a courtroom for a client, a lawyer representing a child must take on the role of advisor. The child lawyer's sole professional responsibility is to the child. The lawyer must provide advice on placement options, permanency plans, services, and visitation. The lawyer must base the advice on all the information and without bias.

“If the youth is out to you as the lawyer, but not to the preadoptive parents, help your client become comfortable coming out to the family.”

For example, consider a 15-year-old girl is going to be placed in a home that is not accepting of lesbians. She tells her lawyer that she is attracted to girls in her class but she has not told anyone else. Her lawyer advises her that she may have a chance to be placed with a family that accepts her sexual orientation if they tell the social worker. After fully discussing options, the lawyer receives the youth's permission to disclose her sexuality and she is placed with a more accepting family.

Sometimes what the child wants and what actually happens in the courtroom or with the social worker are not the same. It's the lawyer's job to make the child understand that although she should voice her opinion and share her experiences with her lawyer, she might not get exactly what she wants. For example, consider a teenager who comes out while in foster care. She wants to go home. Her mom, who physically abused her, has been taking parenting and anger management classes and also wants to have her daughter come home. But when she learns about her daughter's sexual orientation, she reacts with anger, and now isn't sure she wants her daughter home. The lawyer should argue for return home but should tell his client that the judge may not order reunification if her mom isn't ready or until counseling is in place to ensure the child will be safe.

Misconduct and Prejudice¹⁶

Comment three of the ABA Model Rules states that a lawyer violates the rules of professional conduct when, in the course of representation, he “knowingly manifests by

words or conduct a prejudice based upon...sexual orientation...when such actions are prejudicial to the administration of justice.”¹⁷

Lawyers are going to have their own prejudices; however, in developing a relationship with a client who may be LGBTQ, a lawyer is restricted from allowing LGBTQ prejudice to impact that relationship. The lawyer should realize personal prejudices and ensure they do not interfere with developing relationships with clients.

Relationship-Building Skills for Judges

Unlike a lawyer, the judge has limited time and ability to develop a strong, personal relationship with a child. However, judges can take steps to promote a positive relationship between the court system and LGBTQ youth.

Quality Representation

One option is specialized lawyers. If the case involves a complex special education issue, the judge can appoint a lawyer who specializes or has knowledge of special education. If a child has a concurrent delinquency case, the judge can appoint a lawyer experienced in juvenile justice law. The same applies to LGBTQ clients. If the judge knows the child is LGBTQ, the judge should have a list of lawyers who have experience with LGBTQ clients and ask one of those lawyers to represent the child.

Open, Nonjudgemental Courtroom

The judge should discuss sexual orientation and gender identity openly and know about placement and counseling options. If the child does not want everyone to know about her sexual orientation, the judge should respect that and not announce it in open court. The child will respect and like the judge if the judge respects her privacy and wishes. The judge sets the tone in the courtroom and should require everyone to respect the child and not allow bias to impact the outcome.

Conclusion

Establishing a relationship with a child client is the foundation for successful advocacy. LGBTQ clients may require more time and energy when establishing that relationship because of their past experiences. The child’s lawyer must be willing to put in extra effort to relate to these youth and build trust so that they feel comfortable communicating. This improves the representation of LGBTQ clients.

¹ Opening Doors project listening forums, 2006; ABA Opening Doors National Attorney Survey, Fall 2006.

² A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. American Bar Association Model Rules of Professional Conduct Rule 1.1

³ For example, California passed the California Student Safety and Violence Prevention Act, A.B. 537, in 2000. This act protects students from harassment based on, among other things, sexual orientation and gender identity. S.B. 770, the Students Civil Rights

Act, became law on January 1, 2008. It standardizes all student discrimination protection laws in the California education system including discrimination based on sexual orientation and gender identity.

⁴ See, e.g., Cal. A.B. 458 § 1(f) (2003) (prohibiting foster parents from discriminating against children in their care on the basis of sexual orientation); Connecticut Department of Children and Families. “Ch. 30-9: Nondiscrimination of LGBTQ Individuals.” *Connecticut Policy Manual*, May 2004 (prohibiting discrimination against LGBTQ youth by foster parents).

⁵ See, e.g., Illinois Department of Children and Family Services.

“Policy Guide 2003.02: Assessment and Treatment of Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youths,” February 3, 2003.

⁶ Green Chimneys, New York, NY <www.greenchimneys.org>

⁷ Parents and Friends of Lesbians and Gays <www.pflag.org>

⁸ A lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 1.3.

“Reasonable care or attention to a matter.”

<www.dictionary.law.com>

⁹ A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by these Rules;

(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules or other law.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Model Rule 1.4

¹⁰ Approved by the American Bar Association House of Delegates, February 5, 1996, available online at www.abanet.org/child/rep-standwhole.pdf

¹¹ Jacksonville Area Sexual Minority Youth Network

¹² Nashville, Tennessee

¹³ Pike Street, Seattle, Washington.

¹⁴ (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherances of which the client has used or is using the lawyer’s services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;

(4) to secure legal advice about the lawyer’s compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client; or

(6) to comply with other law or a court order.

Model Rule 1.6

¹⁵ Youth opinions expressed at ABA Opening Doors project listening forums, 2006.

¹⁶ In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation. Model Rule 2.1

¹⁷ It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

¹⁸ ABA Model Rule 8.4

Creating a Safe Environment for LGBTQ Youth

AN INTERVIEW WITH KRISTIN KIMMEL

Kristin Kimmel has worked at Lawyers for Children in New York City for 11 years. She began her career at Lawyers for Children through a Skadden Fellowship and Equal Justice Works fellowship. As a law guardian, Kristin represents children in voluntary foster care and abuse and neglect cases.

What advice do you have for other adults working with LGBTQ youth in out-of-home care?

It doesn't occur to most people that sexuality could be a struggle for a youth; advocates and judges simply assume the youth is straight. Legal advocates need to force themselves to think about these issues. Use posters or provide materials that indicate this is a safe space to come out. Don't assume a youth is straight or gay, but if a teen does come out, meet them where they are. Don't force them to go to a gay placement. Don't put a label on them which they haven't chosen for themselves. Some youth are outspoken about their sexuality and some are reserved. It's your job as the adult to help them at the point where they are. Also, the words that youth currently use are not always used by adults, nor do adults feel comfortable using them. (For example, these youth call themselves "queer.") It's important to keep a checklist: if you have a queer client, you have certain things you know you want to address with them. Finally, special attention needs to be paid to queer kids and safety.

How many child welfare cases do you carry? How many LGBTQ youth do you represent?

I carry 110-120 cases at a time. This number is about average. A bill recently passed the state legislature that will limit how many cases law guardians can have at a time. This number would be restricted to between 60-75 cases. Our caseload often has about 25-30 clients at a time who have at some point identified themselves as queer.

How did you make those youth feel comfortable?

I hand out the book *You are Not Alone* to LGBTQ youth. In cases where we suspect a youth might be queer, but he or she has not offered such information, we do not directly ask. Instead, we hand them a packet of books that we provide all youth and say: "Some of these books may be relevant to you, some may not, let us know if you

have questions.” We also have rainbow flag stickers on our laptops and posters in the office which were disseminated by Green Chimneys and Lambda that advertise the environment as one that is a safe LGBTQ space. We also have stickers that provide queer support hotline information. Lambda also distributed magnetic queer poetry which a colleague and I display on our file cabinets.

When working with an LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional, health, education, medical, developing relationship with family)?

Medical care and education is an issue for all youth, but especially queer youth. These teens do not feel safe at the doctor’s office or at school. LGBTQ youth just want to be safe in schools where they are, and can be referred for offsite counseling. All issues for youth are personal; those for gay youth are not any more urgent, or more important, but for them, safety is an issue everywhere. They have to worry about not being safe in placements where staff and peers harass or beat them up. Safety and mental health services are paramount.

Foster care recruitment and training needs to be revamped to let foster parents know what they could be dealing with. The messages of acceptance we send our youth often conflict with those they receive from potential foster parents. For example, one youth finally found a foster mother and they seemed to get along extremely well in the first meetings. However, upon exiting the agency, when the teen felt comfortable enough to say to the foster mother, “I’m gay. Is that a problem?” the woman walked out. The agency empathized with the foster mother. Perhaps that is because one fundamental problem is that foster care providers’ religious views often shape their views of LGBTQ youth. The point is that if you work with youth, you are no longer a private person that can act solely on the basis of your own belief system. You’re state-certified and you need to hold yourself to a higher level when dealing with children.

All agencies are in dire need of more information about queer-friendly placements. It’s dangerous for youth to come out in most foster homes. I’ve known several youth who have been beaten up or kicked out. For years, foster care training has not included a section on LGBTQ issues. Just recently, the ACS commissioner said we need to change the training program regarding LGBTQ youth. We have been repeating that training for staff and foster parents is critical for years so this is a major achievement for us! The commissioner has finally said every foster parent has to be open to this and that ACS should be mandating the training.

How have your colleagues reacted to your efforts and have any of them altered their behavior?

We have a very gay-friendly staff at my office. Individually, some people are homophobic. It’s difficult when directors and supervisors make heterosexist comments, but in general my office receives these efforts very positively. Now, trainers come in to talk to staff about LGBTQ issues and the executive director has never said no to these opportunities.

Describe a situation in which you've worked with a LGBTQ youth. What are some highlights and frustrations?

It's hard to say "queer" or "lesbian" in an open courtroom on the record. You're met with stunned silence by judges and attorneys. A few years ago in court I said, "My client is a lesbian." You'd think I had used a swear word. Judges need to know they're not curse words, they're not sex words. It needs to be okay to say my client is a lesbian and doesn't feel safe. One judge in particular was problematic. If you had to discuss sexuality, she would get flushed, embarrassed, and harsh. Finally, we met with her to discuss this, and gave her another set of booklets to review. Queer youth are treated differently because people are afraid in court and talk around it, yet it's really important to find out what kids want. If a youth has come out to me, but does not want their sexuality to be discussed in court or to be part of their record, I just ask for a placement order at certain residences and everyone knows what that means.

I've had many LGBTQ clients who have succeeded in their lives, but it has been a struggle, nothing has magically fallen into place. The highlight is that things are improving! LGBTQ-friendly placements exist now and residential treatment centers (RTC) have been made gay-friendly. It's an agency success story. A social worker stepped up and decided the organization needed to address those issues and now there are meetings on the RTC campus. This year they even had a gay pride celebration. Sadly, I still recently allowed a young man, who attended a lot of these new meetings, stay with me because it was a struggle for him to find an appropriate placement. He finally aged out of care. However, now he attends college and is a consistent contributor at ACS LGBTQ support groups. He comes to all the meetings and even speaks on panels.

Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

Green Chimneys has the Gramercy Residence which has 25 beds for biological males. The Foundling's Agency Operated Boarding Homes are smaller homes with maybe eight beds and a supervised independent living program for 18-21 year olds. St. Christopher-Ottolie Family Services has 18 beds and accepts biological females. These service providers are always packed.

Interview conducted by Melissa Fay Colangelo

Meeting LGBTQ Youth Where They Are

AN INTERVIEW WITH SHAWNDELLE

Shawndelle identifies as a lesbian and spent several years in the foster care system. She aged out of the system and now lives in Seattle, Washington. Shawndelle was eventually adopted by her foster parents and advocates for gay youth in foster care. She is an inspiration to youth and adults alike in the child welfare system.

What advice do you have for legal advocates who are working with LGBTQ youth?

I would say a lot of the work to make a youth comfortable can be done ahead of time by advocates and social workers. Attorneys or judges can put up hate-free posters that specifically address homosexuality (not just a picture of a black and white person together). They can put up equality signs or rainbow stickers or pink triangles. They can offer youth lots of different packets of information with something about queer services. I think a lot of adults think, “I know that doesn’t apply to me” so they are reluctant to put these symbols out there for the sake of the youth. But it would be helpful if people were willing to put up some sort of sign of acceptance of any sexuality. I know that is a lot to ask, but all diverse backgrounds should be welcomed.

To be honest, even if attorneys or judges did make these efforts, I still wouldn’t have been comfortable coming out, because that is just me. Advocates should know that even if they do all this, some youth still won’t feel comfortable sharing such personal information. They shouldn’t push kids to say it. Instead, the attorney or caseworker could interview the placement providers and ask discretely about how LGBTQ-friendly the home was. When to come out, who to tell, and how is an extremely personal decision.

Before making *any specific* requirement for placement, talk to the youth. My feeling is that a lot of youth would not want an adult to place *any* type of limit on possible placements. Unless that youth is at risk (physically or mentally) in a certain place, I believe that adults should not cut off their chances to remain in one place, to go to a school (the same school!) for a few years, to make friends who might stick around, or to live in a family’s home.

Do you feel being gay affected your experience in foster care?

Because I was in the system, I didn’t come out. Coming out affects your placement from what I can tell. I just wanted to *be placed* and didn’t want to have any possible extra complication that could further delay my eligibility to get some parents. I so

desperately wanted to end the stream of group homes. I would have dealt with anything, even homophobic foster parents to get out of the group homes.

I remember having a hard time in some interviews with various advocates and caseworkers because some of them in the court system still asked me, “Do you have a boyfriend?” I don’t know if they were trying to identify with me or make nice, but as soon as they asked that, I would shut down. Kids want to fit in and match the assumptions people have about them, especially when you want to get placed. I also had to let adults tell me many religious stories and share their religious views that I couldn’t identify with (and often actually feared was a direct comment about my being gay) because I just wanted to get placed. Attorneys, judges, and caseworkers should not share those kind of personal views with youth unless they already know *for sure* that the youth can identify with those feelings or conversations. Otherwise, youth feel they can’t live up to your ideal. That’s a lot of pressure for kids who are already under a great deal of strain.

What advice do you have for an attorney or judge who strongly suspects a youth is LGBTQ but the youth is not comfortable discussing the topic?

The attorney or judge should go ahead and try to make sure that wherever they put the youth will be a liberal, accepting home. They need not necessarily tell the youth they have checked into that aspect of the potential home. (In general, parents, adults, and mentors do things for kids that the teen doesn’t realize has been done for them until much later, and then when the kid finds out, he or she is really thankful. The same scenario applies here.) It’s much easier for adults, as opposed to a scared kid, to step up in court or challenge other adults and help these youth by advocating for a hate-free, accepting, and stable placement.

I had many different legal advocates throughout my years in foster care and never discussed being gay with them. I was told later that almost everyone knew. It was a relief that I found wonderful adoptive parents who knew already and were accepting of me when I eventually came out. That love and unconditional support made all the difference in the world in my life. I am extremely grateful to all those adults who helped me get to the independent and happy point I’m at today!

Interview conducted by Melissa Fay Colangelo



Chapter Four

IMPROVING YOUR LEGAL ADVOCACY AND DECISION MAKING

BY MIMI LAVER

LGBTQ youth rarely feel safe, no matter where they are. Some LGBTQ youth feel safer on the streets than at home or school. They are harassed and physically harmed by other youth, foster parents, and group home staff. As the child's advocate or judge, you must ensure the safety, permanency, and well-being of LGBTQ youth in foster care.

Finding permanent homes for teens is a challenge. Agency workers and other professionals often give up on helping LGBTQ youth achieve permanency. Like other teens, these youth can and should go home with appropriate supports. If not, they should be placed in adoptive homes or with guardians. They should also have at least one positive adult connection that will continue after they leave foster care. As the judge or lawyer, you can make this happen.

LGBTQ youth may feel abandoned by families and friends because of their identity. Like other youth, they may have questions about their sexuality or health-related concerns. They may be bullied in school or feel left out of activities or conversations in class. If they need counseling or other health services, the provider must be LGBTQ-friendly and have experience with LGBTQ youth. They need to be in schools that are supportive and academically appropriate. You can help get these services for the LGBTQ youth on your caseload.

This chapter discusses: factors judges and lawyers should consider to assure safety, permanency, and positive well-being for LGBTQ youth; tools for involving youth in their case planning, including court appearances; and tips to help LGBTQ youth find their voices in the dependency court process. This chapter assumes the lawyer has established a strong relationship with the youth and focuses on in- and out-of-court advocacy.

Role of Youth in Court

Including youth in their court hearings helps them feel valued and empowers them. Youth benefit from appearing in court in the following ways:¹

Sense of control (e.g., youth can tell the judge he would like to be in an LGBTQ group home rather than his current placement)

Understanding the process (e.g., youth hears: caseworker recommend services, youth's lawyer discuss need for LGBTQ-friendly services, and then judge's decision)

Seeing that adults care about them and their futures (e.g., judge asks about safety in the foster home and at school and why the youth's grades have improved since entering care and supports youth's LGBTQ status)

The court also benefits since the youth can answer questions about her life more

QUESTIONS EVERY LAWYER AND JUDGE SHOULD ASK

As the judge or lawyer in a case involving an LGBTQ youth, ask the following questions throughout the youth's case. Ask them of the agency, service providers, and the youth to help keep the young person safe, healthy, and in a permanent home.

Safety Concerns:

Where is the youth placed?

- Is it a foster home that is open to working with an LGBTQ youth, or one in which the foster parents may not be open?
- Is it an emergency shelter?
- Is the youth transgender and placed with other youth who are the same gender with which she identifies?
- Is it a group home? If so, what are the staff like?

Is the young person free from harassment by staff and peers? Are staff attuned to this issue? Is the youth being separated rather than included in the home?

Has the youth been evaluated to see if he is in danger of harming himself or attempting suicide?

Are there signs that the youth is abusing drugs or alcohol?

Permanency:

Is the agency frontloading services from an LGBTQ-friendly provider?

Are all professionals in the case working with the child and family on permanency issues at the beginning and throughout the case?

Has the entire family been engaged in the planning process?

Are the professionals engaged in concurrent planning?

How is the family reacting to the youth based on the reason for entry into foster care and LGBTQ status?

What does the youth want as a permanency plan?

Has the youth received counseling about his permanency options including returning home and adoption?

Well-being:

Education: Has the youth had to change schools? If so, is she safe in her new school? Is she enrolled in proper classes? Is there a Gay Straight Alliance (GSA) in the school and is the youth aware of it?

Medical issues: Is the youth being treated like other youth in getting evaluated? Have service needs been identified and is the youth receiving the necessary medical care?

Emotional health: Does the youth appear to need immediate counseling? Is there a protocol for getting youth evaluations and is it being followed? If the youth is open about his sexual identity, is there an LGBTQ-friendly counselor in the jurisdiction to refer the child to? Has the referral been made?

accurately than anyone else in the case. Youth can be included by attending court proceedings and speaking in court or in the judge's chambers, writing a letter that is read in court, or just being present and speaking through the lawyer.

Having your LGBTQ client in court helps the judge see that your client appears like other youth. The youth can explain what is going well, and not well, in foster care. You will need to prepare your client for the court experience though. A courtroom can be intimidating and not what the youth has "seen on TV."² Some judges and lawyers may not respect the youth, and may make disparaging comments about the youth's identity.³ Discuss this concern and let the youth decide whether she wants to talk to the judge, or whether she has something she'd like you to read. Let her know that even if she plans to talk but changes her mind, there is still value in appearing in court. Let her share any concerns she has about the experience before you enter the courtroom and after.

As the judge, you must welcome those who enter your courtroom, especially youth. They can provide insights and information you need to make the best decision in their cases, but will not if they do not trust you, or believe you value what they offer. (See Chapter 3)

The Life of a Case

Once a child enters foster care, the case follows a familiar pattern: regular hearings, case planning meetings, and services for the child and family to help them work through the issues leading to the child's placement. At each point in a case, the judge or lawyer can affect the youth by addressing the issues unique to the case. Whether this is issuing a no reasonable efforts order against the child welfare agency because it was not providing family therapy by an LGBTQ-friendly therapist or advocating for an LGBTQ group home that the youth would like to move into, your actions will change the youth's experience in foster care.

Initial Removal

An LGBTQ youth may enter care for a reason related to his LGBTQ status or something else. The youth may be out and open about his LGBTQ status with family and child welfare professionals, or he may not be ready to talk. If you are in a jurisdiction where you get to meet your client before the first hearing, jump on that opportunity. This is a good chance to start building a trusting relationship with your client. Discuss what information you plan to relay to the court and agency to ensure your client is safe and getting needed services at the start of her case.

Early Hearings

While not ideal, in many places, the shelter care, detention, or adjudicatory hearing is the first time you as the lawyer or judge will meet the youth. For lawyers, if this is true in your jurisdiction, talk to your client and try to establish a relationship.

During the hearing, focus on the questions in the box on p. 48, paying attention to safety issues such as where the youth is placed, how she is being treated, if staff are appropriate, and if she has concerns. Watch for red flags that could give you clues

about the youth's LGBTQ status. These could come from the petition, the caseworker's testimony, or comments from the parents or the youth. These include:

- The youth was kicked out of home when no prior problems were reported;
- The youth ran away or was living on the streets;
- The youth was using substances and the parent was not able to handle the situation (this may or may not indicate LGBTQ);
- The youth attempted suicide;
- The youth started skipping school even though he was doing well before (could show child feels unsafe at school).

If there are signs that the youth is LGBTQ, decide how to use what you've learned in your advocacy and decision making. For example, if the youth came out to you as her lawyer, but did not want you to disclose her LGBTQ status in court, you may need to figure out how to convey some concerns. As one youth put it, "If we tell our attorney, it's because we feel comfortable, not because we want the judge and everyone else to know...or we would announce it over a loudspeaker."⁴

For example, if your client told you that she is frightened in her new school because people are bullying her because she prefers to dress in boys' clothing, the judge and agency need to know this because it is a safety concern. You could discuss why the judge needs the information and agree on a way for you to communicate it. You could say she is being bullied and not say why, for example. That should be enough of a message for the worker and judge to get involved. You could also talk to the school counselor on your client's behalf.

As the judge, the child's lawyer may ask you to change a youth's placement. The lawyer may be able to disclose that the young person feels unsafe because of LGBTQ status, or the lawyer may just say the young person feels her safety is not guaranteed and she is unhappy. Even if the agency wants to keep the youth in the same placement, you are in a position to order the placement change and ask the agency to find an appropriate placement.

Remember the youth is more than just her LGBTQ status. For example, she may have special learning needs, a desire to be near family, or religious beliefs that should be accommodated. All youth in foster care should be treated as individuals. A youth who identifies as LGBTQ is no different than other youth in foster care, but there are identity issues to consider.

In Between Hearings — Throughout the Entire Case

Advocating outside court

As the child's lawyer, you play a key role in between hearings as the case progresses. You should participate in important meetings with your client and talk to your client regularly. This is essential for your LGBTQ clients who may be dealing with difficult relationships with their families, foster parents, old friends, schoolmates and others. Your role is to look out for what is best for them and to advocate for what they want.

ON POINT

Must the Agency Provide Medical Services to Transgender Youth?

Mariah L. v. Administration for Children's Services considers whether the child welfare agency must pay for sexual reassignment surgery (SRS) for a male-to-female transgender youth who is a foster child in the custody of the New York Administration for Children's Services (ACS). Despite all of her medical providers agreeing the surgery is medically necessary for Mariah, ACS refuses to pay for the surgery because they say it is not medically necessary and is not covered by Medicaid. Mariah filed a petition with the court asking for an order requiring ACS to provide the surgery. The Family Court granted her petition in January 2006 and ACS appealed.

On August 24, 2006, the appellate court held that SRS is the generally recognized and successful treatment for gender identity disorder, but remanded the case to ACS to give a specific reason for their denial of Mariah's request. On February 21, 2007, Judge Sheldon Rand of the New York Family Court ordered ACS to provide Mariah with SRS. Judge Rand dismissed ACS's unsubstantiated arguments that SRS is not medically necessary. ACS appealed this decision. Oral arguments took place in May 2007 and there is no opinion yet. *(Based on summary from the National Center for Lesbian Rights.)*

Impact on Practice

Advocates should be aware of this case and watch for the outcome. If the family court's order is upheld, it could impact what services you can advocate for on behalf of your transgender clients. Such services might include hormone treatment, sex realignment counseling, sex realignment surgery, and other supportive services. You may also be able to use this case to ask the court for specialized services for your LGBTQ clients that you may not have pursued in the past.

While your client is in foster care, she will have contact with other systems and providers. For LGBTQ youth, these interactions are often not smooth. Examples include:

- *School system.* Your client may be struggling in school, either academically or socially. She may be getting harassed or physically harmed. If she has changed schools many times, she may be having a hard time adjusting. You should make an appointment to see the school counselor with your client to arrange help by a tutor or someone who can protect her safety. If your client has an Individualized Education Plan (IEP), attend the IEP meeting and advocate for the educational services she needs.
- *Juvenile justice system.* If your client gets arrested and is having a delinquency hearing, you should appear or talk with the defense lawyer before the hearing. The police are often not sensitive to the issues facing LGBTQ youth. Many LGBTQ youth get arrested for sexual behavior that is labeled "predatory" when it is really behavior that would not rise to a criminal level for heterosexual youth. Other LGBTQ youth get arrested for prostitution because they are on the streets and need money. Ensure that whoever is representing your client in the delinquency proceeding is aware of your client's LGBTQ status and any relevant concerns.⁵
- *Health care system.* Your client may have health needs but have trouble accessing a doctor who is LGBTQ-friendly and treats youth in foster care.

JUDGE HEPNER'S PLACEMENT TIPS

In training programs for judges, attorneys and agency personnel conducted by Judge Paula Hepner from New York, she suggests that before placing an LGBT youth in a detention or foster care facility, judges might want to know:

- what the facility's policies are regarding treatment of LGBT youth
- what the facility's staff training on LGBT issues is
- what the facility's policies are regarding segregating LGBT youth
- whether the facility provides equal access to programs and services
- whether and under what circumstances a facility engages in differential treatment of LGBT youth

If your client is transgender, there may be medical issues to address, such as whether the youth should be on hormones (See box, p. 51). If your client has a substance abuse problem, help the client access appropriate treatment.

If your client needs counseling, be sure the provider is committed to supporting the youth, not trying to change the youth's sexual orientation or gender identity. Some mental health practitioners practice reparative therapy techniques designed to change the youth. The American Academy of Pediatrics and the American Psychiatric Association oppose this type of therapy and believe it can harm the client. Child welfare agencies, attorneys and judges should never allow LGBTQ youth to be seen by a therapist who uses reparative therapy.⁶

If your client is sexually active, provide information about HIV and HIV prevention. Note that lesbian and gay youth are no more at risk for HIV infection than their heterosexual counterparts who engage in unprotected sex, therefore it is important that all youth in foster care have access to information about HIV prevention.

As the lawyer of a client dealing with any of these systems, you should be on top of the issue and help the youth and caseworker find assistance. If advocating with the agency and providers does not work, you may need to ask the judge to hear the case early to resolve the problem and issue an order.

Advocating at case planning meetings

LGBTQ-friendly services. During case planning meetings, lawyers must work with the agency to get services for clients and their families by taking the following steps:

- Determine if the service provider is open to working on LGBTQ issues in a respectful and nonjudgmental way. Review websites of service providers to see if they list LGBTQ youth as a specialty. If not, work with the agency to decide if the provider can provide the necessary services or help find another provider.
- If your client is willing to engage in family counseling, advocate for services to work on the relationship with the client's parents, if appropriate.
- Monitor the agency's permanency planning efforts. Consider:

Is the agency working towards having your client return home? If so, how?

Has the agency or counselor directly addressed the youth's LGBTQ status and the parents' feelings before recommending your client return home?

Does the agency have a concurrent plan of adoption or guardianship by an LGBTQ-friendly individual or family? If so, what steps have been taken to ensure those outcomes?

Has the agency reached out to other family members who are open to the youth's LGBTQ status?

Has the agency found the youth a mentor or other positive adult role model who is LGBTQ-friendly?

Getting answers to these questions, and others in the box on p. 48, should be part of your advocacy throughout the entire case.

Permanency plan changes. As circumstances change, it may be necessary to revise the permanency plan. Sometimes when LGBTQ youth come out to the people in their lives, changes occur. For example, a young woman at one of the Opening Doors project's listening forums was in foster care for many years living with a preadoptive parent. When she came out to this parent, the parent would not adopt her.⁷ If you were her lawyer, you would want to help her find another permanent placement. More immediately, you would need to help her with any emotional issues related to coming out and be abandoned by her preadoptive mother. This might involve working with the agency, at case planning meetings and through conversations, to find counseling by an LGBTQ-friendly provider. If the agency is unwilling to work with you and your client, consider taking the case to court and asking for an order.

Permanency Hearings (and Reviews)

Every case must be in court at least every six months for a review hearing and every 12 months for a permanency hearing. These hearings should never be just rubber stamps of what the agency says. Judges and lawyers can ensure meaningful hearings happen for all young people, remembering that a meaningful hearing may look different for each family.

As the lawyer, by communicating with your client and her caseworker regularly, and attending the case planning meetings, you should know how your client is doing in care, her long-term goals, the agency's goals for her, and her progress in school. You should know whether she needs any services, and whether she is receiving them from LGBTQ-friendly providers. You will know whether she is involved in a Gay Straight Alliance (GSA) group at school. You may also have concerns that you think the judge needs to hear, either from your client or from you. Prepare your client to be in court and to share these concerns, or talk to your client about how she would like you to express the issues.

Reunification

When LGBTQ youth enter foster care, especially for reasons related to their LGBTQ status, professionals in the case often bypass reunification as the first choice permanency goal.⁸ This is unfair to the youth and the youth's family. Many youth in care return to their biological families. If a LGBTQ youth returns home without first working with the family about the issues leading to the placement, the chance of this working is poor. However, research shows that even families who are angry when a family member comes out, can work through that anger and learn to become supportive and nurturing. (See Chapter 2) When this happens, outcomes for LGBTQ youth can be positive.⁹

“. . . in developing a relationship with a client who may be LGBTQ, a lawyer is restricted from allowing LGBTQ prejudice to impact that relationship.”

Based on this research, the agency should provide the services your client and his family agree are needed to work towards a safe, and emotionally healthy reunification. This could involve family therapy, enrolling in Parents, Families and Friends of Lesbians and Gays (PFLAG) or other support groups, or education on issues common to LGBTQ youth and their families.

During the review, let the judge know whether this is happening. If not, ask the judge to order immediate services. The judge should order services unless there is strong evidence to the contrary. When working toward reunification, you might have to look beyond the youth's LGBTQ status to determine the reasons why the youth entered care and focus services on these issues. If the child was not being supervised at home, was using substances, had mental health concerns, or was physically harmed, the kinds of services offered may go beyond basic family therapy and PFLAG membership.

Remember that a youth's family may include people other than parents. The youth may have siblings who entered foster care, or remained at home, depending on the reasons for the placement. No matter where the siblings are, the youth should maintain contact with them, and you should help ensure that.¹⁰ Visitation increases the chance of reunification and maintains sibling relationships. Ask the court to order sibling visitation in the most natural setting possible. The siblings could see each other during visits with the parents, or separate visits with the youth could be arranged. Advocate for whichever is best for your client. Additionally, including siblings in counseling and other family-centered services may maintain the relationship and help the siblings understand the youth's LGBTQ status. If the sibling has heard bad things about the youth from the parents, having the chance to talk to your client, and ideally the sibling, in a safe place about that may help the youth and the sibling.

Termination of parental rights/adoption

If reunification is unlikely at the permanency hearing, the judge should require the agency to provide information about a viable permanency plan with clear steps for achieving this plan. If this does not happen, the judge should issue a no reasonable efforts order and ask that the case be brought back to court soon. This plan should include information about adults in the youth's life who can serve as lifetime resources for the youth upon leaving care. These people should welcome the youth into their homes for holidays and when the youth needs help. While they do not have to be LGBTQ themselves, they should be open to the youth's identity and ready to support him throughout his life. The youth should help identify these people, just like the youth can help find his own permanent placement resources.

If the agency says the goal is adoption, they should discuss specific recruitment efforts to find an adoptive resource for the youth. These efforts could include outreach to the gay community. If the youth will be adopted by current foster parents, find out if the youth is out to these parents. If the youth is out to you as the lawyer, but not to the preadoptive parents, help your client become comfortable coming out to the family. Talk with your client about her concerns about coming out

to these parents. Counsel her about the danger that the adoption would disrupt in the future when she does come out, or when the parents find out from another source. Suggest that your client and the preadoptive parents see a counselor together to discuss this issue in a comfortable, supportive setting.

The adoptive parents must understand and be comfortable with the youth's LGBTQ status. Many people say they are comfortable, but the adoptive parents must understand what this means. For example, would the parents be comfortable when the youth brings his same-sex partner home for a holiday and the two are holding hands in the living room? Will they treat the couple the same way they would if the couple were heterosexual and holding hands on the couch?

Also, the adoptive parents must be comfortable as advocates for the youth on a systemic (e.g., school) and a personal (e.g., with extended family) level. If the adopted grandparent is not comfortable with the youth's partner, will the adoptive parent support the youth? The adoptive parents must be comfortable with their relationship with the youth so when people from outside the family make unpleasant comments, they can respond in an affirming way. The main focus must be on the youth and supporting him so he can become a well-adjusted adult.¹¹

Remember that youth may be able to identify adults in their lives — mentors, teachers, coaches, friends' parents — who may be interested in adoption. Do not forget to include youth in planning their lives.

The TPR hearing is its own step in the case. If the goal at a permanency hearing is adoption, some decisions must be made before terminating the youth's parents' rights. These include whether the youth is ready to end the relationship with her biological family or whether the adoptive parents are open to those relationships continuing. Talk to the youth about these issues before and during the TPR hearing.

Guardianship/relative placement

If adoption is also not possible, discuss guardianship and then relative placement with the youth. The youth can often locate a suitable guardian. When this happens, the caseworker should ensure the proposed adult would provide a safe home.¹²

The caseworker should have reached out to relatives when the case started, but if not, should be ordered to do so if other permanency options are not likely. A relative, who is open to LGBTQ issues, may be interested in adopting, being a guardian, or providing a permanent home and connection for the youth. This relative may also be willing to help the youth improve relationships with his parents if that is a concern, and maintain a relationship with his siblings. A relative may know the family history and whether other family members are LGBTQ or who in the family would be open to supporting this youth.¹³

APPLA

The final permanency option is another planned permanent living arrangement (APPLA). APPLA is not:

- living in an emergency shelter for a year;
- moving from group home to group home; or

- staying in a residential treatment facility indefinitely unless the youth’s diagnosis requires that setting.

Some youth do well in group homes, especially group homes created for LGBTQ youth. This placement might work for some or all of the youth’s stay in foster care. However, since most youth need family connections, the caseworker should be trying to find LGBTQ youth family placements. APPLA should be planned and permanent. This means that if the youth will remain in care until he turns 18 or 21, services should be established to help with the transition, and a plan should be in place so the youth does not end up homeless, incarcerated, or without adult connections. If the agency suggests APPLA as the permanent plan, the judge should ask questions to ensure the transition is occurring and the youth has access to resources.

Appeals

If judges are not making appropriate orders or holding the agency accountable, the attorneys have a duty to appeal.¹⁴ While appealing a trial judge raises concerns about the judge’s treatment of you and your client in future cases, it is not acceptable for a judge to make derogatory or prejudicial comments and then disregard your requests on behalf of an LGBTQ client. If your case is heard before a hearing officer or master, remember you can file exceptions and have the case heard by a judge. The right to appeal is a legal tool when you are dissatisfied with the order or treatment by a judicial officer.

When deciding to appeal, first talk to your client. Explain that appeals involving minors only identify the youth with initials, but the youth may feel that personal information about his life would be broadcasted to even more people. This should be a decision that you make together.

Conclusion

To be an effective advocate or decision maker for a young person who identifies as LGBTQ you must get to know the youth. Earn his respect and trust by including him in his case. Find answers to the key questions that will help to ensure his safety, permanency, and well-being. Then, as the attorney advocate, get what your client needs. And, as the judge, make difficult decisions for the sake of the youth. This is not easy, but it is essential to improving outcomes for LGBTQ youth in foster care.

¹ Khoury, Andrea. “Seen and Heard: Involving Children in Dependency Court.” *ABA Child Law Practice* 25(10), December 2006, 150.

² Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.

³ Youth statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006. See also Chapter 2 for quotes from youth about court experience.

⁴ Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.

⁵ Fedders, Barbara. “Coming Out for Kids: Recognizing Respecting and Representing LGBTQ Youth.” *Nevada Law Journal* 6, Spring 2006, 774, 796–798 (for discussion of LGBTQ youth being arrested and detained longer than heterosexual youth for “sexual predatory behavior” and sexual crimes).

⁶ Wilber, Shannan, Caitlin Ryan and Jody Marksamer. *CWLA Best Practice Guidelines*. Washington, DC: Child Welfare League of America, 2006 at 55–56, 64 (discussion of reparative therapy and

the opposition to its use).

⁷ Youth statement, Opening Doors Project listening forum, Nashville, TN, November 14, 2006.

⁸ This is a common theme expressed during listening forums and trainings.

⁹ Wilber, Ryan & Marksamer, 2006, 12 (discussion of the Family Acceptance Project, “family and caregiver acceptance is an important protective factor and family and caregiver rejection has serious negative health outcomes for LGBTQ youth.”)

¹⁰ See Viner, Elana. “Understanding Siblings’ Rights in the Child Welfare System.” *Child Law Practice*, November 2006, 129, 134–138.

¹¹ Interview with Gary Mallon, PhD, July 26, 2007.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Judge statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006.

Courtroom Strategies for Supporting LGBTQ Youth

AN INTERVIEW WITH JUDGE JANET ALBERT

Judge Janet E. Albert is a magistrate judge in the District of Columbia Superior Court. She has taken creative steps to make sure LGBTQ issues are addressed sensitively in her courtroom and youth feel safe and comfortable. In this interview, Judge Albert shares ideas on ways courts can support and meet the needs of LGBTQ youth.

How many child welfare cases do you carry? How many involve LGBTQ youth?

My caseload includes about 250 youth. I'm unsure how many have identified as LGBTQ, but there is at least a handful. I find that most youth are not open in the courtroom about their LGBTQ status.

How do you make LGBTQ youth feel comfortable in court?

I try not to label these youth because I don't believe labels are important and I never want to out a youth in the courtroom. Usually I will ask a youth if there is anything they would like to discuss privately.

When working with LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional health, education, medical, developing relationship with family)?

LGBTQ youth have many more risk factors than other youth in foster care. It's critical to find a good placement that will provide proper mental health care and substance abuse counseling. Gay youth also experience extra harassment at school. So keeping them in school is important, but that requires that social workers, foster parents, and CASAs improve their communication with the school system.

How have your colleagues reacted to your efforts and have any of them altered their behavior?

I believe there has been a significant change in the last several years. Now, adults involved in family court affairs are primarily doing the right thing or trying to. That said, there are still pockets of homophobia in the court system.

Do colleagues or advocates seek you out in cases involving LGBTQ youth? When you interact with colleagues, advocates, or a youth you believe to be LGBTQ, what kind of information do you share?

Although I have no particular training in this area, I have done some research about local organizations so I can inform others about available services. I have printed information to hand to parties about these issues because we lack these resources in readily available forms and they're needed. I'm also now chairing an LGBTQ working group that works with child welfare representatives in the community to share best practices. Currently the group is attempting to link community organizations with group homes for juveniles. The group is encouraging mental health care personnel to make themselves available for these meetings so we can troubleshoot with them as well.

Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

I'm aware of general organizations that support LGBTQ youth such as PFLAG, SMILE, and there are certain CASAs in the DC area who are gay-friendly. Judges and CASAs are now largely aware of the *homophobic placements*, but more information is needed on where the *gay-friendly placements* are. I find information from articles, journals, and mental health studies, and then I print my own materials.

Describe a situation or two in which you've worked with a LGBTQ youth. What are some highlights and frustrations?

The frustration is that the foster care system needs to actively recruit foster families that are gay friendly and train all new foster parents (or re-train those currently serving as foster parents) about these issues. Training should be mandatory. The organization as a whole is extremely religious but needs to remain open to these youth. Those in the system who statistically tend to be the most homophobic (the foster parents or even some social workers) are on the front lines.

A highlight is that I'm now aware that the Child & Family Services Agency has a LGBTQ working group that is developing training for social workers. I'm optimistic about this because I believe that working with social workers and foster parents (in addition to judges, GALs, or CASAs) is critical to the systemwide buy-in that needs to occur.

What advice do you have for other adults working with LGBTQ youth?

Be open. Do not be afraid to talk about these issues with the youth if they raise them. No one is comfortable discussing sexuality in general, or pregnancy, or STDs. If these issues are not addressed, then risk factors associated with sexual activity will not be addressed. In general, all advocates need to be open to discussing sexuality because we need a complete picture of the youth. Although this may be more difficult or uncomfortable when dealing with a gay youth, it is critical because of the many risk factors (drug and alcohol abuse, mental health issues, safety, and truancy) that could be overlooked if that initial piece of information is not known.

Interview conducted by Melissa Fay Colangelo

Listening to and Learning from LGBTQ Youth

AN INTERVIEW WITH DOMINICK MAGEE

Dominick is 18 years old and has spent 10 years in foster care. He is currently in a community college program, but will transfer soon to a local four-year college and focus his studies on paralegal work.

What advice do you have for advocates in the legal system who are working with LGBTQ youth?

Don't ask, "Why are you this way?" Don't bring your personal beliefs and values about how it's wrong or right into your work. The placement of this child is not about you. It's about them and their life.

Do you feel being gay affected your experience in foster care?

Foster care has its ups and downs. I do think sexual orientation played a part in my experience. I had no male role model as a young child, so I always acted like my mom. My foster care mother accepts that kind of attitude for the most part. I'm close with my foster mom, but I still can't have company over here unless I ask. I told her about my sexual preference about two or three years ago. I've been here four years now, and we have our disagreements. Some of the stuff does seem to be about who comes over. Right now I'm living on my own, but renting a bottom floor from my foster mom. I can't bring anyone over here; I am still severely restricted in what I can do. I feel as if: *"I'm renting my place from you, but you think because of my sexual orientation I can't bring anyone over here."* My foster brother also said he's tired of all these gay people coming through this house. So now I don't want to bring people over anymore. I think they assume if I have any friends over that those people are gay and that I will engage in some sort of homosexual activity with anyone who walks through the door. Yes, my sexual orientation plays a big role in this house even though I'm most comfortable here.

If an attorney or judge strongly suspected a youth was LGBTQ but the youth did not feel comfortable discussing the topic, what would you want your attorney/judge to do?

It was hard for me to talk about most of my life. I knew that people knew or had an idea, but no one wanted to talk to me about it. I need an attorney to be open-minded, understanding. If possible, agencies should try to recruit openly gay or gay-friendly attorneys. If an attorney was gay-friendly, openly gay, or was just willing to have a non-judgmental one-on-one conversation with me, saying something like, "I've experienced

that, I'm that way," or "I understand," or "I'm sorry that's so hard," or just asking what I wanted to do, that would be really helpful. Most of the time though, attorneys see any kind of sexual orientation issue as an increase in drama; more issues to deal with. I just wanted to make sure I would get into a home.

I would also recommend that foster parents, social workers and attorneys go through a careful screening process and thorough background checks, because research needs to be done to see if they are violent or have a history of abuse, and of course, if they're homophobic. We're a vulnerable group and you add in people who could potentially abuse youth in conjunction with their sexual orientation, it's traumatic. When I told social workers that my former foster parents and staff at a residential treatment center abused me, no one believed me. Attorneys and judges need to respect youth in disputes with foster parents and respect youth when they feel threatened. Basically, I have a deep belief that juveniles who are prosecuted for status offenses and adults who violate basic decency to youth, particularly on the basis of their sexual orientation, should all be handled similarly and equally.

Interview conducted by Melissa Fay Colangelo

APPENDIX A

Resources

These resources provide further information for advocates about LGBTQ youth. You may find them useful to give to others involved in the process (caseworkers, residential staff, parents, teachers, psychologists, colleagues) or youth themselves. This list is not exhaustive. For more state-specific services, please contact the ABA Center on Children and the Law, Opening Doors project, directly or visit the National CASA website at www.NationalCasa.org

LEGAL ADVOCACY ORGANIZATIONS

ABA Center on Children and the Law, Opening Doors Project

740 15th St., NW
Washington, DC 20005
202/662-1736

www.abanet.org/child/lgbtq.shtml

This project improves legal advocacy and judicial decisions on behalf of LGBTQ youth in dependency cases. In addition to its manual for attorneys and judges, the Opening Doors project provides legal training to jurisdictions on request. A web cast discussing legal roles in LGBTQ cases, and attitudes and beliefs about LGBTQ youth can be accessed on the project's website.

Court Appointed Special Advocates (CASA)

100 West Harrison St., North Tower, Suite 500
Seattle, WA 98119
800/628-3222

www.nationalcasa.org

The National CASA Association, with its state and local members, supports and promotes court-appointed volunteer advocacy for abused and neglected children in the court system so they can thrive in safe, permanent homes.

Publication:

Annotated Bibliography: Resources for Working with Lesbian, Gay, Bisexual, and Transgender and Questioning Youth and Families in the Foster Care System

http://www.casenet.org/download/diversity/0612_lgbtq_0032.pdf

Equity Project

<http://www.equityproject.org/>

This national collaboration between Legal Services for Children (San Francisco), the National Center for Lesbian Rights, and the National Juvenile Defender Center ensures LGBT youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues that impact LGBT youth during the delinquency process.

Lambda Legal Defense

120 Wall Street, Suite 1500
New York, NY 10005
212/809-8585

www.lambdalegal.org/

This national organization pursues high-impact litigation, public education, and advocacy on

behalf of equality and civil rights for LGBT people. It supports people who need legal help through its phone help desks and educational publications. It has four locations throughout the country, in addition to its New York City headquarters.

Publications:

Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care

Current state foster care programs neglect LGBT youth and, in many cases, promote a homophobic atmosphere that undermines their welfare. This report from Lambda Legal examines foster care programs in 14 states, highlighting the shortfalls of each in addressing LGBT youth and providing recommendations to address them.

<http://www.lambdalegal.org/our-work/publications/page.jsp?itemID=32009148>

Legal Services for Children/National Center for Lesbian Rights Model Standards Project

Legal Services for Children
254 Market St., 3rd Floor
San Francisco, CA 94102
415/863-3762, ext. 310
www.lsc-sf.org

National Center for Lesbian Rights National Office

870 Market St., Suite 370
San Francisco, CA 94102
415/392-6257
www.nclrights.org

This partnership has produced the *Model Standards Project LGBTQ Practice Guide*, published by the Child Welfare League of America in 2006 and available through www.lsc-sf.org, info@nclrights.org, and www.cwla.org

National Center for Lesbian Rights

870 Market St., Suite 370
San Francisco CA 94102
415/392-6257
www.nclrights.org

NCLR is a national legal organization committed to advancing the civil and human rights of LGBT people and their families through litigation, public policy advocacy, and public education. In addition to its San Francisco headquarters, it has offices in Florida and Washington, DC.

Publications:

Breaking the Silence: LGBTQ Foster Youth Tell Their Stories

This 45-minute DVD/CD includes 10 digital short stories by LGBTQ foster youth, training tools, and resources. The stories describe what it's like to be an LGBTQ foster youth and what advocates and providers can do to improve how child welfare and juvenile justice systems serve these youth. Available for \$25. To order, call or email Jody Marksamer, NCLR Staff Attorney, 415/392-6257, ext. 308; jmarksamer@nclrights.org

LGBTQ Youth in Foster Care System Fact Sheet

www.nclrights.org/site/DocServer/LGBTQ_Youth_In_Foster_Care_System.pdf?docID=1341

LGBTQ Youth in the Juvenile Justice System Fact Sheet

www.nclrights.org/site/DocServer/LGBTQ_Youth_Juvenile_Justice_Factsheet.pdf?docID=1343

Sylvia Rivera Law Project

322 8th Ave., 3rd Fl.

New York, NY 10001

212/337-8550

www.srlp.org

SRLP works to guarantee all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.

NONLEGAL ADVOCACY ORGANIZATIONS

Advocates for Youth

2000 M Street NW, Suite 750

Washington, DC 20036 USA

202/419-3420

www.advocatesforyouth.org

Advocates for Youth helps young people make informed and responsible decisions about their reproductive and sexual health.

Publications:

“Respecting the Rights of LGBTQ Youth, A Responsibility of Youth-Serving Professionals,”
Transitions 14, June 2002.

A special issue of Advocates for Youth’s journal, *Transitions*, dedicated to LGBTQ issues.

www.advocatesforyouth.org/publications/transitions/transitions1404.pdf

Creating Safe Space for GLBTQ Youth: A Toolkit

This manual includes sections on supporting youth of color and transgender youth.

www.advocatesforyouth.org/publications/safespace/safespace.pdf

GLBTQ Youth

Fact sheet providing information on challenges, risk factors, and trends among GLBTQ youth.

www.advocatesforyouth.org/publications/factsheet/fsglbt.pdf

Pamphlets for Youth:

I Think I Might Be Bisexual, Now What Do I Do?

www.advocatesforyouth.org/youth/health/pamphlets/bisexual.pdf

I Think I Might Be Gay, Now What Do I Do?

www.advocatesforyouth.org/youth/health/pamphlets/gay.pdf

I Think I Might Be Lesbian, Now What Do I Do?

www.advocatesforyouth.org/youth/health/pamphlets/lesbian.pdf

I Think I Might Be Transgender, Now What Do I Do?

www.advocatesforyouth.org/youth/health/pamphlets/transgender.pdf

Child Welfare League of America (CWLA)

440 First St. NW, 3rd Floor

Washington, DC 20001

202/638-2952

www.cwla.org/programs/culture/glbtc.htm

CWLA and partner Lambda Legal Defense and Education Fund are working together to build the child welfare system's capacity to deal fairly and constructively with young people, family members, and employees who are LGBTQ, with particular emphasis on those making the transition to adulthood.

Publications

Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of LGBTQ Youth in Care. Available free online.

“Addressing the Needs of Gay, Lesbian, Bisexual, Transgender and Questioning (GLBTQ) Children, Youth, and Families Within Child Welfare Systems,” Special Edition, *Child Welfare Journal*, CWLA, 2006. Available for purchase online.

www.cwla.org or www.cwla.org/programs/culture/glbtc.htm

Families United Against Hate

P.O. Box 6396

Olympia, WA 98507

360/888-5291

Contact: Lisa Weiner-Mahfuz of PFLAG, 202/467-8180, ext. 217

www.fuah.org

A national network by and for families and survivors of hate-motivated violence which operates in conjunction with Parents, Families, and Friends of Lesbians and Gays (PFLAG) and other organizations and individuals. It focuses on providing long-term emotional support and technical assistance to families.

Gay, Lesbian, Bisexual, and Transgender (GLBT) Health Access Project

Justice Resource Institute

130 Boylston St.

Boston, MA 02116

617/457-8150

www.jri.org/jrihealth.htm#glbt

This project is a collaborative, community-based program funded by the Massachusetts Department of Public Health, offering provider trainings, technical assistance, and support aimed at eliminating barriers to health care access for LGBT individuals and their families.

Human Rights Campaign (HRC)

1640 Rhode Island Avenue, NW

Washington, DC 20036-3278

202/628-4160

www.hrc.org

As the largest civil rights organization working to achieve equality for LGBT Americans, the Human Rights Campaign represents a grassroots force of more than 700,000 members and supporters nationwide. HRC envisions an America where LGBT people are ensured equality and embraced as full members of the American family at home, work and in every community.

National Youth Advocacy Coalition (NYAC)

638 R. St., N.W., Suite 300

Washington, DC 20009

202/319-7596, ext. 12

www.nyacyouth.org

A social justice organization that advocates for LGBTQ youth to end discrimination and ensure their physical and emotional well-being. NYAC publishes a news magazine about sexual minority youth concerns.

DIRECT SERVICES FOR LGBTQ YOUTH

California AIDS Clearinghouse (CAC)

443 N. Martel Ave

Los Angeles, CA 90046

323/845-4180

www.hivinfo.org/

The Clearinghouse partners with state-funded education and prevention programs and HIV testing programs to create support services and educational materials that are culturally sensitive, language appropriate, and meet educational needs of these programs.

Gay, Lesbian, Bisexual, and Transgender Youth Support Project

942 W. Chestnut St.

Brockton, MA 02301

800/530-2770

www.hcsm.org/glys/glys.htm

Provides training and technical assistance for providers and educators who support LGBT youth.

Gay and Lesbian Adolescent Social Services, Inc. (GLASS)

650 N. Robertson Blvd.

West Hollywood, CA 90069

310/358-8727

www.glassla.org

Private, nonprofit social services agency aimed at gay and lesbian youth who are in foster care, on probation, or are homeless.

Hetrick-Martin Institute (HMI)

www.hmi.org/

The Hetrick-Martin Institute, Home of The Harvey Milk High School, believes all young people, regardless of sexual orientation or identity, deserve a safe and supportive environment in which to achieve their full potential. HMI creates this environment for LGBTQ youth between the ages of 12 and 21 and their families. Through a comprehensive package of direct services and referrals, HMI seeks to foster healthy youth development. HMI's staff promotes excellence in the delivery of youth services and uses its expertise to create innovative programs.

Locations:

Manhattan: Ali Forney Center

Wednesday, 10:30-11:30 a.m.

527 West 22nd St., 1st floor

Take the E train to West 23rd St.

Youth must be a member of the Ali Forney Center to attend.
Call 212/206-0574 to join.

Manhattan: Streetwork Project

Thursdays, 3:00-5:00 p.m.
165 W. 131st street, 3rd floor New York, NY 10027
Take the # 2, 3 trains to 135th St.
Youth must be a member of Streetwork to attend.
Call 212/695-2220 to join.

Manhattan: Hetrick Martin Institute

1st and 3rd Wednesday of the month, 5-6 p.m.
2 Astor Pl.
Take R or W to 8th St. or 6 to Astor Pl.
Youth must be a member of Hetrick Martin Institute to attend.
Call 212/674-2400 to join.

Jacksonville Area Sexual Minority Youth Network (JASMYN)

P.O. Box 380103
Jacksonville, FL 32205
904/389-3857
Gay Youth Information Line: 904/389-0089
JASMYN is a safe place where sexual minority youth are accepted, no questions asked. It offers a place for these youth to talk about LGBTQ issues and thoughts

L.A. Gay and Lesbian Center

The L.A. Gay & Lesbian Center provides services for the LGBT community, welcoming nearly a quarter-million client visits from ethnically diverse youth and adults each year. Through its Jeffrey Goodman Special Care Clinic and onsite pharmacy, the Center offers free and low-cost health, mental health, HIV/AIDS medical care and HIV/STD testing and prevention. The Center also offers legal, social, cultural, and educational services, with unique programs for families and youth, including a 24-bed transitional living program for homeless youth.
www.laglc.org

Locations:

McDonald/Wright Building

1625 N. Schrader Blvd.
Los Angeles, CA 90028-6213
323/993-7400

The Village at Ed Gould Plaza

1125 N. McCadden Pl.
Los Angeles, CA 90038
323/860-7302

Jeff Griffith Youth Center

7051 Santa Monica Blvd.
Los Angeles, CA 90038
323/993-7501

The Spot

745 N. San Vicente Blvd.
West Hollywood, CA 90069
323/993-7440

One-in-Teen Youth Services Nashville

109 29th Avenue North
Nashville, TN 37203
615/321.7288
877/ONE-IN-TN (877/663-4686)

www.one-in-teen.org

Since 1989, One-In-Teen Youth Services (OIT) has provided a safe space for LGBTQ youth, between the ages of 14 and 21, to be themselves. Basic services are free and events are alcohol and drug-free.

Sexual Minority Youth Assistance League (SMYAL)

410 7th St. SE
Washington DC 20003-2707
202/546-5940

www.smyal.org

SMYAL assists LGBTQ youth in Washington, DC. It promotes self-confident, healthy, productive lives for LGBTQ youth as they journey from adolescence into adulthood. It concentrates five areas: (1) life skills & leadership development, (2) counseling & support, (3) health & wellness education, (4) safe social activities, and (5) community outreach and education.

Urban Justice Center: Peter Cicchino Youth Project

123 William St, 16th Fl.
New York, NY 10038
646/602-5600

www.urbanjustice.org/ujc/projects/peter.html

This project helps LGBTQ youth stabilize their lives by helping them obtain government benefits, access permanent housing, and continue their educations. Legal clinics are conducted weekly at drop-in centers for runaways and LGBT youth. In addition, the project engages in systemic advocacy and impact litigation around issues such as mistreatment of LGBT youth in New York City's foster care and juvenile detention systems. The project also helps LGBT youth who are "aging" out of foster care.

CAREGIVER SUPPORT PROGRAMS

Family Builders

3953 24th St., Suite C-2
San Francisco, CA 94114
www.familybuilders.org

Family Builders provides a full range of services to families who wish to adopt a waiting child. In addition to an orientation and preadoption training, it offers ongoing support services, postadoption training, groups, community building events, and an extensive library for families.

Family Equality Council

P.O. Box 206
Boston, MA 02133
3953 24th Street, Suite C-2
San Francisco, CA 94114
510/272-0204
www.familyequality.org

A national advocacy organization that works to secure family equality for LGBTQ parents, guardians, and allies. Promotes legislation, policies, and initiatives that support LGBTQ-headed families.

Parents, Families, and Friends of Lesbians and Gays (PFLAG)

1726 M St., NW, Suite 400
Washington, DC 20036
202/467-8180
www.pflag.org

Provides support, education, and advocacy for parents, siblings, and friends of LGBTQ youth. Local chapters meet monthly. If no chapter is listed under “Local Organization” for your town, contact National PFLAG.

Publications:

Be Yourself: Questions and Answers for Gay, Lesbian, Bisexual, and Transgender Youth
www.pflag.org/fileadmin/user_upload/Be_Yourself_TT.pdf

SCHOOL-BASED SUPPORT PROGRAMS

Gay, Lesbian, and Straight Education Network (GLSEN)

1012 14th St. N.W., Suite 1105
Washington, DC 20007
202/347-7780
www.glsen.org

This national education organization focuses on ensuring safe schools for all students.

Gay Straight Alliance Network

1550 Bryant St., Suite 800
San Francisco, CA 94103
415/552-4229
www.gsanetwork.org

This youth-led organization empowers youth activists fighting homophobia in schools. It advises on starting GSAs in schools and how to keep them going.

Note: The National Center for Lesbian Rights offers a fact sheet that explains the legal rights of students to form GSAs and to have the same privileges as other clubs.

www.nclrights.org/publications/pubs/gsaqa.pdf

Safe Schools Coalition

Public Health—Seattle & King County, MS: NTH-PH-0100
10501 Meridian Ave., N.
Seattle, WA 98133
206/632-0662, ext. 49
Intervention Help: (WA State only): 888/307-9275

www.safeschoolscoalition.org

A public-private partnership that works to reduce bias-based bullying and violence in schools and to help schools better meet the needs of sexual minority youth and children with sexual minority parents.

Note: Three useful resources addressing bullying in school are:

Bullying, It's Not Okay

This brochure for parents contains sections on “When Your Child Is the Victim,” “When Your Child Is the Bully,” and “When Your Child Is a Bystander.” It was jointly produced by the Washington State Medical Association, the Washington State Chapter of the American Academy of Pediatrics, and the Washington State Attorney General’s Office.

www.atg.wa.gov/bullying/BullyingBrochure8_05.pdf

Responding to Hate at School

A guide for teachers, counselors, and administrators from Teaching Tolerance.

www.tolerance.org/pdf/rthas.pdf

Safe Passage: Voices from the Middle School

A web page for parents and educators on bullying from the Family Education Network.

<http://familyeducation.com/topic/front/0,1156,24-18106,00.html>

WEB SITES FOR LGBTQ YOUTH

Youth Guardian Services

www.youth-guard.org

A youth-run organization that provides support services on the Internet to LGBTQ and straight youth.

Youth Resource Web Site

www.youthresource.com

This web site was created by and for LGBTQ youth to safely explore sexuality and issues of concern to the LGBTQ community. Created by Advocates for Youth, it offers “web rings,” which are collections of home pages for all LGBTQ youth, and dedicated pages for LGBTQ youth from various ethnic and cultural backgrounds.

National Coalition for Gay, Lesbian, Bisexual, and Transgender Youth (OutProud)

www.outproud.org

A web site community for LGBTQ youth and those who care about them. The site offers publications, personal stories, youth forums, Q&As, recommendations, and other resources.

APPENDIX B

Legal System's Approach to LGBTQ Youth in Foster Care: Select Findings from Attorney/Judge Surveys

BY SHARON G. ELSTEIN

As part of the Opening Doors project, an exploratory survey was conducted to learn whether child welfare attorneys and judges know about court-involved lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth on their caseloads. It also sought to understand how the legal system responds to the special needs of LGBTQ youth.

This survey was the first of its kind and the sample is small. Its findings highlight the need for awareness education, sensitivity training, resource allocation, and support for youth who identify as LGBTQ and their families. A summary of the survey findings appears below. To view the full research report, visit the Opening Doors web site: www.abanet.org/child/lgbtq.shtml

SUMMARY OF ATTORNEY/JUDGE SURVEY FINDINGS

Attorney/Judge Background

Attorneys

- 71 of 556 attorneys completed and returned the survey.
- Attorney respondents primarily had a dependency caseload.
- Most attorneys had at least seven years of experience in the field; and one-third had more than 15 years' experience.

Judges

- 18 of 300 judges completed and returned the survey.
- Judges in the sample preside over dependency cases with various levels of experience (i.e., length of time presiding over cases and length of assignment).
- Judges rarely know if a youth in their courtroom identified as LGBTQ.

Identification/Awareness of LGBTQ Status

Attorneys

- More than half of the attorneys often or sometimes know if their client is LGBTQ; two-fifths rarely or never know; and only 3% said they always know.
- Most attorneys believe that LGBTQ clients represent 10% or less of their dependency and delinquency caseload.
- The majority of attorneys reported their awareness of their clients' sexual identity was based either on the youth's self-report or on reports from others.

Judges

- Judges rely on others, or on self-report by the youth, to determine if a youth is LGBTQ.
- Judges perceive LGBTQ status as somewhat important in respect to child safety and very important in regards to permanency.
- Judges do not routinely ask social workers or GALs to ask youth about their sexual orientation.

Identification/Awareness of LGBTQ Status *(continued)*

Attorneys

- A majority of attorneys do not ask their young clients about their sexual orientation.
- More than half the respondents believe that social workers ask youth about their sexual orientation; close to one-half do not know whether they ask.
- If the attorney is aware of a youth's LGBTQ status, more than half will share that information with other professionals, but 40% will not.
- More than half of the attorneys believe a client's LGBTQ status is somewhat or very important when considering a child's safety and plans for permanency.
- The majority of attorneys believe LGBTQ youth in foster care have unique needs (safety, sensitivity, and acceptance).

Judges

- Judges do not address a youth's LGBTQ status with others involved in the case, although some share the information if they feel it is important for decision making, and is based upon the wishes of the minor.
- Judges believe that LGBTQ youth in foster care have unique needs compared to heterosexual youth on their caseloads.

Education/Training

Attorneys

- Close to one-half of the attorneys reported LGBTQ educational seminars were available within their jurisdiction, but one-third did not know if such trainings were offered.
- Only a handful of attorneys (16) had taken advantage of training opportunities, and 5 of those reportedly changed their practice based on what they learned.

Judges

- Educational seminars/trainings related to LGBTQ were available in only a few jurisdictions.

LGBTQ-Friendly Efforts

Attorneys

- One-third of responding attorneys report that child welfare professionals demonstrate they are "LGBTQ friendly" (e.g., by displaying rainbow flag or LGBTQ insignia or resource materials); while about one-half do not know of any such efforts.
- While a minority of responding attorneys currently display posters, flags, etc., a majority would consider doing so.

Judges

- A small proportion of judges reported displaying a sign or poster that was supportive of nondiscrimination generally, not specific to LGBTQ. Judges reported they would be willing to display LGBTQ resource material either in or outside of their courtroom.

Delinquency System Involvement

Attorneys

- Forty-five percent of respondents consider fewer than 5% of their LGBTQ clients as both delinquency and dependency (“cross-over”) clients.
- Most attorneys do not know whether their LGBTQ clients are more likely to be adjudicated delinquent for risky behaviors (e.g., prostitution/survival sex, assault, substance abuse) than non-LGBTQ clients.
- When asked specifically about LGBTQ clients with substance abuse problems, more than one-third could not estimate the number; 19% thought between one-quarter and one-half had problems.

Judges

- Most judges were unsure of how many LGBTQ youth were involved in the delinquency system, or how many were involved in both the delinquency and dependency systems.
- Among the few judges who were aware of LGBTQ youth involved in both the delinquency and dependency systems, the sense was that they represented a small proportion of youth.
- Most judges did not know if LGBTQ youth were more likely than heterosexual youth to be adjudicated for risky behaviors, or to have substance abuse problems.

Placement/Safety

Attorneys

- Most attorneys raise specific issues when addressing placement for LGBTQ youth, including foster homes’ safety, sensitivity, and acceptance.
- Few attorneys reported the availability of resources related to LGBTQ-friendly placements.
- 38% said LGBTQ-friendly counseling services were available either through their own offices or their child welfare agency.
- A minority of attorneys reported their local child welfare agency had a resource list of appropriate placements or counseling services; most were unsure if such lists exist.
- Two-thirds of attorneys reported asking social workers to provide information on placement families’ views if the youth identifies as LGBTQ; and about one-half ask at subsequent hearings.
- More than one-half ask social workers to screen placements if the child has identified as LGBTQ.
- Three-quarters of the attorneys will recommend the agency find an accepting placement if the first placement does not accept a youth’s LGBTQ orientation.

Judges

- Judges perceive no specific placement issues for LGBTQ youth.
- Few of the judges reported the availability of resources related to LGBTQ-friendly placements, and counseling services either through their own offices or their child welfare agency.

Mental/Physical Health

Attorneys

- Half of the attorneys' jurisdictions require a medical examination when entering their child welfare system; very few require reproductive health examinations or HIV testing.
- Two-thirds of attorneys say they make sure youth are receiving therapy or services by LGBTQ-sensitive providers.
- Over half the attorneys report their jurisdiction has confidentiality protections for HIV status, but 37% were not sure.
- More than half the attorney respondents stated their judges order all parties not to disclose the youth's HIV status.

Judges

- Medical exams were the most commonly requested exam requested by judges for LGBTQ youth, with over half of respondents requesting one.
- Very few judges request therapy/services by LGBTQ sensitive providers based on the results of medical, psychological, or reproductive exams.
- Most judges' jurisdictions have confidentiality protections in place for HIV status.
- Most judges enforce HIV confidentiality protections by ordering attorneys and parties not to disclose HIV status. Some seal records, close the courtroom, or follow statutes and laws.

Permanency

Attorneys

- All 32 attorneys who responded to the question on whether LGBTQ youth are harder to place in comparison to heterosexual teens said LGBTQ youth are harder to place, primarily due to the lack of tolerance/acceptance at the placements.
- Among 25 responding attorneys, all reported LGBTQ teens experience more placements; and among 33 responding attorneys, all believe LGBTQ youth have more turmoil or trouble with placements, again due to a lack of tolerance by adults and other youth.
- Among 19 responding attorneys, all believe that LGBTQ teens run away from placements more frequently than other teens, due to lack of acceptance, and to maltreatment.
- 69% of attorneys discuss with parents their attitudes towards their child's sexual identity; 61% do the same with relatives with whom the youth will be placed; and 64% discuss this with adoptive parents.
- Most attorneys said they refer families to LGBTQ-friendly counseling if they learn that the youth's status is an issue with parents or relatives.

Judges

- Some judges believe LGBTQ youth are harder to place compared to heterosexual teens, due to lack of tolerance/acceptance associated with placement options. A few judges also reported LGBTQ teens experience more placements, more turmoil or trouble with placements, and more frequently ran away from placements.
- When LGBTQ youth are placed with relatives, judges do not discuss attitudes towards sexual identity with the relatives. Some judges felt this discussion was the responsibility of mental health professionals and social workers.
- Judges indicated that they were not knowledgeable about the ability of LGBTQ couples to be foster parents. However they report LGBTQ couples are allowed to adopt within their jurisdiction.

Permanency *(continued)*

Attorneys

- The majority of respondents are not aware of any LGBTQ group homes in their jurisdictions.
- Three-fourths of respondents said that LGBTQ couples may be foster parents in their jurisdictions; and 69% said they may be adoptive parents.

This summary is based on research compiled by Sarah Caverly.

APPENDIX C

Case Law on LGBTQ Youth Rights and Protections

Case law recognizing the rights of LGBTQ youth is another critical building block in the pursuit of achieving fair representation and treatment in the court system for all minors. The following cases are representative of some of the claims and issues being taken up in jurisdictions around the country. School harassment and discrimination, inequities in access to health-care and medical services, and general institutional persecution are prevalent. However, parents and legal organizations are helping LGBTQ teens fight for equal treatment and complete acknowledgment of their civil rights. These cases also serve to demonstrate the types of issues that LGBTQ youth in foster care may face and the extensive legal measures they must take to preserve and secure basic privacy and liberty interests.

***Brian L. v. Administration for Children's Services*, 32 A.D.3d 325 (N.Y.A.D. 1 Dept. 2006).**

See Chapter 4 for a summary of this case addressing a child welfare agency's responsibility to pay for sex reassignment surgery for a transgender youth in its custody.

***R.G. v. Koller*, 2006 WL 897578 (D. Hawai'i).**

Three youth (a 17-year-old male-to-female transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay) accused the Hawai'i Youth Correctional Facility (HYCF) of willful blindness, abuse, and harassment. Doctors and psychologists repeatedly expressed concern over the welfare of LGBT youth in the facility because of the atmosphere of harassment. The ACLU of Hawaii then issued a report in 2003 exposing this pervasive humiliation and abuse. In 2005, the U.S. Department of Justice also reported on the policies and practices at the HYCF and found systematic violations of youths' civil rights. The United States District Court for the District of Hawaii issued a preliminary injunction requiring HYCF to stop harassing LGBT youth. HYCF agreed to several new training procedures, antiharassment policy, and other reforms.

***Nguon v. Wolf*, 517 F. Supp. 2d 1177 (C.D. Cal. 2007).**

Charlene Nguon, a 17-year-old student at Santiago High School in California with no previous disciplinary record, was repeatedly chastised and suspended for one week for engaging in what the school deemed inappropriate public displays of affection (IPDA) with another female student. However, heterosexual students were not disciplined for hugging, holding hands, or kissing. When explaining the suspension to Charlene's parents, the school disclosed her sexual orientation without obtaining Charlene's permission first, resulting in her transfer to another school mid-semester.

The ACLU's national Lesbian Gay Bisexual Transgender Project, the ACLU of Southern California, and the law firm of Latham & Watkins, LLP, brought a lawsuit on behalf of Nguon and the Gay-Straight Alliance Network in September 2005 to clear Charlene's disciplinary record and establish a policy of equal treatment for LGBT students in the district.

The court found that disciplining Charlene for IPDA with her girlfriend did not violate her equal protection or first amendment rights, and the principal did not violate her privacy rights by disclosing her sexual orientation to her parent while explaining the student's suspension without obtaining Charlene's permission.

Davis v. Fleming High School (Florida)*

Kelli Davis, a senior at Fleming High School, was denied the right to appear in her senior yearbook because she wore a tuxedo. After negotiating with NCLR, the school board agreed to change the portrait policy; add 'sexual orientation' to its nondiscrimination policy; distribute a copy of the new policy to all secondary school students; and provide annual training on sexual orientation to faculty, staff, and students.

Pinellas County Juvenile Welfare Board (Florida)*

A member of the Pinellas County Juvenile Welfare Board circulated a memo stating that Gay Lesbian and Straight Education Network (GLSEN) and Parents, Families and Friends of Lesbians and Gays (PFLAG) "endorse unhealthy sexual practices among youth, including sex between underage youth and adults." GLSEN and PFLAG issued a letter insisting the statements be retracted. The executive director of the board issued a public statement clarifying that "neither [GLSEN nor PFLAG] endorse unhealthy sexual practices among youth, including sex between underage youth and adults" in response to the letter.

Ramirez v. Los Angeles Unified School District (California)*

At Washington Preparatory High School in the Los Angeles Unified School District, students and members of the Gay-Straight Alliance Network's It's OK club claimed they had been harassed and discriminated against by teachers, administrators, staff, and other students based on their sexual orientation. The discrimination and harassment took place at school and included anti-gay comments and name calling, threats to out students, and failure to provide safety from anti-gay attacks.

The NCLR and the ACLU of Southern California, joined by Milbank, Tweed, Hadley & McCloy LLP, filed a complaint against the Los Angeles Unified School District and Washington Preparatory High School for discrimination against students based on sexual orientation. A settlement was reached and included among its stipulations, mandatory training for teachers, administrators, staff, and high school and middle school students.

PRIDE v. White County School District (Georgia)*

In 2005, students at White County High School in Cleveland, Georgia requested permission to form a gay-straight alliance club. The club aimed to fight against anti-gay harassment and bullying at the school. School administrators opposed the club and were slow to respond to the students' request. The ACLU of Georgia then became involved, negotiating for the students. Later in the school year, school administrators granted permission to start the club. The gay-straight alliance club was formed, meetings began, and the club was called PRIDE ("Peers Rising in Diverse Education").

A few days after PRIDE was formed, school officials presented a plan to ban all noncurricular student groups, starting with the following academic school year. During the 2005-2006 school year, PRIDE was not allowed to have meetings on school grounds. However, other clubs such as a dance club and a shooting club did continue meeting on the school campus even though they involved noncurricular activities and no academic credit was given for taking part in such clubs.

The Lesbian Gay Bisexual Transgender Project of the ACLU and the ACLU of Georgia filed a federal lawsuit against the school officials for banning the gay-straight alliance. A preliminary injunction was obtained, ordering the school officials to permit PRIDE and other school clubs to meet.

The ACLU and school officials of White County reached a settlement requiring school officials to institute an antiharassment policy to safeguard LGBT students from bullying, and provide faculty training each year on handling and preventing anti-gay harassment.

Paramo v. Kern High School District (California).*

East Bakersfield High School in the Kern High School District publishes *The Kernal*, a respected school newspaper. In 2005, students at the paper decided to write an article series about difficulties faced by lesbian, gay, bisexual, and transgender students at East Bakersfield High School.

The students were thorough and cautious in securing the consent and cooperation of interviewed students and their parents. Nevertheless, school officials prevented the articles from being published, “claiming unsubstantiated threats” against those students who had been interviewed for these articles.

Representing the newspaper staff and the interviewed students, the ACLU of Southern California and the ACLU Lesbian, Gay, Bisexual, Transgender Project sued the school. Attorneys for the plaintiffs argued that school officials must handle any problems by dealing with those students who are making threats, not by stifling the right to free speech of those students being threatened.

An agreement was reached affirming that “all students have the right to exercise freedom of speech and of the press” and that “school officials may turn to censorship only as a last resort.”

Morrison v. Boyd Co. Board of Education (Kentucky).*

The ACLU filed a lawsuit on behalf of Boyd County High School students who wanted to start a gay-straight alliance club at their school. Upon settlement of this lawsuit, a federal judge in Kentucky ordered the Boyd County public schools to institute antiharassment training and policy. The school district agreed to comply after the judge discovered the extensiveness of anti-gay harassment in the school, “where students in an English class once stated that they needed to ‘take all the fucking faggots out in the back woods and kill them.’”

In February 2005, the Alliance Defense Fund (ADF), a conservative religious legal organization, sued the school district to stop the antiharassment training and policy. Five plaintiffs from the original lawsuit were represented by the ACLU Lesbian Gay Bisexual Transgender Project and the ACLU of Kentucky. The parent of a student from Boyd County also joined in fighting the ADF suit.

A trial court ruled that “there is no religious right to stay out of school trainings aimed at reducing anti-gay harassment.” An issue concerning the constitutionality of the school board’s antiharassment policy (since revised) was also resolved in favor of the school district.

The U.S. Court of Appeals for the Sixth Circuit decided whether the policy was constitutional. In agreeing with the ADF that the initial harassment policy was constitutionally flawed, the ACLU nevertheless argued on appeal that “schools can have antiharassment policies that protect LGBT students from harassment while still respecting the constitutional rights of students opposed to homosexuality on religious (or other) grounds.”

The Sixth Circuit “reversed the district court’s ruling in favor of the Board, but only with respect to the court’s dismissal of Morrison’s claim that his speech had been chilled by the Board’s prior policies.” The case has been remanded to decide if Morrison’s right to free speech was in fact violated.

* These case summaries were adapted from the NCLR website: <http://www.nclrights.org>



SUPPORTING LGBTQ YOUTH

A JUDICIAL BENCH CARD

Positive Attitudes

- Use gender-neutral language when talking with youth.
- Ask about the youth's "partners" or "important relationships" in the youth's life, romantic and otherwise.
- Use the youth's name and pronoun of choice and encourage the youth to dress as he or she wishes.
- Display hate-free zone, rainbow flag or triangle signs in your courtroom or office.
- Speak out when you hear anyone make homophobic or inappropriate anti-gay comments.
- Foster diversity by making the courtroom an "inclusive environment."
- If a youth wears non-gender conforming clothing or otherwise appears stereotypically LGBTQ do not assume anything about sexual orientation or gender identity when making decisions concerning safety, permanency, or well-being.
- Avoid defining LGBTQ youth by their sexual orientation or gender identity. Realize they are defined by these and other aspects of their lives.
- Never discuss the youth's sexual orientation or gender identity without her permission.

Fair Treatment

- Enforce nondiscrimination policies from state civil rights laws, court rules, representation standards, school/placement/agency policies, or canons of ethics.
- Insist the agency care for the youth in an affirming way. If they don't, consider making a "no reasonable efforts" finding against the agency.
- Eliminate segregation and isolation of LGBTQ youth as a punishment for engaging in same-sex activities unless heterosexual activity is similarly sanctioned.
- Avoid double standards for LGBTQ youth and heterosexual youth who are sexually active.
- Ensure all youth receive information about HIV and protective measures.

Services and Support

- Require the child welfare agency to find opportunities for social support for LGBTQ youth.
- Require qualified mental health practitioners, knowledgeable about LGBTQ issues to provide treatment.

- Ensure transgender youth receive medical services from qualified health care practitioners knowledgeable about hormone treatments and other pharmacological interventions.
- Encourage or require parents and family members to participate in counseling and parent support groups if they need help becoming more accepting and supportive of LGBTQ issues.
- Require that discharge plans identify local programs and services available for LGBTQ youth and their families.
- Identify appropriate school placements to maintain LGBTQ youth in the community or successfully transition back to the community at the end of placement.
- Have resources available to share with LGBTQ youth, their families, and lawyers.

Placement and Permanency

Reunification

- Require families to work through any concerns relating to their child's sexual orientation or gender identity that led to placement before reunification.
- Require the child welfare agency to provide services to the family to work towards a safe and emotionally healthy reunification.
- Require frequent visitation between the youth and family, including siblings, to further ensure successful reunification.

Adoption

- Require the child welfare agency to locate LGBTQ-friendly adoptive placements.
- Ensure the adoptive caregivers will be strong advocates for the youth.

Guardianship/Relative Placement

- A relative who is open to LGBTQ issues may be interested in adopting, being a guardian, or providing a permanent home and connection for the youth.
- If a youth can locate a suitable guardian, the caseworker should ensure the proposed adult would provide a safe home.


Another Planned Permanent Living Arrangement

- If youth will remain in care until age 18 or 21, establish services to help with the transition.
- If the agency suggests APPLA as the permanent plan, the judge should ask questions to ensure the transition process is occurring and the youth has access to LGBTQ resources.





JUDICIAL GUIDELINES

- Analyze your attitude toward LGBTQ youth. Work on changing negative attitudes.
 - You may think and believe what you want, but those thoughts may not impact the treatment clients and litigants receive.
 - Learn about sexual developmental needs and healthy sexual development of all young people, including LGBTQ youth.
 - Become familiar with state laws and policies protecting LGBTQ youth.
 - Learn LGBTQ terminology and become comfortable using it.
 - Understand that LGBTQ youth are not mentally ill.
 - Help develop nondiscrimination policies covering LGBTQ youth.
 - Help develop procedures that assure the safety of LGBTQ youth.
 - Require court staff training regarding treatment of LGBTQ youth.
 - Promote the development of recreational programs and opportunities for LGBTQ youth to interact.
 - Ensure LGBTQ youth have access to the same programs as their heterosexual peers.
 - Ensure court staff are respectful to all individuals in the courthouse, including LGBTQ youth.
 - Visit websites of service providers to determine if they provide services in an LGBTQ-affirming manner.
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Representing Transgender Youth: Learning from Mae's Journey

by Garry Bevel

Mae is the life of the party. She sings and dances at parties and excels in school. When she comes to court hearings people notice how alive and talkative she is. At age eight, it is like she is a new person. In many ways, she is.

Flash back to a few months ago. Kyle was shuffled between placements—11 total. His mother had two other children in the child welfare system and was struggling to manage her responsibilities while in substance abuse rehab. Kyle's older brother routinely burst into fits of anger and performed poorly in school. This family had a long history of mental health problems. It seemed Kyle might follow his mother and brother's path. However, an attentive foster mother, child welfare agency, child's attorney, and judge made it possible for us to learn Kyle was really Mae, and that Mae had a much better life ahead.

If a youth on your caseload behaves or presents in ways that do not conform to expected gender norms, showing understanding and becoming aware of the underlying issues will protect that youth's safety and well-being. The most important thing you can do for transgender youth (or youth you believe may identify as transgender) is be aware of local resources and apply the law and relevant social and medical science to your advocacy so the youth feels accepted and empowered.

This article explores the efforts that made a difference for Mae during her journey through the child

welfare system, including advocacy tips and best practices for legal practitioners when working with transgender youth.

Rights of Transgender Youth in Foster Care

The Equal Protection Clause, Due Process Clause, First Amendment, and Title IX protect transgender youths' rights to safety in schools (freedom from harassment), expression (freedom of dress), equal access, and opportunity to participate in activities.¹ Transgender youth also enjoy freedom of religion (including the right not to practice a

religion). The Hate Crimes Bill (now the Matthew Shepard Act)² was recently expanded to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. The Fostering Connections Act provides additional avenues to protect and support transgender youth (see box).

State protections for transgender youth vary. The National Center for Lesbian Rights has a state-by-state guide³ to laws protecting transgender people.

Placement

Mae's placement promoted her safety, well-being, and permanency. The child welfare agency trained its staff and recruited and trained foster parents on the needs of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care. Mae's preadoptive foster parent was accepting and actively participated in Mae's services. Allowing Kyle (later Mae) to explore questions of gender identity and expression alleviated previous maladaptive behaviors. Mae did not require medications to control her behavior, she showed appropriate social interaction, and improved in school. "Adequate resources and a relationship characterized by warmth, closeness, parental sensitivity, and commitment that promotes healthy adjustment"⁴ reinforce a child's long-term well-being.

How to approach a young person's gender identity when considering placement is controversial. Experts agree that forcing a child to conform to strict gender roles or reparative therapy is harmful.⁵ Instead, a safe placement takes a holistic view of the young person's environment, gender identity, and

Building Relationships with Transgender Youth

- Use gender-neutral language ("Are you seeing anyone special?" vs. "Do you have a girlfriend?").
- Ask which pronoun/name the youth prefers.
- Display posters of LGBT role models or LGBTQ-friendly signs and antidiscrimination policies.
- Share stories that demonstrate your openness and acceptance.
- Take action if you witness or hear anti-LGBTQ discrimination or harassment.
- Judges can make nondiscrimination the standard in their courtrooms and with court personnel.
- Maintain confidentiality, but make it clear that your role as an advocate does not always *guarantee* confidentiality.
- Be sensitive to practical needs like name changes on important government and personal documents.

Understanding Terms

Biological sex is a male or female classification assigned at birth based on anatomy and genitalia. Gender and gender expression are distinct from biological sex.

Gender is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be¹ (i.e., expected gender expression in one culture or society may be different from expected gender expression in a different culture or society).

Gender nonconforming (or gender variant) children behave, dress or play, or express feelings about themselves that differ from what is expected for their gender. It could be a boy playing with dolls instead of trucks, or a girl who says she wants to be a boy, or is a boy. This is best understood to be a natural, albeit uncommon, variation in human development.²

Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions. Research shows that sexual orientation ranges along a continuum, from exclusive attraction to the other sex to exclusive attraction to the same sex. Sexual orientation is distinct from other components of sex and gender, including biological sex, gender identity, and social gender role³ (e.g., being transgender is separate from the individual's sexual orientation).

Transgender is an umbrella term used to describe people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex.⁴ When used broadly, being transgender is not *per se* a mental illness.⁵ Being transgender does not imply that the individual desires or intends to undergo sexual reassignment. There is a difference between being transgender, being transgender and seeking to live as the opposite gender, and being gender nonconforming (and otherwise satisfied with physiological and anatomical features).

Visit www.abanet.org/child/lgbtq.shtml for definitions of lesbian, gay, bisexual, transgender, and questioning.

Sources

¹ American Psychological Association Task Force on Gender Identity, Gender Variation, and Intersex Conditions. "Answers to Your Questions about Transgender Individuals," 2006, accessed October 18, 2010. <www.apa.org/topics/sexuality/transgender.aspx>

² Gender Identity Research and Education Society (GIRES). "Medical Care for Gender Variant Children and Young People: Answering Families' Questions," 2008, 4. www.gires.org.uk/assets/DOH-Assets/pdf/doh-children-and-adolescents.pdf

³ Ibid.

⁴ American Psychological Association, 2006.

⁵ National Center for Transgender Equality. "Frequently Asked Questions About Transgender People." 2009. Retrieved from http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf.

presenting issues. The World Professional Association for Transgender Health's (WPATH) *Standards of Care for Gender Identity Disorders* recommends:

The child and family should be supported in making difficult decisions regarding the extent to which to allow the child to assume a gender role consistent with his or her gender identity. This includes issues of whether to inform others of the child's situation, and how others in the child's life should respond; for example, whether the child should attend school using a name and clothing opposite to his or her sex of assignment. They should also be supported in tolerating uncertainty and anxiety in relation to the child's gender expression and how best to manage it. Professional network meetings can be very useful in finding appropriate solutions to these problems.⁶

Practice tips:

- Be prepared to rebut anecdotal or opinion arguments with social science research that makes clear that lack of acceptance, reparative therapy, physical or emotional violence, and discrimination based on gender identity is harmful.⁷
- In cases where youth are not in a supportive placement, ask for findings that reasonable efforts have not been made to secure a safe, stable placement.
- Hallmarks of LGBTQ-friendly placements include unambiguous nondiscrimination and antiharassment policies, evidence of training on LGBTQ issues, and placements that hold themselves out as being LGBTQ-friendly.

Medical/Therapeutic Services

Mae was participating in therapy with an LGBTQ-friendly clinician at

her agency. The clinician supported Mae and her foster parent by offering guidance and tips for integrating Mae's identity into daily life. For example, the clinician suggested when and how to allow Mae to dress in female clothing and how to handle questions and comments from peers. Additionally, the agency was linked with community resources that offered assistance to Mae and her foster mother, including education on gender and sexual orientation, and provision of social programming and activities for LGBTQ youth.

Some transgender children and youth meet criteria for gender identity disorder. Youth diagnosed with gender identity disorder should be considered for treatment when deemed necessary by a qualified physician or clinician.

Gender identity disorder is characterized in the DSM-IV-TR as a persistent discomfort with one's assigned sex and with one's primary and secondary sex characteristics, which causes intense emotional pain and suffering⁸ and if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.⁹

Transgender youth without a gender identity disorder diagnosis should also receive medical and mental health assessments. These assessments may suggest medical interventions like hormone treatments and surgery. The appropriateness of these interventions will be considered on an individual basis, taking age and psychological factors into account.

The Fostering Connections Act requires states to develop plans with Medicaid for ongoing oversight and coordination of health care services for *any* child in foster care,¹⁰ and

those services should be specific to the needs of the transgender youth.

Practice tips:

- Seek out medical and therapeutic experts in the field. For instance, search HealthCommunities.com, LGBHealthcare.com, WPATH.org, or GMLA.org (Gay and Lesbian Medical Association).
- Create a resource list in your jurisdiction of LGBTQ-competent services/medical providers.
- Be careful that transgender people are not denied coverage for medically necessary procedures because their documented gender does not correspond to the "gender-specific" service,¹¹ (e.g., gynecology, prostate/breast cancer screening, etc.) or if gender identity disorder has been diagnosed.

School

Mae's foster parent spoke to school administrators in advance about Mae's gender identity. The school agreed to allow Mae to use a unisex bathroom. School administrators also sat down with Mae's foster parent, caseworkers, and teachers to discuss Mae's experience and how to appropriately address it. Though issues related to social activities and sports would present themselves later, opening a dialogue and engaging all the stakeholders created an environment to discuss solutions.

Youth have a right to a public education, and to be safe at school. The Fostering Connections Act requires states to improve educational stability for children in care.¹² "In addition to prohibiting harassment, the law also prohibits discrimination against transgender and gender-nonconforming youth. This means that school officials have to let a student wear clothing that matches the student's gender identity, and cannot refuse to call the student by the name and pronoun the student

prefers. The school also has to provide transgender and gender non-conforming students with access to a safe and appropriate restroom and locker room or an appropriate alternative place to change for gym class."¹³ Discrimination at schools can lead to higher rates of emotional distress, suicide attempts, and substance abuse.¹⁴

Practice tips:

- Know the school's discrimination and antiharassment policies.
- Prepare by reviewing and understanding relevant school laws and policies (e.g., Safe Schools Coalition School Law and Policy Guide).¹⁵
- Ensure youth are not isolated or removed from a school solely because of their gender identity without appropriate efforts and intervention by the school.
- If inadequate facilities or harassment make a school an unfit environment for any of your youth, advocate for a different school placement.
- Locate schools with Gay-Straight Alliances (GSAs) and policies that support transgender youth and nondiscrimination.
- Look for warning signs that a youth may be experiencing bullying or harassment or is bullying others in response to discrimination or harassment.

Mae's Family

Kyle and his mother had a close bond that was tested when Kyle began to live as Mae. Mae's mother was heartbroken when the transition occurred. Many parents of transgender children and youth say the experience is like losing a child. The American Psychological Association suggests that parents and caregivers:

Get support in processing reactions. Having someone close to you transition will be an

Legal Tools

Discrimination—Title VII - Sex Discrimination – Supreme Court language suggests protection for LGBT people based on “gender stereotypes.” (*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1998).)

Privacy—Constitutional right to privacy/autonomy (*Lawrence v. Texas*, 539 U.S. 558 (2003).)

Confidentiality—Explain your role to your client, if your role as an advocate does not include attorney-client privilege and what that means about the information your client may disclose.

Documents—Understand your state’s law about what is required to change driver’s licenses/IDs, birth certificates, social security cards.

Detention—Do not isolate LGBT youth. Federal case counted isolation of LGBT youth among other detention center abuses (*R.G., et al. v. Koller*, 415 F. Supp. 2d 1129 (D. Hawaii 2006).)

Facilities—Understand your city, state, or county’s position on restroom use. “Reasonable accommodations” are required of employers under the Occupational Health and Safety Act (OHSA).

Schools—Encourage schools to seek technical assistance from the Department of Education. Schools have a duty to protect students from bullying and harassment.

Medical—Per se exclusions under Medicaid have been found unconstitutional (*Doe v. State Dep’t. of Public Welfare*, 257 N.W.2d 816 (Minn. 1977)). Each case must be assessed individually.

See also, New York appellate court finding that the court lacks authority to order agency to pay for sex reassignment surgery. (*Mariah L. v. Administration for Children’s Services*, 820 N.Y.S.2d 257 (App. Div. 2006).)

How the Fostering Connections Act Supports Your Practice and Advocacy

Section 101 provides support for locating and assisting relative caregivers.

Section 102 provides support to kinship or relative caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs as well as working to reestablish relationships.

Section 103 requires due diligence locating relatives and to inform adult relatives of additional services and supports available to the child.

Section 202 ensures an individualized transitional plan for older youth.

Section 203 provides short-term training dollars for child welfare agencies, staff and court personnel.

Section 204 ensures the educational stability of youth in foster care

Section 205 requires the state to develop a plan for the ongoing oversight and coordination of health care services for any child in care.

adjustment and can be challenging, and takes time. Mental health professionals and support groups for family, friends, and significant others of transgender people can be useful resources.¹⁶

Working with the agency, Mae’s therapist, and the foster parent, Mae’s mother continued to spend time educating herself about Mae’s life and experience. “LGBT young adults whose parents and foster parents support them have better overall health, and mental health. They also have higher self-esteem. They are also much less likely to be depressed, use illegal drugs, or think about killing themselves or attempt suicide”¹⁷ Meanwhile, LGBT young people who were rejected by their families because of their identity have “much lower self-esteem and have fewer people they can turn to for help, are more than 8 times as likely to have attempted suicide, nearly 6 times as likely to report high levels of depression, more than 3 times as likely to use illegal drugs; and more than 3 times as likely to be at high risk for HIV and STDs.”¹⁸

Support for the family should consider ways to integrate the youth’s identity into the family and offer education and strategies for addressing the needs of transgender youth, while honoring any discomfort or unfamiliarity family members may have. Any mental health assessments should include a family evaluation, because other emotional and behavioral problems within the family are very common, and unresolved issues in the child’s environment are common.¹⁹

Use the Fostering Connections Act to argue for notifying grandparents and adult relatives who may be (or may become) suitable and supportive placements. The Act also encourages reasonable efforts to place youth with siblings and provide visitation when they are not placed together. If you are successful in

working with the family to provide permanency, Family Connections grants are available to provide resources for family group decision-making meetings.²⁰

Practice tips:

- Advocate for mental health and family therapy services that support acceptance when a continuing relationship with a parent is likely and appropriate.
- Ensure mental health professionals and service providers recognize and accept the gender identity experience. Acceptance and removal of secrecy can bring much relief.²¹
- Avoid assuming that a parent or family will not accept the youth. An LGBT young person is 24% more likely to be a happy adult if his or her family is “a little accepting” versus “not accepting at all.”²²

In Court

Mae’s transition was not without problems. Before and after court, there were often disparaging, insensitive, and uninformed comments made about Mae, her foster mother, and the professionals who supported allowing Kyle to live as Mae. This included court clerks, parents’ attorneys, and bailiffs. It is important that any courtroom be free of harassment and discrimination. If you hear or see behaviors that are inappropriate in the courtroom, consider these steps:

- Speak to the judge directly.
- Speak to the employee’s supervisor.
- Offer education and speak to the individual directly if you feel comfortable.
- If the behaviors or comments are made in front of the youth, ask the youth what he or she would like done.
- Remind the youth that the comments and behaviors are not a

Training Resources:

ABA Center on Children and the Law Opening Doors Project for LGBTQ Youth in Foster Care: Project that improves outcomes for LGBTQ youth in foster care through training, practice and advocacy tips for the legal community and child welfare professionals. www.abanet.org/child/lgbtq.shtml

Child Welfare League of America/Lambda Legal: Back to Basics: Toolkit that addresses LGBTQ disproportionality in the foster care and juvenile justice systems. www.lambdalegal.org/take-action/tool-kits/getting-down-to-basics/

Human Rights Campaign: All Children All Families Initiative: Project that improves LGBT competence and LGBT awareness of foster care and adoption opportunities. www.hrc.org/issues/12111.htm

The Downs Group LLC: Organization that improves services and outcomes for older youth. www.downsconsultinggroup.com.

The Equity Project (juvenile justice): Project that ensures LGBT youth in delinquency courts are treated with dignity, respect and fairness. www.equityproject.org

reflection of him or her, but the other person’s lack of understanding and fear.

- The Model Code of Judicial Conduct and the Model Rules of Professional Conduct apply a standard for judges and lawyers to act in nonbiased ways when addressing the needs of LGBTQ and all youth. This means personal opinions and beliefs about gender expression and transgender people may not influence legal representation and decision making in a case.

Avoiding Labels

Experts agree it is not helpful to force a child to act in a more gender-conforming way.²³ Gender variance is a natural part of human development (see “Understanding Terms” box) and may take many forms, including:

Boys

- wanting to dress as a girl
- wanting to wear long hair (e.g.,

with a towel, braiding yarn or string into hair)

- wanting to paint toenails or fingernails
- preferring to play with dolls or participate in activities typical for girls
- wanting a nongendered nickname (AJ, Pat, Grey, Blake, Terry, etc)

Girls

- wanting to dress as a boy
- wanting short, cropped hair
- preferring not to wear make-up
- preferring baggy clothes and pants to dresses and skirts
- wanting to reduce or eliminate the appearance of breasts
- wanting a nongendered nickname

Gender variance alone is not a sign a youth is gay, lesbian, transgender or has a disorder. For children who are gender nonconforming, and do not seek to live or dress as the opposite gender, not being allowed to participate in the gender nonconforming play can be

harmful. If the feelings or behaviors persist, an environment where it is safe for the child to explore his or her identity and/or orientation is best for healthy development. If youth demonstrate persistent physical, mental, or social discomfort, then the family should be linked with medical providers with experience serving transgender youth. Either way, it is important that the youth and her caretakers receive appropriate and affirming services. The APA states:

... some children express a great deal of distress about their assigned gender roles or the sex of their bodies and experience difficult social interactions with peers and adults because of their gender expression. Parents may become concerned when what they believed to be a “phase” does not seem to pass. It is often helpful to consult with a mental health professional familiar with gender issues in children to decide how to best address these concerns. Peer support from other parents of gender variant children may also be helpful.²⁴

Abuse and rejection often lead youth to runaway behavior, truancy, substance abuse, prostitution, and theft as means of survival and coping. Additionally, normal adolescent sexual behavior by transgender youth is often stigmatized and criminalized. Be careful that these behaviors are not mischaracterized as criminal when a safe placement, affirmative therapeutic intervention, and a harassment-free environment might eliminate them.²⁵

Conclusion

Transgender children and youth present novel issues for ensuring the well-being of youth in care. Personal opinions must yield to our responsibilities as child welfare professionals to provide safe and healthy outcomes for all our youth.

The experts agree that children raised in loving, supportive environments who are linked to appropriate resources thrive. A transgender youth is no more likely to have maladaptive outcomes as any other youth given timely, appropriate, and affirmative responses to his or her needs.

If there is a conflict between your feelings and the needs of transgender youth ask yourself, “what is more important: my personal beliefs or ensuring that every child is safe and happy, like Mae?”

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Endnotes

¹ Gay-Straight Alliance Network, Transgender Law Center, and the National Center for Lesbian Rights. *Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools*, 2004, 32. <www.nclrights.org/site/DocServer/beyond_the_binary.pdf?docID=741>

² Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007, § 1105, 10th Cong., 1st Sess. (2009). <<http://thomas.loc.gov/cgi-bin/query/z?c110:S.1105:we>>

³ “State by State Guide to Laws That Prohibit Discrimination Against Transgender People,” 2010. <www.nclrights.org/site/DocServer/StateLawsThatProhibitDiscriminationAgainstTransPeople.pdf?docID=7821>

⁴ American Civil Liberties Union. *In re: Gill - Summary of Scientific Evidence*. New York, NY, 2008. November 25, 2008. <www.aclu.org/lgbt-rights_hiv-aids/re-gill-summary-scientific-evidence>

⁵ “Such efforts have serious potential to harm young people because they present the view that the sexual orientation of lesbian, gay and bisexual youth is a mental illness or disorder, and they often frame the inability to change one’s sexual orientation as a personal and moral

failure.” Additionally, the coalition notes that those whose appearance and behavior are perceived as inconsistent with gender norms and roles are often targeted for sexual orientation discrimination and violence. Just the Facts Coalition. *Just the Facts about Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*. Washington, DC: American Psychological Association, 2008. <www.apa.org/pi/lgbc/publications/justthefacts.html>

⁶ World Professional Association for Transgender Health. *Standards Of Care For Gender Identity Disorders, Sixth Version*, February 2001. <<http://www.wpath.org/documents2/socv6.pdf>>

⁷ Just the Facts Coalition. 2008.

⁸ DSM-IV-TR, 575-79, from AMA Resolution. <www.gires.org.uk/assets/Medpro-Assets/AMA122.pdf>

⁹ *Ibid.*, 578-79.

¹⁰ Fostering Connections to Success and Increasing Adoptions Act §205.

¹¹ Transgender Law Center Health Care Access Project (HCAP), a joint effort of TLC and The California Endowment. *Transgender Health and the Law: Identifying and Fighting Health Care Discrimination*. 2004, 2. <<http://transgenderlawcenter.org/pdf/Health%20Law%20fact%20sheet.pdf>>

¹² Fostering Connections Act § 204.

¹³ Gay-Straight Alliance Network, 2004, 2.

¹⁴ Just the Facts Coalition, 2008.

¹⁵ Safe Schools Coalition. “Guidance on School Law and Policy.” <www.safeschoolscoalition.org/RG-law_policy_guidance.html>

¹⁶ American Psychological Association, 2006.

¹⁷ Ryan, Caitlyn. *Helping Families Support Their Lesbian, Gay, Bisexual, and Transgender (LGBT) Children*. Washington, DC: National Center for Cultural Competence, Georgetown University Center for Child and Human Development, Fall/Winter 2009, 7.

¹⁸ *Ibid.*, 4.

¹⁹ World Professional Association for Transgender Health, 2001.

²⁰ Fostering Connections Act § 206

²¹ World Professional Association for Transgender Health, 2001.

²² Ryan, Caitlyn. *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children*. San Francisco, CA: Marian Wright Edelman Institute, San Francisco State University, 2009, 12.

²³ American Psychological Association, 2006.

²⁴ *Ibid.*

²⁵ Majd, Katayoon, Jody Marksamer, and Carolyn Reyes. *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*. Berkeley: Autumn Press, 2009.

²⁶ National Center for Transgender Equality.

“Frequently Asked Questions About Transgender People,” 2009. <http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf>

National Recommended Best Practices for Serving

LGBT Homeless Youth



NATIONAL CENTER FOR LESBIAN RIGHTS



LGBT YOUTH AND HOMELESSNESS

Lesbian, gay, bisexual, and transgender (LGBT) youth are overrepresented in the homeless population. According to a growing body of research and study, a conservative estimate is that one out of every five homeless youth (20 percent) is LGBT-identified. This is greatly disproportionate to the estimated percentage of LGBT youth in the general population which is somewhere between 4 and 10 percent.¹ Research indicates that each year, hundreds of thousands of LGBT youth will experience homelessness. Most LGBT youth become homeless because of family abuse, neglect, or conflict over their identity. Many homeless LGBT youth were kicked out of their homes while others ran from foster and group homes because they were mistreated or harassed.

LGBT youth are not only overrepresented in homeless youth populations, but reports indicate that while living on the streets, LGBT youth are at great risk of physical and sexual exploitation—at the hands of adults, police, and other youth. For example, one study concluded that LGBT homeless youth experience an average of 7.4 more acts of sexual violence toward them than their heterosexual peers.² Transgender youth in particular are often harassed, assaulted, and arrested by police because of their gender presentation. Another study found that LGBT youth may have twice the rates of sexual victimization on the streets as non-LGBT homeless youth, and LGBT youth report double the rates of sexual abuse before age 12.³ In addition, LGBT homeless youth are more likely to report being asked by someone on the streets to exchange sex for money, food, drugs, shelter, and clothing than heterosexual homeless youth.⁴ Unfortunately, many LGBT homeless youth resort to trading sex to meet their basic needs.

Further, just trying to survive in street environments or with transitory and unstable housing can increase mental health problems and disabilities. One study found that lesbian homeless youth are more likely to have post-traumatic stress syndrome, conduct disorders, and alcohol and substance abuse problems than heterosexual homeless young women, and gay homeless young men are more likely to meet criteria for major depressive episodes.⁵ Finally, LGBT homeless youth are also more likely to attempt suicide (62 percent) than their heterosexual homeless peers (29 percent).⁶



Unfortunately, some LGBT homeless youth have experienced discriminatory practices and policies when trying to access homeless youth services. Others have been assaulted by peers based on their sexual orientation or gender identity⁷ while participating in programs designed to help homeless youth stabilize their lives. Without access to the residential stability, nurturance, and opportunities for positive youth development provided by homeless youth service providers, LGBT homeless youth are susceptible to further challenges as adults and continued violence and exploitation on the streets, and are at great risk of entering the juvenile or criminal justice system.

All community-based agencies or programs serving adolescents should assume that some of their youth participants are LGBT even if they do not publically disclose their sexual orientation or gender identity. Whether offering shelter, housing, drop-in services, case management services, or street outreach, it is important that inclusive and culturally competent services are offered to enable LGBT homeless youth to stabilize their lives. While the outcomes for LGBT homeless youth—when they lack appropriate support and guidance—can be unsettling, LGBT youth can thrive and succeed if given the opportunity. Despite the stigma and violence that many LGBT youth experience, these youth often demonstrate remarkable courage and resilience. The following recommendations provide direction to agencies and not-for-profit organizations to increase their competency in working with LGBT youth.

Best Practice Recommendations for Homeless Youth Service Providers

These recommendations are broken down into three sections. The first section includes steps intake workers, case managers, social workers, youth supervisors, and others who have regular, direct contact with youth should take to improve the experiences of LGBT youth accessing services. The second section includes steps administrators should take to improve agency-wide culture and effectiveness in serving LGBT youth. The final section includes specific steps both administrators and youth workers should take to improve the experiences of youth in residential settings, whether these settings are emergency shelters or longer term transitional living.

The recommendations are informed by the experiences of service providers and LGBT youth as reported to the Child Welfare League of America and Lambda Legal in 13 listening forums conducted nationwide, and through focus groups conducted by Legal Services for Children and the National Center for Lesbian Rights, as part of the Model Standards Project. During the listening sessions and focus groups, youth spoke on their experiences in out-of-home care, and offered suggestions for reform of practice and policy.

The recommendations are further informed by the legal and child welfare expertise of these respective organizations, as well as by the input of various advocates and service providers who are part of the National Advisory Council on LGBTQ⁸ Homeless Youth. The following list of recommended best practices was reviewed by an advisory panel of professionals from the National Alliance to End Homelessness, Lambda Legal, the National Center for Lesbian Rights, the American Bar Association, and the National Network for Youth. Evaluation and selection were determined through consensus among the organizations and the recommendations were reviewed and edited by the National Advisory Council on LGBTQ Homeless Youth.

Though the recommendations listed here are specific to providing inclusive and culturally competent services to LGBT youth, it is extremely important to remember that many LGBT youth are also youth of color. Service providers, supervisors and administrators, should receive training on, and examine issues related to, race, racism, white privilege, and the intersection with gender and sexuality, in order to effectively respond to the needs of LGBT youth of color who are homeless.

Agencies can use this document to help determine the fundamental issues they need to address to best work with LGBT youth and to evaluate how well they are currently meeting the needs of the LGBT youth they serve. In addition, agencies can use the recommendations as a starting point for creating a broader action plan or as a blueprint for new initiatives. By implementing these recommendations agencies will move toward active affirmation and support for LGBT homeless youth—in stark contrast to the rejection and even brutality too many LGBT youth have experienced at home, in school, and in their communities.

National Alliance to End Homelessness

www.endhomelessness.org

National Network for Youth

www.nn4youth.org

Lambda Legal

www.lambdalegal.org

National Center for Lesbian Rights

www.nclrights.org

1 IMPROVING PRACTICES

Recommendations for Employees Serving LGBT Homeless Youth

The following recommendations address how staff of organizations serving homeless LGBT youth can improve the responsiveness and effectiveness of their assistance.

Treat LGBT Youth Respectfully and Ensure Their Safety

LGBT youth should have the same rights and privileges as other youth who use agency services. They should not be subjected to harsher or more restrictive standards of behavior because of their sexual orientation or gender identity. They should be safe and free of harassment and violence when using agency services. It is crucial that LGBT youth feel safe and respected across the continuum of services provided by an agency. Staff should not tokenize LGBT youth or set them apart from other youth because of their identities, nor should facility staff ignore or dismiss LGBT youths' specific needs and experiences. All employees and volunteers at agencies that serve homeless youth should do the following:

- Examine their own beliefs and attitudes and ensure their ability to professionally and ethically serve their youth participants.
- Understand the common experiences of LGBT homeless youth, the factors that often lead to their homelessness, and the risks they face once they leave home.
- Be able to use the words gay, lesbian, bisexual, and transgender appropriately when talking with youth, other employees, and volunteers.
- Call youth participants by their preferred first name and pronoun in accordance with the youth's gender identity or expression.
- Know what to do when a youth self-discloses his or her sexual or gender identity (e.g., offer support, engage in conversation if youth wants to, maintain privacy, and locate appropriate services and support for the youth).
- Prevent harassment and discrimination by valuing and affirming differences and appropriately responding to

verbal, emotional, and physical threats against any youth.

- Never use anti-gay slurs or jokes, and appropriately intervene if others do.
- Be alert to signs of harassment or abuse that may not be obvious; be approachable for youth to come to with their concerns, and make decisions on how to respond based on the youths' best interests.
- If other agency staff members, volunteers, or youth participants are harassing or mistreating LGBT youth participants, staff must intervene to ensure the harassment stops immediately and take any further action needed.

Appropriately Address LGBT Identity during Intake Process

Youths' perceptions of an agency begin with the initial contact with any worker or volunteer. If an LGBT youth receives the message—implicit or explicit—that he or she is not welcome because of his or her sexual orientation or gender identity, the youth will be less likely to use the agency's services. An initial impression of openness and acceptance can help build the foundation for deepening trust and a more positive, productive experience for both youth and staff. If LGBT youth feel that the agency will accept them for who they are, they are more likely to disclose that they are LGBT, and agency staff will then be better able to offer services that will meet the youths' needs. All employees and volunteers who do intakes for agencies that serve homeless youth should do the following:

- Use intake forms that include questions about a youth's sexual orientation/gender identity in the demographics section, but do not make it a requirement that youth answer these questions.
- Ask questions in a way that avoids implicit assumptions about the sexual orientation or gender identity of youth participants (e.g., asking a youth if he or she is dating someone, rather than asking a girl if she has a boyfriend).

- Educate all incoming youth and staff about the agency’s nondiscrimination and harassment policies, what behaviors are prohibited, and what is expected of the youth. Clearly explain that homophobic comments and jokes as well as harassment based on race, sex, gender identity, sexual orientation, disability, and other differences will not be tolerated.
- Provide all youth participants with information about available local social services for LGBT youth and their families, including health and mental health services, community groups, supportive services for families, and social programs.

Support Access to Education, Medical Care, and Mental Health Care

LGBT youth often face obstacles when accessing two of the most basic services that exist to promote their long-term well-being: education and health care. Health care providers that treat LGBT youth must be trained and educated on the heightened risks some of these youth face. Health care providers should be able to discuss sexual orientation, gender identity, and sexual behaviors openly and comfortably, and health care providers must make no attempts to try to change a youth’s sexual identity. In educational settings, LGBT youth often face relentless bullying and harassment. Because receiving an education is a crucial part of a youth’s transition to adult life, it is essential that LGBT youth have access to educational environments where they can learn without fear of harassment and assault. All employees and volun-



teers at agencies that serve homeless youth should do the following:

- Determine whether LGBT runaway and homeless youth are attending school. If they are, ask whether or not they feel safe at school. If they are not attending school, determine whether harassment and assault are reasons the youth are no longer going to school.
- Address problem behaviors of bullying and harassment at school against LGBT youth participants and work with school staff to address this problem.
- Help connect school staff to training, consultation services, and youth service professionals to train schools on how to create a safe and appropriate school environment for transgender youth. This includes guidance on how to ensure transgender youth have access to safe and gender appropriate bathrooms, how to implement policies that require teachers and other staff to refer to youth using the youth’s preferred name/pronoun, and how to address bullying and harassment aimed at transgender students.
- Contract only with health and mental health providers who have been trained on the specific health needs of LGBT youth and who are open and comfortable with youth of all sexual orientations and gender identities if agencies provide medical and mental health services to homeless youth.
- Avoid clinicians who exhibit homophobic attitudes or who may engage in inappropriate and questionable practices that attempt to alter a person’s sexual orientation, gender identity, or gender expression.
- Help LGBT youth participants find appropriate sexual health services through referrals to inclusive resources in the community.
- Ensure that all materials provided to youth participants about safer-sex are affirming of LGBT people and include information that addresses safer-sex techniques for LGBT youth.

Support Transgender and Gender-Nonconforming Youth Participants

Transgender youth have needs that are distinct from those of LGB youth. For example, they may need transition-related health care or help getting a state identification that includes their chosen name and has the

appropriate gender marker. In addition, because most shelter and other congregate care living programs are segregated by gender, facility staff are often unsure how to classify transgender youth and may simply classify them based on their birth gender without realizing that this negatively affects the youth's physical and emotional safety. In order to serve transgender youth competently and keep them safe, all employees and volunteers at agencies that serve homeless youth should:

- Understand what it means for a youth to be transgender, recognizing that transgender youth will have diverse experiences and ways of talking about their self-identity.
- Use transgender-related terms appropriately.
- Avoid assumptions about the sexual orientation of transgender young people. Understand that a person's sexual orientation relates to who someone is attracted to and a person's gender identity relates to how the person understands his or her gender. Transgender youth can be heterosexual, gay, lesbian, or bisexual.
- Allow transgender youth to express their gender identity through their chosen attire, hairstyle, and mannerisms while using agency services.
- Call transgender youth by the names and pronouns they prefer. It is always OK to politely ask a youth which pronoun he or she prefers if the youth does not volunteer this information. (e.g., "Do you prefer if people refer to you using female pronouns, she and her, or male pronouns, he and him?")
- Have general knowledge about Gender Identity Disorder (GID) and the WPATH⁹ recognized standards for diagnosing and treating youth and adults with GID.
- For agencies providing medical and mental health services to homeless youth, ensure that transgender youth have access to providers who are competent to provide counseling, hormone therapy, and other medical treatment in line with professional (WPATH) standards and can provide transgender youth with individualized medical and psychological assessments.
- Ensure transgender youth receive or are able to access all transition-related treatment recommended by the health care provider's assessment.

- Take appropriate steps to advocate on behalf of the transgender youth participants if they are not safe on the streets or in school.
- Locate resources and programs that can assist transgender youth participants with their unique legal issues such as getting their names changed and obtaining legal identity documents—birth certificate, state identification card, driver's license—that reflect the gender with which they identify.
- Identify resources and programs that provide transgender specific services, including counseling and groups where transgender youth can get support, meet other transgender youth, and learn more about themselves.
- Agencies that provide long-term housing support, such as transitional living programs, should ensure meaningful opportunities for education, job training and employment that help transgender youth successfully transition to independent adulthood.

Inform LGBT Youth Participants about Local LGBT Programs and Services

LGBT youth may be hesitant to access social services and other programs because they are afraid that these services will not be LGBT-friendly. Unfortunately, their reluctance is often based on past negative experiences. Helping homeless LGBT youth access the range of services they need means connecting them to resources they can count on as being LGBT-friendly. Agencies that serve homeless youth should do the following:

- Help LGBT youth participants access LGBT community services and supportive adult mentors.
- Develop and regularly update lists of resources in the community, including services directed to the LGBT community. Distribute them to everyone in the agency, including to youth who may wish to access community resources privately. A Community Resource guide should include:
 - Options for LGBT-friendly long term housing;
 - Information about local LGBT community centers;
 - Locations of LGBT-friendly medical and mental health professional services;
 - Information about laws that protect LGBT people in the jurisdiction;

- Contact information for LGBT civil rights organizations;
 - Locations of recreation centers safe for LGBT youth participants;
 - Employment resources and opportunities helpful to LGBT youth participants.
- Ensure that staff provides LGBT youth participants with information about any agency services available that address individual, family, and health issues around sexual orientation and/or gender identity, once the youth discloses to the agency's staff that he or she is LGBT.
 - Talk to youth one-on-one about resources that might be helpful for meeting specific needs.
 - Encourage agency and program staff to visit other community resources and agencies to experience what will happen when a youth visits the site.



2 IMPROVING ORGANIZATIONAL CULTURE

Recommendations for Administrators and Supervisors

Decisions made by agency administrators about hiring, policy adoption and implementation, training, volunteer recruitment, and other areas significantly affect the day-to-day functioning of the agencies and the experiences of all youth. Administrators' consistent communication that creating an LGBT-friendly and competent agency is a priority can jumpstart and inject momentum into the process of improving agency performance. Directors, managers, and supervisors must demonstrate knowledge on LGBT youth issues and offer support and leadership in implementing competent service to LGBT youth.

Programmatic Culture: Creating a Safe and Inclusive Environment.

Youth participants are keenly aware of their surroundings and often make judgments regarding programs based on a quick assessment of the office structure, visual signs, and culture. Those offering programs should be aware of the appearance of their facilities and strive to create an environment of nonjudgmental acceptance for LGBT youth participants entering the premises for the first time. To create this environment, agencies should do the following:

- Create a positive physical environment in the work place. Display LGBT supportive images such as pink triangles, rainbows, or hate-free/safe zone stickers to send a clear message to all youth and staff that LGBT people are welcome at the agency.
- Demonstrate knowledge on LGBT youth issues and offer support and leadership in implementing LGBT-competent services.
- Use community outreach material that enforces program practices in welcoming LGBT youth and reassures them there is a safe space for the youth in the facility.
- Offer materials and accessible services to parents and guardians to learn about sexual orientation and gender

identity. Facilitate acceptance of the youth's sexual orientation and gender identity and seek improvement in familial communication and nurturing behavior.

Adopt and Implement Written Nondiscrimination Policies

Nondiscrimination and anti-harassment policies provide the minimal standard for work with LGBT homeless youth. Having a nondiscrimination policy that is widely distributed and fully enforced communicates a basic commitment to creating an LGBT-safe environment and also helps make an agency more identifiable as a possible resource for LGBT homeless youth. In order to ensure that LGBT youth participants know that an agency is committed to preventing harassment and discrimination, agencies should do the following:

- Adopt and implement written policies that prohibit both discrimination and harassment against youth and staff on the basis of their actual or perceived sexual orientation, gender identity, gender expression, or HIV status. The policies should apply not only to employees, but also to contractors and volunteers.
- Adopt written policies outlining a grievance procedure for LGBT youth and staff to report discrimination, harassment, or abuse and offer guidance on appropriate responses to discrimination, harassment, or abuse by personnel, youth participants, and volunteers.
- Ensure that all youth participants, employees, contractors, and volunteers receive notice of the nondiscrimination policy, both written and verbal.
- Let all youth participants know they are expected to treat everyone in accordance with this policy.
- Provide initial and ongoing professional training on the policy and its application to all employees and volunteers, as well as to contract service providers like health

and mental health providers to ensure effective implementation of the nondiscrimination policy.

Nondiscrimination policies can only make a true difference in agency culture if mechanisms are in place for policy implementation and accountability. Periodic self-assessments and updated action plans with input from staff, youth, volunteers, administrators, and other stakeholders can help agencies assess overall consistency between policy provisions and agency practice. To give “teeth” to nondiscrimination policies, agencies that serve homeless youth should do the following:

- Ensure grievance procedures allow for confidential complaints and neutral third-party investigations.
- Prohibit retaliation against an individual who files a complaint of discrimination or harassment or participates in an investigation of such a complaint.
- Ensure that supervisory and management staff treat all incidents of discrimination or harassment seriously and follow up promptly by initiating a grievance according to the agency’s grievance procedure.
- Ensure that all youth who access agency services are aware of their rights and are given clear instructions on how to file a complaint of discrimination or harassment.
- Develop accountability standards that assess agency staff performance in supporting LGBT youth participants and that track complaints of policy violations.

Adopt Confidentiality Policies

When youth disclose their sexual orientation or gender identity to service providers, they are sharing private, sensitive information. Even LGBT people who are “out of the closet” are generally not “out” to every person in their lives—even if they have been out for years and are active in LGBT communities. LGBT youth should be able to determine to whom they wish to come out. Agencies should adopt strict policies around managing confidential information about a young person’s sexual orientation and gender identity in addition to other sensitive information like HIV status. Staff should be aware that a misplaced disclosure—to a family member who is not ready to digest this information or to a homophobic

peer—can have deeply negative consequences and may even result in harassment and violence. Agencies offering direct services to LGBT homeless youth should do the following:

- Adopt written policies regarding the management of information about a youth participant’s sexual orientation, gender identity, or HIV status.
- Ensure that staff do not disclose a youth participant’s sexual orientation, gender identity, or HIV status without the young person’s permission, unless limited disclosure is required by law to protect a young person’s safety. When disclosure is legally required, staff should explain, to the youth participant, who is entitled to the information and why.

Provide LGBT Competency Training to All Agency Employees and Volunteers

Older adolescents often grow and change in the context of relationships with others. Professional and volunteer staff or community-based organizations are a crucial link between youth participants and the attainment of individual goals. Staff should be trained to ensure ongoing competence and professionalism in serving LGBT homeless youth and to create professionalism among team members. Agencies that serve homeless youth should do the following:

- Provide initial and ongoing comprehensive LGBT competency training for all staff including administrators, managers, supervisors, social workers, case workers, direct service staff, support staff, facilities maintenance personnel, volunteers, and health and mental health providers with whom the agency contracts.
- Include the following topics in trainings and offer trainings that are tailored to specific service components provided by the agency:
 - A review of vocabulary and definitions relevant to LGBT youth;
 - An exploration of myths and stereotypes regarding LGBT youth and adults;
 - Information about how to communicate sensitively with youth about sexuality, sexual orientation, and gender identity;

- Information on developmental issues and adaptive strategies for LGBT children and youth;
- A review of the coming-out process and how adults can support a young person who is coming out;
- A discussion of how sexual orientation and/or gender identity may relate to the reasons a young person is homeless or has run away, including parental reactions;
- A discussion of the social issues and challenges unique to transgender or gender-nonconforming youth;
- Guidance on how to serve LGBT youth respectfully and equitably;
- Information about community resources available to serve LGBT youth and their families;
- Information about the agency’s nondiscrimination policy and any applicable state nondiscrimination laws;
- Discussion about the importance of confidentiality for LGBT youth and how to comply with state and agency confidentiality rules and policies;
- Discussion about the intersection of race, culture, socioeconomic status, white privilege, and other cultural factors with sexual orientation and gender identity.

Establish Sound Recruitment and Hiring Practices

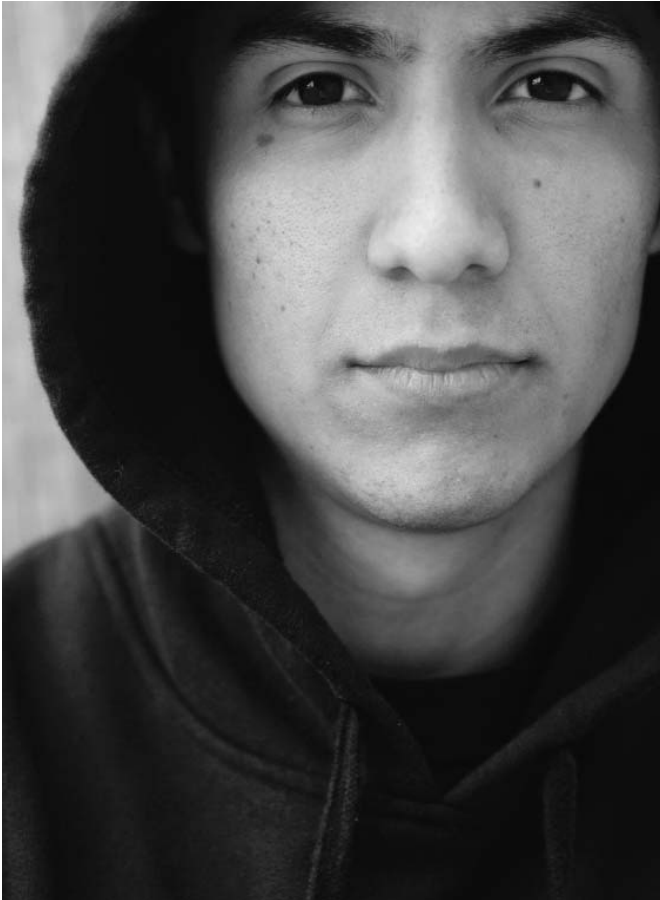
In order to ensure that all youth clients are competently served by agencies that provide homeless youth services, agency administrators should inquire into a potential hire’s past work experience, his or her ability to do the tasks required by the position, and his or her ability to competently work with the diverse population of youth the agency serves, including LGBT youth. Administrators can prevent problems down the line—like cases in which staff are unable to separate their personal biases against LGBT youth from their professional obligations—by informing applicants that the agency is committed to serving all youth in a nondiscriminatory manner and asking about prior experience working with LGBT youth. More specifically, the agency should:

- Ensure that the recruiting and hiring processes are clear about core skills and competencies needed to provide direct services to LGBT homeless youth.
- Create and monitor goals for the hiring and retention of a diverse staff that reflects the diversity of the population served.
- Offer support and leadership in implementing LGBT-competent services.
- Appropriately reprimand and/or remove homophobic or unsupportive staff, contract employees, and volunteers.
- Establish personnel goals which guide staff to celebrate and nurture a youth’s sexual orientation and gender identity and not simply accept or tolerate it.

Develop Agency Connections to LGBT Organizations and the LGBT Community

One of the best ways to stay on top of local LGBT youth resources in the community is to develop connections with local resources and with the LGBT community more generally. In addition, by developing relationships with other providers who serve local LGBT youth, agencies will be better able to determine how to reach out to LGBT youth who are not receiving any services. Administrators should encourage staff members to:

- Get involved with local networks of organizations that are concerned with the welfare of LGBT people generally.
- Develop collaborations with LGBT community groups to support the establishment of services for LGBT run-away and homeless youth.
- Build a stronger network of LGBT people and allies within the agency and agency contractors.
- Commit to outreach in areas where LGBT youth have been known to congregate.
- Regularly review all local resources to find those that are LGBT-friendly.
- Use or refer to health and mental health providers who have been trained on the specific health needs of transgender youth and who understand the professional standards of care for transgender people.



Collect and Evaluate Data

Good data on the numbers of LGBT youth accessing services can help agencies determine whether they need expanded services for this population. Data can also serve as a powerful education tool for board members and other key decision makers when pursuing programmatic expansion. At the same time, accurate data is extremely difficult to obtain because many youth are reluctant to self-identify, especially when data is not collected sensitively. Agencies that serve homeless youth should do the following:

- Incorporate questions about a youth participant's sexual orientation and gender identity status into demographic data elements and evaluation tools to determine accessibility and outcomes specific to LGBT youth.
- Compare data and outcome measures to determine if any disparity of treatment is noted between LGBT youth participants and heterosexual youth participants.
- Ensure that data is collected by individuals trained on how to respectfully ask questions about sexual orientation and gender identity, and on how to maintain confidentiality.

3 IMPROVING RESIDENTIAL SERVICES

Recommendations for Administrators and Youth Workers

Keep LGBT Youth Safe in Shelters and Other Residential Services

There are a handful of facilities across the country that offer specific shelter and residential services to LGBT homeless youth, but these programs only provide a very small fraction of the number of beds needed to house all LGBT homeless youth, and in some cases these facilities are not appropriate for particular LGBT youth. It is important for LGBT youth to feel safe and comfortable in all local emergency shelters and transitional living programs. If LGBT youth do not feel comfortable staying in a shelter because of fear of violence or harassment they will not use these services. There are several steps that agencies can take to better meet the needs of LGBT homeless youth.

Agencies that provide shelter and other residential services to homeless youth should do the following:

- Ensure that LGBT youth participants are not treated differently from heterosexual youth in shelter placement determinations.
- Ensure that staff never automatically isolate or segregate LGBT youth from other participants for the LGBT youths' protection.
- Inform LGBT youth participants of the different types of sleeping arrangements available, including beds close to direct care staff if the youth participant prefers to be in eyeshot/earshot of staff.
- Ensure that transgender or gender-nonconforming youth participants are not automatically placed based on their assigned sex at birth, but rather in accordance with an individualized assessment that takes into account their safety and gender identity.
- Ensure that individual LGBT youth participants are not placed in a room with another youth who is overtly hostile toward or demeaning of LGBT individuals.
- Allow transgender youth to use bathrooms, locker rooms, showers, and dressing areas that keep these youth physically and emotionally safe and provide sufficient privacy.
- Ensure that staff do not prohibit LGBT youth participants from having roommates or isolate these youth from other youth based on the false assumption that LGBT youth are more likely to engage in sexual behaviors.
- Maintain regular contact with youth participants placed in scattered-site housing units (apartments in the community) to protect them from emotional isolation and ensure they are free from harassment and discrimination.
- Create a safety plan for youth placed in scattered-site housing to respond to verbal harassment, physical threats to safety, and sexual exploitation by neighbors and community members.

■ CLOSING

Given the overrepresentation of LGBT youth in homeless populations and their increased levels of abuse and exploitation in street environments, agencies and programs serving homeless youth should adopt competencies to adequately serve the needs of LGBT youth participants. The recommended best practices noted above are the first guidelines in the United States dedicated to building cultural proficiency and positive programmatic practices to meet the needs of LGBT homeless youth. Agencies can use this document to evaluate how well they are currently meeting the needs of LGBT homeless youth or as a starting point for creating a broader action plan for new initiatives.

A significant portion of the recommendations was created by LGBT youth and reviewed by an advisory panel of professionals with the National Advisory Council on LGBTQ Homeless Youth, including representatives from the National Alliance to End Homelessness, Lambda Legal, the National Center for Lesbian Rights, the American Bar Association, and the National Network for Youth. The National Advisory Council on LGBTQ Homeless Youth anticipates these best practice recommendations and comments will be widely circulated, critically studied, improved upon, and implemented to improve the lives of LGBT homeless youth.



Notes

1. Dempsey, Clea L. 1994. Health and Social Issues of Gay, Lesbian, and Bisexual Adolescents. *Families in Society* 75, no. 3: 160-167. It should be noted that a youth's need for social desirability may result in underreporting when asked about issues pertaining to sexual orientation, gender identity, and family and personal substance abuse.
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6. Van Leeuwen, James M., Boyle, Susan, Salomonsen-Sautel, Stacy, Baker, D Nico, Garcia, JT, Hoffman, Allison and Christian J. Hopfer. 2006. Lesbian, Gay, and Bisexual Homeless Youth: An Eight City Public Health Perspective. *Child Welfare* 85, no. 2: 151-170. See also, Whitbeck, Les B., Chen, Xiaojin, Hoyt, Dan R., Tyler, Kimberly A. and Kurt D. Johnson. 2004. Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents. *The Journal of Sex Research* 41, no. 4: 329-342.
7. Gender identity is a person's internal, deeply felt sense of being male or female, or something other or in-between. A person's gender identity may or may not conform to physical anatomy.
8. See Glossary
9. For information about GID and the World Professional Association for Transgender Health (WPATH) visit their website: www.wpath.org. If you wish to review the WPATH standards of care, please see http://www.wpath.org/publications_standards.cfm.

Glossary of Terms

- Bisexual:** a person who is emotionally, romantically, and sexually attracted to both men and women.
- Coming out:** the process of disclosing one’s sexual orientation or gender identity to others. Because most people in our society are presumed to be heterosexual, coming out is not a discrete event, but a lifelong process. Heterosexual family members or allies of LGBT persons also experience “coming out” when they disclose to others that they have friends or relatives who are LGBT.
- Gay:** a person whose emotional, romantic, and sexual attractions are primarily for individuals of the same sex, typically in reference to men. In some contexts, still used as a general term for gay men and lesbians.
- Gender expression:** a person’s expression of his or her gender identity (see below), including characteristics and behaviors such as appearance, dress, mannerisms, speech patterns, and social interactions.
- Gender identity:** a person’s internal, deeply felt sense of being male or female, or something other, or in-between. Everyone has a gender identity.
- Gender identity disorder (GID):** a strong, persistent desire to be the opposite sex, as well as persistent discomfort about one’s anatomical sex or a sense of inappropriateness in the gender role corresponding to one’s anatomical sex. GID is a diagnosable medical condition found in the *Diagnostic and Statistical Manual (DSM)*.
- Gender-nonconforming:** having or being perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender-nonconforming people may or may not identify as LGBT.
- Genderqueer:** a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described gender identity (for instance, male or female only). Also see *gender-nonconforming*, *queer*, and *transgender*.
- Heteronormativity:** a belief system that assumes heterosexuality is normal and that all people are heterosexual.
- Heterosexism:** a belief system that assumes that heterosexuality is inherently preferable and superior to other forms of sexual orientation.
- Heterosexual:** a person whose emotional, romantic, and sexual attractions are primarily for individuals of a different sex. Sometimes referred to as straight.
- Homophobia:** fear, hatred of, aversion to, or discrimination against: homosexuality, LGBT people, individuals perceived as LGBT, and people associated with LGBT people.
- Homosexual:** a term used to refer to a person based on his or her same-sex sexual orientation, identity, or behavior. Many LGBT people prefer not to use this term—especially as a noun—because of its historically negative use by the medical establishment.
- Intersex:** a term used to refer to an individual born with a reproductive or sexual anatomy that does not conform exclusively to male or female norms in terms of physiological sex (this may include variations of genetics, genital or reproductive structures, or hormones). According to the Intersex Society of North America (ISNA)—an organization that advocates and educates about intersex concerns—about one in every 2,000 children is born intersex. Many intersex people prefer this term to the historically negative term *hermaphrodite*. An intersex person may or may not identify as LGBT.

In the closet: keeping one’s sexual orientation or gender identity secret.

LGBT: common acronym for Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning— persons who despite their differences are often discriminated against in similar ways. Sometimes written to include I for Intersex, and/or A for Ally. May also be written as LGBTQ or GLBTQ.

Lesbian: a woman whose emotional, romantic, and sexual attractions are primarily for other women.

Queer: an historically derogatory term for a gay man, lesbian, or gender-nonconforming person. The term has been widely re-claimed, especially by younger LGBT people, as a positive social and political identity. It is sometimes used as an inclusive, or umbrella, term for all LGBT people. More recently, *queer* has become common as a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described sexual orientation (for instance, gay, lesbian, or bisexual only). Some LGBT community members still find *queer* an offensive or problematic term. Also see *genderqueer*.

Questioning: an active process in which a person explores his or her own sexual orientation and/or gender identity and questions the cultural assumptions that he or she is heterosexual and/or gender-conforming. Many LGBT people go through this process before “coming out.” Not all people who question their identities end up self-identifying as LGBT.

“Reparative” or “Conversion” Therapy: an intervention intended to change an individual’s sexual orientation from homosexual to heterosexual, which is not condoned by the American Academy of Pediatrics, the American Psychiatric Association, or other major professional associations.

Sexual orientation: a term describing a person’s emotional, romantic, and sexual attraction, whether it is for members of the same sex or a different sex. More appropriate than “sexual preference.” A person’s sexual orientation may or may not dictate the person’s sexual behavior or actions.

Straight: A term often used to identify a person as heterosexual.

Transgender: an umbrella term that can be used to describe people whose gender expression is nonconforming and/or whose gender identity is different from their assigned sex at birth. This term can include transsexuals, genderqueers, cross-dressers, and others whose gender expression varies from traditional gender norms.

Transition: the time period when a transgender person starts living as the gender he or she identifies as. Often includes a change in style of dress, selection of new name, a request that people use the correct pronoun, and possibly hormone therapy and/or surgery.

Transphobia: fear, hatred of, aversion to, or discrimination against transgender people or people who are gender-nonconforming.

Transsexual: a term for someone who transitions from one physical sex to another in order to bring his or her body more in line with his or her innate sense of gender identity. It includes those who were born male but whose gender identity is female, and those who were born female but whose gender identity is male, as well as people who may not clearly identify as either male or female. Transsexual people have the same range of gender identities and gender expression as non-transsexual people. Many transsexual people refer to themselves as transgender.

Organizations Supporting the Dissemination of the National Recommended Best Practices for Serving LGBT Homeless Youth

Ali Forney Center, New York, NY

The Attic Youth Center, Philadelphia, PA

Avenues for Homeless Youth/GLBT Host Home Program, Minneapolis, MN

Children's Service Society of Wisconsin, Milwaukee, WI

The Gay, Lesbian, Bisexual, and Transgender Youth Support Project of
Health Care of Southeastern Massachusetts, Inc., Brockton, MA

Green Chimneys Children's Services, NYC Programs, New York, NY

Larkin Street Youth Center, San Francisco, CA

Latin American Youth Center, Washington, DC

Metropolitan Community Churches, Global Justice Ministries, New York, NY

Metropolitan Community Churches, Homeless Youth Services, New York, NY

Milwaukee LGBT Community Center, Milwaukee, WI

National Black Justice Coalition, Washington, DC

San Diego Youth Services, San Diego, CA

Sexual Minority Youth Assistance League, Washington, DC

Sylvia Rivera Law Project, New York, NY

Teen Living Programs, Chicago, IL

Transgender Health Empowerment, Inc., Washington, DC

Utah Pride Center, Salt Lake City, UT

Walden Family Services, Inc., San Diego, CA

YouthCare, Seattle, WA



Advocates
For Youth

Rights. Respect. Responsibility.®

RESPECTING THE RIGHTS OF GLBTQ YOUTH, A RESPONSIBILITY OF YOUTH-SERVING PROFESSIONALS

By Jessie Gilliam, Program Manager for Internet Interventions, Advocates for Youth

Some organizations and programs are intentional about serving gay, lesbian, bisexual, transgender, and questioning (GLBTQ) youth. However, many programs in the United States that serve youth, including educational, health care, youth development, sports, recreational, and employment programs, among others, ignore or overlook the presence of GLBTQ youth among those they serve.

A recent survey of high school youth found that 5.5 percent self-identified as gay, lesbian, or bisexual and/or reported same-gender sexual contact.¹ This probably does not include transgender and questioning youth or those who are fearful of sharing this personal information. Consider then, that six to 10 percent of young people in classrooms and other youth programs may be GLBTQ. Often, unless the program positively acknowledges their presence and actively discourages homophobia, these young people feel compelled to keep their sexuality and their questions hidden.

Society in the United States is overtly hostile to GLBTQ people, and societal homophobia often leads them to devalue themselves. Statistics paint a frightening picture of the stresses in the lives of GLBTQ youth. Too often, these young people feel isolated and alone. Violence and hostility at home and school lead many GLBTQ youth to drop out, run away, use drugs, and attempt suicide.^{1,2}

A values-based approach to serving youth asserts that every young person is of infinite value, regardless of race/ethnicity, gender, health status, socio-economic background, sexual orientation, or gender identity. Valuing youth provides an ethical imperative to acknowledge and serve GLBTQ youth equally and positively along with heterosexual youth.

In October, 2001, Advocates for Youth launched the *Rights. Respect. Responsibility.*® (3Rs) campaign. Through the campaign, Advocates for Youth asserts that—

- Adolescents have the **right** to balanced, accurate, and realistic sexuality education, confidential and affordable sexual health services, and a secure stake in the future.
- Youth deserve **respect**. Today, they are perceived only as part of the problem. Valuing young people means they are part of the solution and are included in the development of programs and policies that affect their well-being.
- Society has the **responsibility** to provide young people with the tools they need to safeguard their sexual health and young people have the responsibility to protect themselves from too early childbearing and sexually transmitted infections, including HIV.

The 3Rs applies to *all* youth, regardless of sexual orientation or gender identity.

Most of my role models are my friends who have been able to survive when they were told they shouldn't.
Gay youth, in an online interview³

Anyone who provides services to youth has an obligation to promote the health and well-being of GLBTQ young people. These youth need and deserve help to survive in the face of family rejection and school harassment, against heightened HIV, STI, suicide, and violence rates, against racial, cultural and socio-economic prejudice. More, they can and should thrive as contributing members of their communities. But, GLBTQ youth need support in order to succeed.

Many programs and approaches exist that specifically serve GLBTQ youth, helping them to value themselves and to avoid or reduce sexual health risks. These approaches offer assistance,

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insights, and techniques to help programs that do not focus solely—or at all—on GLBTQ youth. Programs that respect young people’s right to make responsible decisions about sex will want to develop policies and environments that support *all* the youth in the program, irrespective of their sexual orientation or gender identity.

This issue of *Transitions* compiles the best of these approaches. It offers factual information about the lives of and risks to GLTBQ youth, as well as personal observations of young activists in the field. It provides criteria for successfully serving GLBTQ youth, GLBTQ youth of color, HIV-positive youth, transgender youth, and young people who question their sexual orientation. It addresses the chilling effect of abstinence-only-until-marriage education and the need of lesbian and bisexual young women for access to emergency contraception. Throughout the issue, GLBTQ youth give glimpses of their lives, perceptions, personalities, and experiences.³

Endnotes are found on page 19.

RESOURCES

- *An Emergency Option for Preventing Pregnancy after Sex*. Advocates for Youth, 2001.
- *HIV/AIDS and the Young African American Woman*. Advocates for Youth, 1999.
- Gelperin N. *Teaching with SEX, ETC.: Articles & Activities*. Network for Family Life Education, SEX, ETC., 2002.
- *Young Women Who Have Sex with Women: Falling through Cracks for Sexual Health Care*. Advocates for Youth, 2001.
- *I Think I Might Be Bisexual, Now What Do I Do?* Advocates for Youth, 2001.
- *I Think I Might Be Gay, Now What Do I Do?* Advocates for Youth, 2001.
- *I Think I Might Be Lesbian, Now What Do I Do?* Advocates for Youth, 2001.
- *Guide to Implementing TAP (Teens for AIDS Prevention): A Peer Education Program to Prevent HIV and STI*. 2nd ed. Advocates for Youth, 2002.
- *Resources for Gay, Lesbian & Bisexual Youth*. Advocates for Youth, 2001.

Visit www.advocatesforyouth.org. for Advocates' publications. For SEX, ETC., visit www.sxetc.org.

Films by Teens for Teens

Scenarios USA is a program for teenagers to get them thinking about their choices and decisions around important issues that affect their lives, such as HIV/AIDS, unwanted pregnancy and violence. Teens, ages 12 to 22, address these issues by writing stories for the Scenarios contest, *What's the Real Deal*.

Winners get to make their stories into short films in their hometown, working with a professional filmmaker and crew. The finished products are high-quality short films that educators can use to spark discussion on important issues. The films have been shown on MTV, PBS and NBC

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STRESSORS IN THE LIVES OF GLBTQ YOUTH

By Meg Earls, Grants Manager, Advocates for Youth

In the United States, GLBTQ youth often lack positive role models and face serious problems in a largely homophobic society. Numerous studies indicate that societal homophobia increases GLBT youth's risk for substance use, dropping out of school, homelessness, sexual risk-taking, and attempting suicide. Youth-serving professionals owe *all* the young people in their programs the opportunity to build their skills and self-confidence and to succeed; but many professionals are unaware of the risks faced by GLBTQ youth.

GLBT youth realize their sexual orientation early in life.

- Research suggests that sexual orientation may be determined during childhood. Many GLBTQ individuals report a feeling of being “different” from an early age.⁴ Prospective studies with adolescents show gay males and lesbians self-identifying at about age 16.⁵ Anecdotal evidence also suggests that many transgender youth have felt, from an early age, uncomfortable with their biological gender and/or expected gender role.⁶
- The age of coming out may be dropping as increased access to information and services for GLBTQ youth, particularly in urban areas, provides greater opportunities for self-affirmation and socialization.⁵

Openly identifying as GLBT may mean rejection by family, friends, and peers at school.

- After coming out to their family, or being discovered, many GLBT youth are thrown out of their homes, face physical, emotional, and/or sexual abuse, or become the focus of family disfunction.²
- GLBT youth face hostility and violence at school. In one nationwide survey, over 83 percent of GLBT students reported verbal harassment while 90 percent of the youth said that other students never or rarely intervened. Forty-eight percent of GLBT youth of color reported verbal harassment on the basis of both orientation and ethnicity. Seventy-four percent of transgender students reported sexual harassment. Over 21 percent of all GLBT youth reported being punched, kicked, or injured with a weapon because of their sexual orientation while 42 percent reported being shoved or pushed.⁷ GLBT students are three times more likely than heterosexual students to miss school because they feel unsafe.¹

GLBTQ youth of color are often at disproportionate risk for abuse, suicide, and HIV infection.

- In one survey, 61 percent of GLBT youth of color reported being victims of violence from family, and 40 percent, from peers and strangers; 41 percent of females and 35 percent of males had attempted suicide.²
- In one recent study of young men who have sex with men (YMSM), 16.9 percent of men of mixed race/ethnicity who reported black background were HIV-infected. HIV prevalence was also higher among African Americans, men of mixed or other race/ethnicity, and Hispanics than among Asian American/Pacific Islanders or whites (14.1, 12.6, and 6.9 percent versus 3.0 and 3.3 percent, respectively).⁸

Research suggests that societal homophobia results in high rates of suicide and suicide attempts, substance abuse, and risk for HIV and other sexually transmitted infections (STIs).

- Numerous studies establish clear links between a youth's sexual orientation and the likelihood of attempting suicide. In a recent survey, GLB and questioning students were more than twice as likely, and gay and bisexual males were nearly four times as likely, as their heterosexual peers to have attempted suicide.⁹
- A study of public high school students found that GLB students reported far more use of crack cocaine, marijuana, alcohol, and inhalants than did their heterosexual peers. GLB students were also more likely to report cocaine use before age 13 than were their heterosexual peers.¹⁰
- In one recent study, during the previous six months 90 percent of YMSM had sex with at least one man, and 23 percent had sex with at least five men. Overall, 41 percent reported unprotected anal sex.⁸

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HARASSMENT IN SCHOOL

By Braden Jahr, 16, Online Peer Educator with www.YouthResource.com, Advocates for Youth

What comes to mind when you hear the words “high school”? Do you think of a safe and friendly environment where students go to learn? Well, that isn’t the way it is for thousands of teenagers across the country. Just try to imagine going to school every day and worrying about your safety so much that you cannot concentrate. Imagine being screamed at, kicked, punched, threatened, and spit upon. How would you feel? You would probably feel the same way that thousands of gay students feel every day—worthless. Now can you understand why so many gay teenagers say that high school was one of the worst experiences of their lives?

I left high school after six months because of harassment like this and the school’s lack of understanding and support. Week after week, I went to the administration, informing them of the names I was called and the many other things my fellow students would do to me and others. I heard that they were doing the best they could—nothing. They blamed me. They told me that I brought it upon myself by the way that I looked, acted, and dressed. I was told that, if I would “tone it down,” I would be left alone. The irony was that I did not dress, look, or act out of the ordinary. Then, one day I was attacked in the hallway. I was not hurt, but I was badly shaken. The boy who attacked me was suspended for three days! Because the school didn’t protect me, I was forced to leave. I was forced to give up a part of my youth, to give up my personal rights to freedom, justice, and the pursuit of happiness as well as to an education.

My life has gotten so much better since I left high school. I have traveled to conferences around the country, meeting hundreds of amazing people, and have learned about aspects of gay life outside of a rural town. This last year has been a most liberating experience! In October, Advocates for Youth accepted me as a peer educator. I spend a lot of time answering e-mail from youth—some of them struggling with harassment in school and all of them looking for help, a way to cope with ignorance and lack of acceptance. I also spend considerable time working with the Triangle Foundation (Michigan’s largest gay rights organization) and with PFLAG (Parents, Families, and Friends of Lesbians and Gays) on their Safe Schools project. I speak to counselors and administrators from a few school districts, including those at my former high school, where I have successfully founded the area’s first diversity group of its kind.

I do this knowing that gay youth make up one-third of all suicides, in part because of the harassment at their schools and the stigma attached to being gay. School counselors, administrators, and staff can help to end this harassment. Help is available from organizations such as Advocates for Youth and GLSEN (The Gay, Lesbian, and Straight Education Network). I urge you to take a stand against discrimination in your schools, communities, and families. You will be helping more than you can imagine.

Continued from page 3

If thrown out of their homes, many GLBT youth face life-threatening situations living on the streets.

- Estimates vary, but service providers agree that GLBT youth make up a large and disproportionate share of homeless youth (25 to 40 percent).⁵
- In efforts to survive on the street, homeless youth often engage in survival sex and are at increased risk for rape, beatings, and STIs, including HIV.²

Endnotes are found on page 19.

GLBT YOUTH ACTIVISM: INSPIRING EACH OTHER

By Kael Parker, 21, Online Peer Educator with www.YouthResource.com, *Advocates for Youth*

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Recently, an old friend reminded me that, when I first came out as queer, I thought I'd never be a part of "that activist scene." It's funny to see how much my life has changed since then, and how much of that change I owe to my experiences with GLBT youth activism.

In the beginning, activism was more of a social activity for me than anything else; I did it because my friends did it. That might never have changed if I hadn't come out as transgendered. Living as a transguy in rural Maine isn't easy, and I knew I needed support. I turned to the Internet and met a lot of other young guys like me. It was incredible, and I believe that, were it not for their courage and openness, I would have been unable to be honest with myself and my friends and family about my own life.

I built a Web site as a way to communicate with online friends and share a little more about myself. Then, I began getting e-mail from people who appreciated what I was doing, which really made all my time and effort worthwhile. Now, through my site—which started out just as a way to keep in touch with my friends—I am able to help other people.

After launching my Web site, I started working with a queer youth/adult collaborative based in Portland, Maine, that provides peer support, education, and outreach in the local community. Through the speakers bureau, I have 40 to 50 yearly speaking engagements at schools and conferences for medical and mental health professionals and others. Speaking and, hopefully, leaving audiences with something to think about is probably the most rewarding work I do. I think about how much it would have meant to me if someone had come into my high school and talked about sexuality and gender identity in a positive way, and I feel lucky to have the opportunity to do that for other youth.

I also work as an online peer educator with Advocates for Youth's Web site, www.youthresource.com, fielding questions from visitors to the site. I love being a part of the Advocates family, knowing that I've been well trained and that I have a strong support system to enable me to help other youth with their concerns. I enjoy the opportunity to reach a wide range of people, and I've had only positive experiences working as a peer educator.

I learned early on that networking—connecting with other people doing similar work—is critical to successful activism. Each time I meet someone new, whether that's a teacher, a young person asking how to make an organization more trans-inclusive, or someone whose partner has just come out as trans, a door opens up to possibilities that weren't there before.

Of course, there are some drawbacks to being open about my life. A lot of people don't agree with who I am and the causes I support, and I am an easy target for them as a result of being so "out." I've gotten nasty e-mail and snide remarks, and there have been times when I've felt physically unsafe. These things make me see even more clearly how important this work really is. I am glad to feel strong and proud and able to put myself out there to help other people. I know activism will continue to be a big part of my life.

Sometimes I feel like there is great change ... in the right direction, but then there are other days, like when I realize the partners of the gay September 11th victims aren't going to get federal relief, that I feel like a second class citizen.

Youth interviewed online³

CREATING INCLUSIVE PROGRAMS

By Jennifer Augustine, MPH, HIV/STI Prevention Program Associate, Advocates for Youth

Kayla Jackson, MPA, Director, HIV/STI Prevention Programs, Advocates for Youth

Jane Norman, Director, Youth Empowerment Initiatives, Advocates for Youth

Advocates' staff is often asked to lead workshops or training sessions for youth-serving professionals who wish to become better informed about the needs of GLBTQ youth. Sometimes, participants say that they are interested in learning more about GLBTQ issues, but that "there aren't any GLBTQ youth in my program/town/city/state." This never fails to surprise staff, as studies show that between five and 10 percent of people are gay, lesbian, bisexual, or transgender.¹ Perhaps it might be more accurate to say that there aren't any gay, lesbian, bisexual, transgender, or questioning youth who feel safe enough to share this information with anyone in the program or sure enough to self-identify as gay, lesbian, bisexual, or transgender.

Whether or not youth-serving professionals know of any openly GLBTQ youth in programs, it is essential to create a safe space for young people who are, who believe that they might be, or who have friends or family members who are gay, lesbian, bisexual, or transgender. Research demonstrates that homophobia and heterosexism greatly contribute to higher rates of suicide, violence victimization, risk behavior for HIV infection, and substance abuse among GLBTQ youth as compared to their heterosexual peers.² Adults' responsibility is to *all* of the youth in the program. Even if some youth-serving professionals feel uncomfortable about sexual orientation, they owe it to the young people they serve to educate themselves and to help connect youth to the organizations, role models, and resources they need. Adults owe it to youth to respect the rights of each of them.

Creating programs that are inclusive of and sensitive to GLBTQ youth is not difficult, but it does require conscientious attention. The following suggestions will help.

- **Assess your own values and beliefs** regarding sexual orientation and gender identity. Taking stock will help you address internal biases, recognize personal limits, identify areas for personal growth, and enable you to serve GLBTQ youth in an open, honest, respectful manner.
- **Discuss sexual behaviors explicitly** rather than assuming that everyone defines sexual intercourse in the same way. Also, avoid terms that make unwarranted assumptions or are disrespectful in nature. For example, the term 'gay sex' is inaccurate and helps no one; heterosexual, bisexual, and lesbian youth may engage in anal intercourse while gay males may not. It is unprotected anal intercourse—not being gay—that poses a strong risk for infection with HIV and other sexually transmitted infections (STIs). Unprotected vaginal and oral sex also pose risks.
- **Use inclusive language.** Discuss 'partners' instead of always assuming a youth's prospective date or sexual partner is of the opposite gender. If you are using role-plays, using ambiguous names, such as Chris or Taylor, will allow students to personalize the context to their lives rather than to reject the role-play scenario as being irrelevant.
- **Make it clear that homophobic sentiments and actions have no place in the program.** Develop a "zero tolerance" policy regarding discriminatory words and behavior directed at GLBTQ youth, just as you would toward racist and sexist remarks. Post the policy in public areas and develop clear guidelines for disciplinary actions. When training students or staff to lead or facilitate workshops, include opportunities to practice responding to unacceptable language and behaviors.

- **Proactively address stereotypes and misperceptions** that may exist among youth and other audiences. “If I say that HIV is a ‘gay disease,’ who can explain why I am wrong?”
- **Incorporate comprehensive sex education.** Sex education programs should include information about *both* contraception *and* abstinence. When discussing abstinence, do not talk about “abstinence-until-marriage.” Like heterosexual youth, GLBTQ youth search for intimacy and emotional closeness and may long for a committed relationship. In a society where same-gender marriages are often illegal and where same-gender committed relationships are ignored or frowned upon, the concept of “abstinence until marriage” completely ignores the emotional and physical needs of GLBTQ youth.
- **Consider posting a ‘safe zone’ sticker**, available from the National Youth Advocacy Coalition (www.nyacyouth.org) that states “A person displaying this symbol is one who will be understanding, supportive, and trustworthy if a gay, lesbian, bisexual, or transgender youth needs help, advice, or just someone with whom they can talk.”
- **Schedule training sessions to debunk myths and stereotypes.** Explain the differences between sexual orientation and behavior and assure students that same-gender feelings and crushes do not necessarily mean a student is, or is not, gay. Include information about sexual orientation throughout a training or program. This helps to dispel the stigmatization of homosexuality as deviant and abnormal.
- **Ask GLBTQ youth and adults to participate in panel discussions or as speakers** to share some of their experiences. Create a safe zone and opportunities for youth to talk openly about racism, sexism, homophobia, and other forms of oppression.
- **Include local groups that serve GLBTQ people** in referral and resource lists.
- **Consider working with students to begin a Gay/Straight Alliance** in school, if one does not already exist. For more information, visit www.glsen.org.
- **Build youth-adult partnerships into the program.** Make sure that youth leaders include those who identify as GLBTQ. Programs are more effective and sustainable when youth are partners in the programs’ design, development, implementation, and evaluation.
- **Provide peer support.** Young people benefit by developing leadership, communication, and other pro-social skills and by seeing role models with whom they can identify. Ensure that peer leaders include youth who identify as GLBTQ.
- **Hire GLBTQ adults to work in the program** as full- or part-time staff or as volunteer mentors.
For more information, training, and strategic assistance on providing a safe and supportive environment for GLBTQ youth, contact Advocates for Youth at 202.419.3420 or visit www.advocatesforyouth.org.

Endnotes are found on page 19.

There are gay/straight alliances in schools now, but many queer kids are still being beaten up.

Youth interviewed online³

ABSTINENCE-ONLY-UNTIL-MARRIAGE EDUCATION: ABANDONING RESPONSIBILITY TO GLBTQ YOUTH *

When Congress passed the Personal Responsibility Act in 1996, it directed public funding to support abstinence-only-until-marriage education. Ostensibly aimed at preventing teen pregnancy and out-of-wedlock births, abstinence-only education serves to stigmatize homosexuality and GLBT people. Some \$87 million in public funds have been spent in each year since 1997 on abstinence-only-until-marriage education. Five of the eight requirements of the abstinence-only provision have a particularly negative impact on GLBT people. Abstinence-only education funded through the Personal Responsibility Act

- *Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children.*
- *Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems.*
- *Teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity.*
- *Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects.*
- *Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society.*¹¹

Dangers of Abstinence-Only Education to All Youth

First, it is important to note the threats that abstinence-only-until-marriage education poses to young people in general. Research has shown that sex education that promotes the delay of first intercourse but simultaneously teaches safer sex practices is more effective than abstinence-only education. A World Health Organization review of 35 sex education programs around the world documented the relative ineffectiveness of abstinence-only education in stemming the spread of sexually transmitted infections.¹²

A report released by U.S. Surgeon General David Satcher in early 2001 also questioned the effectiveness of abstinence-only education. Satcher noted that there has been little research to demonstrate the effectiveness of this particular type of instruction.¹³ Moreover, initial indicators are that the Act's abstinence-only provisions have had a chilling effect on the discussion of homosexuality and on sex education efforts aimed at stopping the spread of sexually transmitted infections (STIs) and teen pregnancy.

Abstinence-only-until-marriage approaches to sex education are counter-productive, dangerous, and even harmful to youth. The approaches present premarital sex as intrinsically harmful. Relying on shame and fear, these approaches spread inaccurate information about STIs and contraceptives; present rarely occurring, worst-case scenarios as routine and common; stigmatize and evoke hostility toward people with AIDS; and largely ignore homosexuality, except as a context for HIV transmission. Some curricula are explicitly hostile toward lesbians and gay men.¹⁴

Abstinence-only approaches present condoms as a dangerous and ineffective form of birth control, overstating condom failure rates and translating people's failure to use condoms properly as an intrinsic defect in the product. Gender stereotypes about males and females are frequent—presenting boys as sex-crazed and girls as less interested in sex than in finding love. The curricula frequently blame feminism for promiscuity and warn girls about the way they dress. Children of single parents and unmarried straight and gay parents are the subjects of such stereotypes as, children of single parents “have lower grades and aspirations” and “are twice as likely to have behavior problems and seek psychiatric help.”¹⁴

* Adapted and reprinted with permission. Cahill S and Jones KT. *Leaving Our Children Behind: Welfare Reform and the Gay, Lesbian, Bisexual and Transgender Community*. New York, NY: The Policy Institute of the National Gay & Lesbian Task Force, c2001.

Particular Threat to GLBTQ Youth

Programs that focus on abstinence-only-until-marriage are detrimental to GLBT youth, those questioning their sexual orientation, the children of GLBT parents, and GLBT teachers and administrators in the nation's schools. These programs largely ignore homosexuality except as a context for HIV transmission, but some programs implicitly and explicitly stigmatize homosexuality. For example, *Sex Respect* teaches that, “[R]esearch and common sense tell us the best ways to avoid AIDS are: Remain a virgin until marriage ... Avoid homosexual behavior.”¹⁴ When homosexual sexual practices are noted, *Sex Respect* portrays them as “unnatural behavior.”¹⁴

As mandated by the Personal Responsibility Act, abstinence-only-until-marriage education teaches that marriage is the only appropriate context for sexual relations. *WAIT Training* explicitly seeks to “reframe the act of sexual intercourse as best and most appropriate between two committed married people who love each other.”¹⁴ *FACTS* presents homosexuality as beyond the realm of common sense: “it only makes sense that marriage is the only place for sexual activity to be enjoyed free from negative consequences.”¹⁴ *Clue 2000* says: “Sexual love, also called conjugal love, is the love between a man and a woman in marriage.”¹⁴

At least two abstinence-only curricula are overtly hostile to gay men and lesbians. *Clue 2000* engages in the standard, right-wing tactic of conflating homosexuality with pedophilia and incest.¹⁴ *Facing Reality* assures teachers and parents that presenting homosexuality as intrinsically dangerous is actually in the best interests of students and is not homophobic. It also repeats the outdated notion of AIDS as a gay disease:

*[M]any homosexual activists are frustrated and desperate over their own situation and those of loved ones. Many are dying, in part, due to ignorance. Educators who struggle to overcome ignorance and instill self-mastery in their students will inevitably lead them to recognize that some people with AIDS are now suffering because of the choices they made. ... Teachers, in order to preserve an atmosphere of intellectual freedom, should feel confident that when examining health issues and moral implications of homosexual behaviors, they are not engaging in an assault on a particular person or group.*¹⁴

The irony of the last sentence is particularly rich. Abstinence-only-until-marriage education is, by definition, a suppression of alternative points of view and involves supplanting of a method scientifically proven to be effective in decreasing the spread of STIs with another, unproven method. Yet this approach is constructed as “preserv[ing] an atmosphere of intellectual freedom.”

In contrast to abstinence-only programs, studies have shown that lesbian, gay, and bisexual youth who receive gay-sensitive HIV instruction in school tend to engage in risky sexual behavior less frequently than similar youth who do not receive such instruction. In a random sample of high school students in Massachusetts, among sexually active youth, gay youth reported more sexual partners, more frequent use of substances before engaging in sex, and higher rates of pregnancy than other youth. However, those gay youth that received gay-sensitive HIV instruction reported fewer sexual partners and less frequent substance use before sex compared to other gay youth.¹⁵

The authors of this study contend that the increased risky sexual behavior among gay youth “tends to be a shifting of sexual orientation and self-identification, and the pressure of a stigmatized sexual identity forces some gay, lesbian, and bisexual adolescents to go to great lengths to prove to themselves and others that they are not gay.”¹⁵ This often involves engaging in heterosexual activity to prove that one is straight to themselves or others. It is clear that those sex education programs that incorporate information on HIV and sexuality are beneficial in reducing risky sexual behavior among youth exploring their sexuality.

Efforts to silence and stigmatize homosexuality can have devastating effects on the health and well-being of GLBTQ youth. A recent NIH-funded study of Latino gay and bisexual men, found a correlation between experiences of homophobia and increased likelihood to engage in HIV risk behaviors. It also found that family acceptance and the presence of an openly gay role model while growing up correlated with lower incidence of HIV risk behaviors.¹⁶ The promotion of homophobia and ignorance about HIV/AIDS and other STIs hurts all students, but especially those who are gay or from gay families.

Endnotes are found on page 19.

MEETING THE SPECIAL NEEDS OF GLBTQ YOUTH OF COLOR

By Kayla Jackson, MPA, Director, HIV/STI Prevention Programs, Advocates for Youth

GLBTQ youth of color face stigma related to both race and sexual orientation. Some also face bigotry related to their gender identity. Surviving racial/ethnic discrimination requires strong connections to family and ethnic community. However, GLBTQ youth of color seldom receive support regarding sexual orientation or transgender identity. Indeed, ethnic communities often perceive gay, lesbian, and bisexual orientation or transgender identity as a rejection of ethnic heritage. Unlike racial stereotypes that family and ethnic community positively reframe, many ethnic minority communities strongly reinforce negative cultural perceptions of homosexual orientation.¹⁷ Thus, stigma places these young people at greater risk for substance use, violence, and risky sexual behaviors.

African American and Latino young men who have sex with men (YMSM) are more likely than other YMSM to be infected with HIV.⁸ Young lesbians of color, particularly African Americans and Latinas are at risk for HIV infection and pregnancy due, in part, to the strong value placed on motherhood and childbearing in their ethnic communities.¹⁸ Young GLBTQ American Indians are often at increased risk for substance abuse, mental illness, and HIV infection.¹⁹ The needs of Asian and Pacific Islander GLBTQ youth are likely to be overlooked due to the 'model minority' stereotype, language barriers, and underreporting of AIDS cases.²⁰

Most models of homosexual identity development are based on the experiences of white, middle- and upper-middle class lesbians and gays.¹⁷ Often, youth of color don't identify as 'gay' or 'queer,' which may constitute a barrier to successful service delivery. To effectively meet the needs of GLBTQ youth of color, programs must integrate awareness of racism with an understanding of how culture shapes sexual attitudes, values, and beliefs.

Good programs targeting youth of color already fully integrate the culture of the target youth into their activities, language, and materials. They already acknowledge and incorporate culturally specific values, attitudes, beliefs, and knowledge about health, sexuality, and relationships. But these programs may not yet acknowledge the presence and needs of GLBTQ youth among those they serve. Programs are most likely to be effective in also meeting the needs of these youth of color when they:

- Use language that is inclusive and non-pejorative with regard to sexual orientation and gender identity.
- Involve youth, including GLBTQ youth, in planning and implementation.
- Focus on the assets of each teen participant, regardless of sexual orientation and gender identity.
- Address the needs of the whole young person.
- Consider the social and cultural factors that influence behaviors.
- Provide peer support to change peer norms.
- Offer gender-inclusive and sexual orientation-inclusive activities and opportunities.
- Build skills.
- Acknowledge culturally specific values, attitudes, and beliefs.⁵
- Ask young people how they self-identify and use these terms.
- Acknowledge when culture and sexual orientation cause conflicts for GLBTQ youth and recognize and confront cultural biases regarding sexual orientation and gender identity within the program.

Programs that serve youth of color can also serve GLBTQ youth of color through sensitivity, caring, and acceptance. A supportive environment within effective programs can go a long way towards reducing the morbidity suffered by GLBTQ youth of color.

Endnotes are found on page 19.

LATINO YOUNG MEN WHO HAVE SEX WITH MEN: UNIQUE NEEDS AND CHALLENGES

By Alex Franka, Program Associate, Advocates for Youth

A large and growing community of Latino young men who have sex with men (YMSM) is severely affected by HIV/AIDS in the United States and in Latin American countries. According to a recent study, Latino YMSM in the United States are twice as likely to become HIV-infected as are white YMSM.⁸ Latino YMSM need prevention programs that are appropriate in both language and culture and that address their specific Latino community.

Challenges in Preventing HIV Infection among Latino MSM

Why are Latino YMSM at higher risk of HIV infection? In many Latin American countries, ministries of health refuse to acknowledge HIV infection's prevalence in the population.²¹ Sometimes, the ministries alter HIV/AIDS statistics and derail research efforts.²¹ As a corollary, prevention messages reach few people in these countries. Thus, immigrants arriving in the United States may have little information about the importance of safer sex.

As a group, Latino YMSM come from traditional families where religion and family are important and homosexuality is stigmatized. Latino YMSM seldom self-identify as gay or bisexual. They marry and have children rather than 'out' themselves. Many of these young men suffer from depression and engage in sexual activities with other men when under the effects of alcohol and/or drugs. Unprotected sex in these circumstances increases their chances of being infected with HIV and then of infecting their female partners. Many Latino YMSM also have a false perception of their safety because they believe that only gay or bisexual men get infected with HIV. Since many Latino YMSM do not self-identify as gay or bisexual, they believe they are not at risk for the virus. Thus, they may not consider the risks posed by unprotected sex.

Culturally Competent Prevention Messages

Since Latino YMSM often don't identify as gay or bisexual, they don't respond to prevention messages aimed at gay or bisexual men. Prevention messages must be specifically tailored to Latino YMSM. Latino populations need interventions that are in tune with their values and beliefs and that include activities to increase knowledge and promote positive changes in sexual behaviors. Campaigns should aim at individual, interpersonal, and societal levels.

1. HIV transmission among injection drug users is a serious problem among Puerto Ricans living in the United States.²² This community needs messages integrating prevention and treatment for HIV/STI and substance abuse.
2. Sex between men represents the primary cause of HIV infection among Latinos born in Mexico, Cuba, and Central and South America.²² Therefore, prevention messages in these communities should focus on understanding cultural attitudes towards homosexuality and bisexuality.
3. Countries in Central and South America need encouragement and support in creating better education and prevention programs. With more knowledge about HIV, people in these countries can make better informed sexual health decisions.
4. In the United States, Latinos need high quality health services and prevention messages that are not racist or homophobic. Provider staff needs to be sensitive to the needs of Latino YMSM from different communities.
5. Messages should utilize voices of Latino YMSM. Print material should be accessible in the places where Latino YMSM look for sex and in clinics where they go for treatment.²³
6. Messages targeted to HIV-positive YMSM should empower young men to protect both themselves and their partners from STI infection.

Endnotes are found on page 19.

TRANSGENDER YOUTH AND THE ROLE OF SERVICE PROVIDERS *

By A. Charlene Leach, Deputy Director, National Youth Advocacy Coalition

No single group has gone more unnoticed by society, or abused and maltreated by institutional powers, than youth with transgender needs and feelings. With the exception of its attention to child labor and child abuse or neglect law, our society has relegated children to a class virtually without voice or rights in society.

Excerpt from *Transgender Care* by Gianna E. Israel and Donald E. Tarver

Gender is a construct. I can shape ... how I want to be perceived.

Transgender Youth³

In recent years, many programs for GLBTQ youth have witnessed an increased presence of youth who self-identify as transgender.* Youth who do not conform to prevalent gender norms, usually represented as feminine women and masculine men, often experience severe harassment, discrimination, ostracism, and violence. Transgender youth are increasingly claiming their right to define and express themselves in new ways. These new ways might include hormone treatment, gender reassignment surgery, name change, and cross living, to name a few. GLBTQ youth service providers, in particular, increasingly observe the diverse ways in which these youth choose to identify, including making the choice not to identify.

Service providers, parents, families, peers, and community members have key roles to play in supporting the healthy development of transgender youth. Respecting transgender youth means taking responsibility for providing supportive services and a safe environment. The following list should assist in beginning or improving services for transgender youth. The recommendations will not answer all questions, but they will assist, in conjunction with input from youth, in assuring quality services for transgender youth.

- **Don't make assumptions!** Do not assume that you know a youth's gender, or that a youth has gender identity issues, just as you would not make assumptions about a young person's sexual orientation. Exploring gender is a healthy expression of personal development. Self-identification or acknowledgement is a crucial first step in a youth's identity development and expression of self.
- **Create a safe and open environment.** Work towards creating an affirming environment that supports non-stereotypical gender expression, and where there is room for dialogue or discussion. Use inclusive, affirming, non-presumptuous, nonjudgmental, and gender-neutral language. Create organizational norms on behavior and language with youth.
- **Be informed and don't be afraid to examine your own beliefs.** Most of us are products of a trans-phobic society that holds rigid gender roles. We have been influenced by misinformation and fear. We're taught what is feminine and masculine, female and male, and we expect that these bipolar categories will not change. Recognize

* These tips are from a resource manual on gender identity and transgender youth issues, currently under review for publication by the National Youth Advocacy Coalition. For further information, please contact the Coalition at 202.319.7596.

+ Editor's note: Many transgender youth have felt uncomfortable from a very early age with their biological gender. These youth often feel very strongly that they are a person of the other gender. Other transgender youth may be comfortable with their biological gender and embrace a more fluid definition of "male" or "female" behavior and appearance than is the norm in their society.

your level of comfort with different types of gender expression and how this can affect your interactions with youth. Don't be afraid to ask questions.

- **Seek to fully understand gender identity.** Each person's gender identity is natural to that person. Gender identity and sexual orientation are a part of each of us and often develop uniquely. Gender identity may be experienced as a continuum. Some people do not experience gender solely as female or male. It is important for youth-serving professionals to educate themselves on gender identity, sexual identity, adolescent development, and social stereotypes. Moreover, sexuality and gender expression, though integral, are only two aspects of a whole person, and it is important to maintain a balanced perspective in addressing the multifaceted issues of youth's development.
- **Respect confidentiality.** When a young person shares personal information about gender identity, you have achieved the trust of that youth. A breach of this confidence can have dire consequences for the young person. If it truly becomes necessary to share the information, first get the young person's permission.
- **Know when and where to seek help.** Be aware of appropriate referral agencies for crisis intervention, mental and physical health services, emergency assistance, etc. Transgender youth are often subject to abuse, homelessness, suicide, harassment, and physical violence. Be aware of your personal and organizational limits and accept that your organization may not always be the best one to assist a young person in some situations. For assistance in finding program models, visit www.nyacyouth.org or www.youthresource.com.
- **Provide training for staff, board, volunteers and, in some cases, other youth.** Up-to-date training is necessary to help staff develop sensitivity and skills around interacting with youth, preventing groups from being derogatory to individuals, and educating all. Provide transgender youth with information on physical safety.
- **Protect from harassment!** Immediately protect transgender youth from harassment in any form, whether perpetrated by other youth, staff, or others. Make it clear that harassing and/or abusive behavior toward anyone will not be tolerated.
- **Provide single occupancy bathrooms, if possible.** Many individuals are uncomfortable about the idea of a man in the women's room and *vice versa* while transgender youth will feel they are using the appropriate bathroom. Every person has the right to use the bathroom, regardless of gender identify. Consider providing single occupancy bathrooms.

My body fits my gender identity perfectly, because I am who I am.

Transgender youth³

My body is fine by me... but other people don't seem comfortable with my body as it confuses them.

Transgender youth³

SERVING HIV-POSITIVE YOUTH

By Jennifer Augustine, HIV/STI Prevention Programs Associate, Advocates for Youth

In a homophobic society, many people equate sexual orientation with HIV infection. Knowledgeable youth-serving professionals know and can assure youth that no such connection exists. Most gay, lesbian, bisexual, and transgender people are not infected with HIV. Many people who are HIV-infected are heterosexual. HIV-infected youth, regardless of sexual orientation, need a supportive environment in order to remain healthy. They need to feel respected and safe and to have their right to information and services acknowledged.

Half of all new HIV infections occur among young people under 25 years old and every hour, two Americans under age 25 are infected with HIV.²⁴ Far too many HIV-positive youth are unaware of their HIV status because they have not been tested. In a nationally representative survey, only 27 percent of sexually active youth ages 15 to 17 reported that they had been tested for HIV and only 48 percent knew “for sure” where they could go to be tested.²⁵

Moreover, linking HIV-infected youth to health care is difficult. Most HIV-infected youth do not receive adequate health care, even when it is available.²⁶ Barriers to health care for HIV-infected youth include lack of financial resources and insurance, mistrust of health care professionals, difficulty negotiating complex health care systems, complex medical regimens, a shortage of providers with expertise in both HIV and adolescent medicine, and concerns about confidentiality. Also, fear, denial, and cultural perspectives may play a role in a youth’s reluctance to go for care. However, research pinpoints major components of effective programs that serve HIV-positive youth.

Youth-Friendly Services

Youth-friendly services help HIV-positive youth overcome barriers to health care. Youth-friendly services offer

- Flexible hours on weekends and evenings to minimize conflict with school or work
- Accessibility through convenient locations, public transportation or tokens, and/or travel vouchers
- Intensive case management to assist youth in adjusting to complex issues, such as disclosure and partner notification, and to provide links to other services, such as mental health care, substance abuse treatment, transportation, housing, and appointment reminders
- The active involvement of young people in all program aspects, including design, planning, operations, and evaluation
- Staff’s cultural competency, including sensitivity to youth culture, racial/ethnic cultures, gender, sexual orientation, and HIV status
- Décor, materials, and atmosphere that are youthful and welcoming
- Informational materials appropriate to the literacy level(s) and language(s) of the youth served.

Comprehensive Health Care

HIV-positive youth need multidisciplinary case management and care—integrating primary and reproductive health care with HIV-specific care, mental health services, and secondary prevention. Youth usually prefer age-appropriate, “one-stop shopping” health care settings and providers who are familiar with their needs.²⁶ Also, health care providers’ attitudes, such as respectfulness or its opposite (i.e., condescension toward youth and homophobia) appear to be major factors in drawing youth into or deterring them from using the health care system.

A primary concern when working with HIV-positive youth is helping them adjust to their HIV status. Overall goals of primary care include determining the stage of HIV disease; monitoring immune function and viral load; identifying and addressing psychosocial needs; and providing ongoing health maintenance, access to state-of-the-art treatment, education about HIV and risk reduction, and access to appropriate clinical trials.⁵ Like adults, youth have a range of psychosocial issues, ranging from emotional support, treatment adherence, and discrimination and isolation, to basic needs for food, shelter, and transportation. In addition, youth must deal with the developmental, cognitive, and emotional changes of adolescence.

Comprehensive Mental Health Services

Providers need to assess the support available to HIV-positive youth, identify support systems and available resources, and encourage HIV-positive youth to use them. Support networks may include family, friends, sexual partners, health care providers, teachers, counselors, clergy, and adult role models. Providers should also assess youth's awareness of and involvement with community-based HIV/AIDS programs. Working with speakers bureaus, volunteering, and participating in community planning groups can promote the well-being of HIV-infected youth. HIV-positive youth can also benefit from peer support groups.

Many HIV-positive youth also struggle with mental illness and substance abuse. Providers may need to deal with these issues by directly providing or by linking youth with substance abuse and mental health programs before a young person's HIV-specific care can be adequately implemented.

Other Issues to Consider

In addition, other issues may be important to providing quality services to HIV-positive youth.

- **Respect**—Youth want to be treated with respect and may fail to seek needed services if they perceive a lack of respect.
- **Confidentiality**—Providers should assure youth that the information they share is confidential. HIV-infected youth may experience rejection, discrimination, and violence if their confidentiality is breached.
- **Disclosure**—Making decisions about disclosure of HIV status is an important step for HIV-positive youth who may fear rejection, harassment, and violence from family, friends, and partners. GLBTQ youth may also face added stigma due to their sexual orientation and/or gender identity. Youth may need guidance and support, including referral to support groups.
- **Secondary Prevention**—HIV-positive youth need information about how to prevent re-infection and new infections (with different strains of HIV and with other STIs) which could damage their immune system and interfere with health regimens. Secondary prevention offers a chance to empower HIV-positive youth with a sense of control over the future direction of their illness.

Youth-serving organizations (YSOs) and AIDS-services organizations (ASOs) play an integral role in serving HIV-positive youth. Although YSOs may have a greater understanding of youth culture, ASOs usually have more experience with HIV care and treatment. Through collaborative partnerships and coordinated services, agencies can overcome barriers to health care for HIV-positive youth.

HIV infection in young people is a challenge for youth, health care providers, and policy makers alike. Effective and sustainable programs that adequately serve HIV positive youth can be difficult to achieve. However, society has a responsibility to provide services to HIV-infected youth and the benefits are noteworthy and far-reaching. Young people have a right to services that are affordable, accessible, confidential, and youth-friendly. HIV-infected youth also have a right to be treated with respect.

Endnotes are found on page 19.

National Resources for HIV Positive Youth

Adolescent AIDS Program

Childrens Hospital, Montefiore Medical Center
718.882.0232
www.AdolescentAIDS.org

Advocates for Youth

202.419.3420
www.advocatesforyouth.org

AIDS Alliance for Children, Youth and Families

202.785.3564
www.aids-alliance.org

CDC National AIDS Hotline

800.342.2437 (English)
800.344.7432 (Spanish)
800.243.7889 (TTY)

National Association of People with AIDS

202.898.0414
www.napwa.org

National Minority AIDS Council

202.483.6622
www.nmac.org

National Youth Advocacy Coalition

202.319.7596
www.nyacyouth.org

YouthHIV

A project of Advocates for Youth
202.419.3420
www.youthhiv.org

I'M COMING OUT... I WANT THE WORLD TO KNOW...(OR DO I?)

by Jessie Gilliam, Program Manager for Internet Interventions, Advocates for Youth

If you've made yourself accessible to teenagers, sooner or later one or more of them might ask for advice, information, or support regarding sexual orientation or gender identity. Some youth might be questioning (or figuring out their feelings) around orientation and identity, while others might have "discovered" their identity or orientation and want to discuss the implications. This article offers appropriate, respectful responses to GLBTQ youth. Written by youth, the responses address some of the questions most frequently asked about sexual orientation and coming out.

What does it mean to be GLBT?

Gay men are physically, sexually, and emotionally attracted to other men. Lesbians are women who are physically, sexually, and emotionally attracted to other women. Bisexual people are physically, sexually, and emotionally attracted to both men and women.

Transgender people feel that the gender to which they were born (or assigned at birth) does not correspond with their gender identity. Transgender people include those who identify as transsexual, that is people born female who identify as male (female-to-male) and people born male who identify as female (male-to-female). Transgender people also include those who may not identify as part of a bipolar gender system. Gender identity doesn't say anything about sexual orientation; someone could be transgender and be straight or gay or lesbian or bi.

Youth may find themselves identifying with one of these basic definitions pretty strongly or with none of them at all. That's okay – no one has to rush to self-label now or ever, and some people choose different labels, such as pansexual, same gender loving, and genderqueer, to name just a few.

How do I know if I'm gay, lesbian, bisexual, or transgender?

A young person might not know if he/she is GLBT, and that's okay. There's no rush—sexual identity and gender identity develop over time. Most young people are intensely sexual around puberty when the body starts changing and hormones start flowing. Sexual feelings may be so strong that they are not directed towards particular people or situations but seem to emerge without cause. People who decide they are gay, lesbian, or bisexual find that, over time, their attraction becomes more clearly focused and consistent. They find themselves falling in love and dreaming or fantasizing sexually more about males, females, or both, consistently and clearly. People who are transgender may find that they feel more like "one of the boys" than "one of the girls" or *vice versa*, that they picture their body/self image as a different gender than they are, or that they don't identify with society's ideas about appropriate gender roles/behaviors for men and women.

No one can decide that someone else is GLBT. Liking ABBA or Ani DiFranco doesn't mean a person is gay or lesbian. Sexually experimenting with someone of the same gender doesn't mean a person is gay or lesbian. Sexual behavior—what one *does* sexually—may be different from what one ultimately understand as one's sexual identity—that is, who one learns that one *is*. Being male and wearing skirts or being female and having really short hair doesn't mean a young person is or is not transgender. The individual decides. Youth shouldn't feel pressured by stereotypes into self-labeling.

Am I normal?

It is perfectly natural to be gay, lesbian, bisexual, and/or transgender. Many people are GLBT, and many of them lead happy, interesting, and productive lives. GLBT people are doctors, lawyers, librarians, waitpersons, athletes, and plumbers. They are of all racial/ethnic and religious backgrounds. Assure the young person that he/she is absolutely normal.

How Can I Avoid HIV, Other STI's and Involvement in Unwanted Pregnancy?

Abstinence from sexual intercourse is the surest way to avoid unwanted pregnancy, HIV, and other STIs. Many young people—gay, straight, or bisexual—choose activities such as hugging, kissing, talking, and massage to show affection. If one chooses to have sexual intercourse, he/she needs to be responsible and use protection. Remember:

- Vaginal, anal, and/or oral intercourse—use a latex or polyurethane condom or dental dam or other latex or polyurethane barrier to prevent the risk of sexually transmitted infections, including HIV.
- Vaginal intercourse—in addition to using a latex or polyurethane condom, also use another effective method of contraception, such as birth control pills or Depo-Provera to prevent pregnancy.
- Lubrication—when using a latex condom, do not use petroleum or oil-based lubricants. Use only water-based lubricants, such as KY Jelly. Also avoid using nonoxynol-9, because it may cause irritation and increase the risk of transmission of HIV and other STIs.
- Manual sex—use a latex or polyurethane barrier, like surgical gloves.

Remember that blood-to-blood contact is the most direct route for HIV transmission. Sharing equipment or needles—for piercing or tattooing the body, taking medications, or using drugs—is dangerous since blood may be left on the used equipment or needles. If possible, avoid sharing needles for *any* purpose.

Whom Should I Tell?

Coming to terms with one's own sexuality or gender identity can be very difficult. In fact, the hardest one a young person may ever have to tell is him/herself! A young person should only tell others when he/she feels ready, and doing so is not always easy. Some people might be very receptive, while others might not be able to handle the information as well as the young person had hoped they would. It may be easiest to talk first about one's sexuality or gender identity with someone she/he knows will understand, such as a parent, brother or sister, clergyman, or guidance counselor. Youth may also find someone to talk with through the Internet or at youth groups. Reaching out can help ensure that youth have support as they talk about their sexuality, and they might be surprised at the relief they will feel when they know others understand.

Where Can I Find Support?

Advocates for Youth has Web sites by and for GLBT youth, including www.youthresource.com and the Spanish-language www.ambientejuven.org. Many major cities have a GLBTQ hotline. If a young person is concerned about privacy, he/she can call from a phone booth. A good hotline counselor will let her/him share feelings and will direct the youth to organizations that help GLBTQ people. There may even be an area GLBTQ youth group; young people can ask the hotline or visit www.youthresource.com for listings. Youth might also want to see if the school has a gay straight alliance. It may seem difficult to believe, but there are other GLBT people wherever young people are!

Continued from page 2

affiliates, Oxygen, at film festivals and on the Internet as well as on ABC's *World News Tonight* and NPR's *On the Media*.

Scenarios USA introduces a new film in the series. *Lipstick* is a story about a group of teenage best friends, the courage of one girl to express who she is, and the struggle of another to accept and understand difference. Together, the four friends confront fears and prejudice, and friendship prevails. *Lipstick* deals forthrightly and understandingly with sexual identity, self-expression, and acceptance.

Lipstick is available for purchase beginning mid-June 2002 for \$15.00. To order, contact *Scenarios USA*, 110 West 18th Street, 6th Floor, New York, NY 10011 or phone 646.230.7677.

EMERGENCY CONTRACEPTION, AN IMPORTANT OPTION FOR YOUNG WOMEN WHO HAVE SEX WITH WOMEN

By Tamarah Moss, Program Manager, Emergency Contraception Initiative, Advocates for Youth

Many young women who have sex with women (YWSW) also have sexual intercourse with men. In a survey of lesbians, 77.3 percent reported sexual intercourse with one or more males in their lifetime.²⁷ Sexual intercourse with men places YWSW at risk for unintended pregnancy. Indeed, one study showed that lesbian and bisexual teens have twice the rate of pregnancy as their heterosexual and questioning peers.²⁸ Compared to their female peers, lesbian and bisexual teens reported a higher incidence of sexual abuse, incest, and rape; heterosexual relationships before they identified as lesbian; internalizing the stigma associated with lesbian identity and using pregnancy to ensure being perceived as heterosexual; and engaging in heterosexual activity as a means to deal with their fear of discrimination and rejection.²⁸

Therefore, health providers and educators should make special efforts to educate YWSW about emergency contraception as an option to prevent teen pregnancy. Emergency contraception (EC) is a method of preventing pregnancy *after* contraceptive failure, sexual assault, and/or unprotected sexual intercourse. Emergency contraceptive pills (ECPs) can be used any time up to 120 hours (five days) after sexual intercourse.

As such, ECP is an option that could annually avert as many as 50 percent of pregnancies and consequent abortions among American teens.²⁹ ECPs are available as Preven, Plan B, and/or as repackaged birth control pills that are taken in a particular dosage and manner. ECPs do not cause abortion because the pills have no effect after pregnancy is established. (The American College of Obstetricians and Gynecologists defines pregnancy as beginning with implantation.³⁰) For more information on ECPs, visit www.advocatesforyouth.org.

Lesbian and bisexual teens, like their heterosexual peers, face barriers to obtaining ECPs. Barriers include providers' lack of knowledge about ECPs, cost, time constraints, lack of insurance and transportation problems, and limited clinic hours. Teens often fear that their confidence will be violated. They also often fear procedures such as blood tests, pelvic exams, and the reputed side effects of ECPs. However, lesbian and bisexual teens face additional challenges from providers, including homophobia, heterosexual assumptions, and lack of understanding of lesbian health care issues.

Youth-serving professionals can help overcome barriers and ensure lesbian and bisexual young women's access to health care. Access means timely use of personal health services to achieve the optimal health outcomes. Health care providers and educators need to ensure that lesbian and bisexual teens receive respect and comprehensive information:

- Inform young women who have sex with women of the risks associated with unprotected vaginal, anal, and oral sexual intercourse.
- Develop and distribute ECP educational materials that address the needs of all teenage women, including lesbian and bisexual teens.
- Develop formal referral systems among health providers, educators, and GLBTQ youth serving organizations.
- Provide ECPs in clinical and non-clinical settings.
- Ensure that teens are able to get hold of ECP within the 72-hour time period. Better yet, provide ECPs or prescriptions for ECP *in advance of need* and without pelvic exams.
- Create both teen-friendly and GLBTQ-friendly office policies and/or procedures.
- Provide training to staff on the needs of lesbian and bisexual teens.

Endnotes are found on page 19.

GLBTQ YOUTH'S HEALTH CARE BILL OF RIGHTS

As a GLBTQ young person accessing health care—

- You have a right to receive treatment without discrimination on the basis of race/ethnicity, religion, gender, gender identity, disability, or sexual orientation.
- You have a right to receive respect and positive, caring treatment.
- You have a right to ask questions. You have a right to ask for clarification and to receive explanations of tests, treatments, treatment options, and all aspects of your care.
- You have a right to receive confidential and affordable care. Your provider should assure you that the information you share is confidential and will not be disclosed to a parent or guardian unless you provide permission. If the provider will not guarantee your confidentiality, you have a right to find a provider who will. * You should not be denied care based on your ability to pay.
- You have a right to accurate, uncensored information.
- You have a right to demand youth-friendly services that are flexible and culturally appropriate.
- You have a right to nonjudgmental health care. Your provider should not make assumptions about your behavior.
- You have a right to disclose your sexual identity, gender identity, and sexual activities. This information may help providers understand what types of tests, referral, and health information you need.
- You have a right to say “no” to care and to learn about the effect this may have on your health.
- You have a right to change providers at any time and for any reason. You also have a right to a second opinion.

* In most states, providers must share information regarding physical and sexual abuse of minors with police and/or child welfare officials. If this is a concern, ask your provider about the law before sharing your concerns.

Endnotes

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ADVOCATES FOR YOUTH'S ONLINE INTERVENTIONS BY YOUTH FOR YOUTH

- YouthResource (www.youthresource.com) is created by and for GLBTQ youth ages 13 to 24 and takes a holistic approach to sexual health by offering support, community, resources, and peer-to-peer education about issues of concern to GLBTQ youth.
- Ambiente Joven (www.ambientejoven.org) is a Web site for Latino/Latina YMSM and GLBTQ youth and provides information on safer sex, HIV/AIDS, and mental and sexual health through peer educators based in the United States and Latin America.
- YouthHIV (www.youthHIV.org) is created by and for HIV-positive youth and HIV peer educators to provide safe and effective mental and sexual health information, community support, resources and referral, and opportunities for advocacy.
- MySistahs (www.mysistahs.org) is created by and for young women of color and provides holistic sexual health information.



Advocates for Youth
Suite 750
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Washington, DC 20036

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CLC PRACTICE KIT 10

DC Human Rights Law Overview

In contrast to federal civil rights laws, the District of Columbia Human Rights Law explicitly prohibits discrimination on the basis of sexual orientation, gender identity, or gender expression. First enacted in 1977, the law is designed to ensure that every individual has an equal opportunity to participate fully in the “economic, cultural and intellectual life of the District.” DC Code § 2-1402.01. The expansive law protects LGBT individuals from discrimination in educational institutions, employment, places of public accommodation, public services, and housing accommodations. District government employees or agencies are also prohibited from discriminating on the basis of sexual orientation, gender identity, or gender expression. DC Code §2-1402.73.

The law establishes a local Office and Commission of Human Rights. The Office of Human Rights has the authority to investigate complaints of discrimination, hold public hearings, adopt and promulgate rules and procedures, and certify complaints of discrimination for adjudication by the Commission on Human Rights. DC Code 2-1403.01. The Commission has the power to hold administrative hearings on complaints brought by the Office. Its authority includes the power to order respondents to cease and desist unlawful discriminatory practices and take certain affirmative actions, including the hiring or rehiring of an employee, the extension of full, unsegregated accommodations, the payment of compensatory damages, and/or the payment of civil penalties. DC Code §2-1403.13.

The DC Human Rights Law also protects students in DC public schools from any form of discrimination or bullying on the basis of their sexual orientation, gender identity, or gender expression. It protects children involved with Child and Family Services Agency (CFSA) from discrimination by CFSA employees or foster parents. LGBT youth committed to Department of Youth Rehabilitative Services similarly have the explicit right to be treated fairly under the DC Human Rights Law.



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*** Current through laws effective as of May 19, 2014, and through D.C. Act 20-306 ***

DIVISION I. GOVERNMENT OF DISTRICT
TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 14. HUMAN RIGHTS
UNIT A. HUMAN RIGHTS LAW
SUBCHAPTER I. GENERAL PROVISIONS

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 2-1401.01 (2014)

§ 2-1401.01. Intent of Council

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.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title I, § 101, 24 DCR 6038; June 28, 1994, D.C. Law 10-129, § 2(a), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(a), 46 DCR 952; Apr. 5, 2005, D.C. Law 15-263, § 2(a), 52 DCR 237; Mar. 8, 2006, D.C. Law 16-58, § 2(a), 53 DCR 14; Mar. 14, 2007, D.C. Law 16-273, § 3(a), 54 DCR 859.

NOTES: SECTION REFERENCES. --This section is referenced in § 1-608.01, § 1-608.01a, § 1-608.59, § 1-632.06, § 2-1403.01, § 2-1431.01, § 2-1535.01, § 4-754.21, § 22-3312.02, and § 50-325.

PRIOR CODIFICATIONS. --1981 Ed., § 1-2501.
1973 Ed., § 6-2201.

EFFECT OF AMENDMENTS. --D.C. Law 15-263 substituted "genetic information, disability," for "disability,".
D.C. Law 16-58 substituted "sexual orientation, gender identity or expression," for "sexual orientation,".
D.C. Law 16-273 inserted "status as a victim of an intrafamily offense," following "source of income,".

LEGISLATIVE HISTORY OF LAW 2-38. --Law 2-38 was introduced in Council and assigned Bill No. 2-179, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on September 28, 1977, it was assigned Act No. 2-83 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 10-129. --Law 10-129, the "Human Rights Amendment Act 1994," was introduced in Council and assigned Bill No. 10-298, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-228 and transmitted to both Houses of Congress for its review. D.C. Law 10-129 became effective on June 28, 1994.

LEGISLATIVE HISTORY OF LAW 12-242. --Law 12-242, the "Human Rights Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-690, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-575 and transmitted to both Houses of Congress for its review. D.C. Law 12-242 became effective on April 20, 1999.

LEGISLATIVE HISTORY OF LAW 15-263. --Law 15-263, the "Human Rights Genetic Information Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-52, which was referred to the Subcommittee on Human Rights, Latino Affairs and Property. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January 3, 2005, it was assigned Act No. 15-648 and transmitted to both Houses of Congress for its review. D.C. Law 15-263 became effective on April 5, 2005.

LEGISLATIVE HISTORY OF LAW 16-58. --Law 16-58, the "Human Rights Clarification Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-389 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 1, 2005, and December 6, 2005, respectively. Signed by the Mayor on December 22, 2005, it was assigned Act No. 16-220 and transmitted to both Houses of Congress for its review. D.C. Law 16-58 became effective on March 8, 2006.

LEGISLATIVE HISTORY OF LAW 16-273. --Law 16-273, the "Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-703, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-629 and transmitted to both Houses of Congress for its review. D.C. Law 16-273 became effective on March 14, 2007.

REPEAL OF LAW 12-138. --Section 153 of Pub. L. 105-277, *112 Stat. 2681-146*, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provided that D.C. Law 12-138 is repealed October 21, 1998. Establishment of Department of Human Rights and Minority Business Development: See Mayor's Order 89-247, November 1, 1989.

Uniform Language in D.C. Government Anti-Discrimination Issuances and Equal Employment Opportunity Notices, see Mayor's Order 2002-149, September 13, 2002 (49 DCR 8613).

Amendment of M.O. 2002-149, dated 8-26-02 -- Uniform Language in D.C. Government Anti-Discrimination Issuances and Equal Employment Opportunity Notices, see Mayor's Order 2002-175, November 1, 2002 (49 DCR 9883).

Sexual Harassment, see Mayor's Order 2004-171, October 20, 2004 (51 DCR 10486).

Amendment of Mayor's Order 2002-175, dated October 23, 2002 Uniform Language in D.C. Government Anti-Discrimination Issuances and Equal Employment Opportunity Notices, see Mayor's Order 2006-151, November 6, 2006 (53 DCR 9351).

EDITOR'S NOTES. --Residency requirement for District employees: Section 2 of D.C. Law 12-138, repealed by § 153 of Pub. L. 105-277, had amended §§ 1-608.1 and 1-609.1 1-608.01 and 1-608.01a, 2001 Ed., and enacted § *1-607.51*, to require newly-hired District employees in the Career Service, Excepted Service, and Educational Service to establish and maintain residency in the District within 180 days of being hired, and to allow the Mayor to exempt hard to fill positions from the requirements of the act.



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D.C. Code § 2-1401.02 (2014)

§ 2-1401.02. Definitions

The following words and terms when used in this chapter have the following meanings:

(1) "Administrative Procedure Act" means the "District of Columbia Administrative Procedure Act," (§ 2-501 et seq.).

(2) "Age" means 18 years of age or older.

(3) "Chairman" means the duly appointed Chairman of the District of Columbia Commission on Human Rights.

(4) "Commission" means the Commission on Human Rights, as established under subchapter IV of Unit A of this chapter.

(5) "Council" means the Council of the District of Columbia as established by § 1-204.01(a).

(5A) "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.

(6) "Director" means the Director of the District of Columbia Office of Human Rights, or a designate.

(7) "District" means the District of Columbia.

(7A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(7B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(8) "Educational institution" means any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

(9) "Employee" means any individual employed by or seeking employment from an employer; provided, that the term "employee" shall include an unpaid intern.

D.C. Code § 2-1401.02

(10) "Employer" means any person who, for compensation, employs an individual, except for the employer's parent, spouse, children or domestic servants, engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; and any professional association.

(11) "Employment agency" means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person.

(11A) "Familial status" means one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.

(11B) "Family member" means, with respect to an individual and genetic information, the spouse or domestic partner of the individual, dependent child (whether born to or placed for adoption with the individual), and all other individuals related by blood to the individual, spouse, domestic partner, or child.

(12) "Family responsibilities" means the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

(12A) "Gender identity or expression" means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

(12A-i) "Genetic information" means information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

(12B) "Genetic test" means an analysis of human chromosomes, genes, gene products, or genetic information that is used to identify the presence or absence of inherited or congenital alterations in genetic material that are associated with disease or illness. A genetic test shall not include a test for the presence of illegal drugs, routine physical measurements, or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic information.

(12C) "Health benefit plan" means any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term "health care benefit plan" does not mean accident only, credit or disability insurance; coverage of Medicare services or federal employee benefit plans, pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as supplemental to liability insurance, insurance arising out of workers compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance; or life insurance.

(12D) "Health insurer" means any person that provides one or more health benefits plans, or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefits society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance, Securities, and Banking.

(13) "Hearing tribunal" means members of the Commission, or 1 or more hearing examiners, appointed by the Commission to conduct a hearing.

D.C. Code § 2-1401.02

(14) "Housing business" means a business operated under the authority of a license issued by the Mayor, or other authorized District agent, pursuant to § 47-2828 and the regulations promulgated thereunder.

(14A) "Intrafamily offense" means an offense as defined in § 16-1001(8).

(15) "Labor organization" means any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers, or any agent thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, conditions, or privileges of employment; and any conference, general committee, joint or system board, or joint council, which is subordinate to a national or international organization.

(16) "Make public" means disclosure to the public or to the news media of any personal or business data obtained during the course of an investigation of a complaint filed under the provisions of this chapter, but not to include the publication of EEO-1, EEO-2, or EEO-3 reports as required by the Equal Employment Opportunity Commission, or any other data in the course of any administrative or judicial proceeding under this chapter; or any judicial proceeding under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.] involving such information; nor shall it include access to such data by staff or the Office of Human Rights, members of the Commission on Human Rights, or parties to a proceeding, nor shall it include publication of aggregated data from individual reports.

(17) "Marital status" means the state of being married, in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

(18) "Matriculation" means the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program.

(19) "Office" means the District of Columbia Office of Human Rights, established by § 2-1411.01.

(20) (A) "Owner" means 1 of the following:

(i) Any person, or any one of a number of persons in whom is vested all or any part of the legal or equitable ownership, dominion, or title to any real property;

(ii) The committee, conservator, or any other legal guardian of a person who for any reason is non sui juris, in whom is vested the legal or equitable ownership, dominion or title to any real property; or

(iii) A trustee, elected or appointed or required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or one who, as agent of, or fiduciary, or officer appointed by the court for the estate of the person defined in sub-subparagraph (i) of this subparagraph shall have charge, care or control of any real property.

(B) The term "owner" shall also include the lessee, the sublessee, assignee, managing agent, or other person having the right of ownership or possession of, or the right to sell, rent or lease, any real property.

(21) "Person" means any individual, firm, partnership, mutual company, joint-stock company, corporation, association, organization, unincorporated organization, labor union, government agency, incorporated society, statutory or common-law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee, principal or agent, legal or personal representative, real estate broker or salesman or any agent or representative of any of the foregoing.

(22) "Personal appearance" means the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

(23) Repealed.

(24) "Place of public accommodation" means all places included in the meaning of such terms as inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparation or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores, and establishments dealing with goods or services of any kind, including, but not limited to, the credit facilities thereof; banks, savings and loan associations, establishments of mortgage bankers and brokers, all other financial institutions, and credit information bureaus; insurance companies and establishments of insurance policy brokers; dispensaries, clinics, hospitals, bath-houses, swimming pools, laundries and all other cleaning establishments; barber shops, beauty parlors, theaters, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiards and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures, occupied by 2 or more tenants, or by the owner and 1 or more tenants. Such term shall not include any institution, club, or place of accommodation which is in its nature distinctly private except, that any such institution, club or place of accommodation shall be subject to the provisions of § 2-1402.67. A place of accommodation, institution, or club shall not be considered in its nature distinctly private if the place of accommodation, institution, or club:

(A) Has 350 or more members;

(B) Serves meals on a regular basis; and

(C) Regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business.

(25) "Political affiliation" means the state of belonging to or endorsing any political party.

(26) "Real estate broker (or salesperson)" means any person licensed as such in accordance with the provisions of Chapter 17 of Title 42.

(27) "Real Estate Commission" means the Real Estate Commission of the District of Columbia established by § 42-1739 [repealed].

(28) "Sexual orientation" means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

(29) "Source of income" means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

(30) "Transaction in real property" means the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon, including, but not limited to, leaseholds and other real chattels.

(31) "Unlawful discriminatory practice" means those discriminatory practices which are so specified in subchapter II of Unit A of this chapter. "Unlawful discriminatory practice" shall include harassment engaged in for discriminatory reasons specified in § 2-1402.11(a).

D.C. Code § 2-1401.02

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title I, § 102, 24 DCR 6038; Mar. 10, 1983, D.C. Law 4-209, § 35(a)(1), 30 DCR 390; Feb. 24, 1987, D.C. Law 6-166, § 33(c), 33 DCR 6710; Dec. 10, 1987, D.C. Law 7-50, § 2, 34 DCR 6887; June 28, 1994, D.C. Law 10-129, § 2(b), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(b), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 159(a), 47 DCR 520; June 19, 2001, D.C. Law 13-313, § 7, 48 DCR 1873; Oct. 1, 2002, D.C. Law 14-189, § 2(a), 49 DCR 6523; Dec. 7, 2004, D.C. Law 15-216, § 2(a), 51 DCR 9123; Apr. 5, 2005, D.C. Law 15-263, § 2(b), 52 DCR 237; Apr. 8, 2005, D.C. Law 15-309, § 2, 52 DCR 1718; Mar. 8, 2006, D.C. Law 16-58, § 2(b), 53 DCR 14; Mar. 2, 2007, D.C. Law 16-191, § 123, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-273, § 3(b), 54 DCR 859; Sept. 12, 2008, D.C. Law 17-231, § 7, 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-368, § 4(a)(1), 56 DCR 1338; Mar. 3, 2010, D.C. Law 18-111, § 1151, 57 DCR 181.

NOTES: SECTION REFERENCES. --This section is referenced in § 1-603.01, § 1-1001.02, § 2-1411.02, § 2-1535.01, § 4-751.01, § 5-1103, § 7-1231.02, § 16-901, § 22-2104.01, § 22-3701, § 24-112, § 24-403.01, § 31-1601, § 31-2231.01, § 31-2231.11, § 31-2231.13, § 32-401, § 34-1501, and § 51-110.

PRIOR CODIFICATIONS. --1981 Ed., § 1-2502.
1973 Ed., § 6-2202.



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DIVISION I. GOVERNMENT OF DISTRICT
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CHAPTER 14. HUMAN RIGHTS
UNIT A. HUMAN RIGHTS LAW
SUBCHAPTER I. GENERAL PROVISIONS

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 2-1401.03 (2014)

§ 2-1401.03. Exceptions

(a) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where it can be proved by a respondent that, without such exception, such business cannot be conducted; a "business necessity" exception cannot be justified by the facts of increased cost to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person. The business necessity exemption is inapplicable to complaints of unlawful discrimination in residential real estate transactions and to complaints alleging violations of the Fair Housing Act, approved April 11, 1968 (*42 U.S.C. § 3601 et seq.*) ("FHA").

(b) Nothing in this chapter shall be construed to bar any religious or political organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious or political organization, from limiting employment, or admission to or giving preference to persons of the same religion or political persuasion as is calculated by the organization to promote the religious or political principles for which it is established or maintained.

(c) Nothing in this chapter shall be construed to supersede any federal rule, regulation or act.

(d) Nothing in this chapter shall prohibit any religious organization, association, or society or non-profit organization which is operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sales, rental or occupancy of housing accommodations which it owns or operates for other than a commercial purpose to members of the same religion or organization, or from giving preference to these persons, unless the entity restricts its membership on the basis of race, color, or national origin. This chapter does not prohibit a private club, not open to the public, which incident to its primary purpose, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of these lodgings to its members or from giving preference to its members.

(e) Nothing in this chapter shall prohibit an employer, an employment agency, or a labor organization from seeking, obtaining, or using genetic information to determine the existence of a bona fide occupational qualification reasonably

necessary for the normal operation of an employer's business or enterprise; provided, that the employee or applicant for employment provides, in writing, his or her informed consent, the genetic information is provided to the employee or applicant for employment in writing as soon as it is available, and the genetic information is not disclosed to any other person.

(f) Nothing in this chapter shall prohibit an employer from seeking, obtaining, or using genetic information about an employee to:

(1) Investigate a workers' compensation or disability compensation claim; or

(2) Determine an employee's susceptibility or level of exposure to potentially toxic substances in the workplace; provided, that the employee provides, in writing, his or her informed consent, and the genetic information is provided to the employee in writing as soon as it is available, and the genetic information is not disclosed to any other person.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title I, § 103, 24 DCR 6038; Apr. 20, 1999, D.C. Law 12-242, § 2(c), 46 DCR 952; Apr. 12, 2000, D.C. Law 13-91, § 159(b), 47 DCR 520; Apr. 5, 2005, D.C. Law 15-263, § 2(c), 52 DCR 237.

NOTES: SECTION REFERENCES. --This section is referenced in § 2-1402.41.

PRIOR CODIFICATIONS. --1981 Ed., § 1-2503.
1973 Ed., § 6-2203.

EFFECT OF AMENDMENTS. --D.C. Law 13-91 validated a previously made technical correction in subsec. (d).
D.C. Law 15-263 added subsecs. (e) and (f).

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01.

LEGISLATIVE HISTORY OF LAW 12-242. --For legislative history of D.C. Law 12-242, see Historical and Statutory Notes following § 2-1401.01.

LEGISLATIVE HISTORY OF LAW 13-91. --For Law 13-91, see notes following § 2-1209.06.

LEGISLATIVE HISTORY OF LAW 15-263. --For Law 15-263, see notes following § 2-1401.01.



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D.C. Code § 2-1401.04 (2014)

§ 2-1401.04. Severability of provisions

If any provision, or part thereof of this chapter or application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision, or part thereof, to other persons not similarly situated or to other circumstances is not to be affected thereby.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title I, § 104, 24 DCR 6038.

NOTES: PRIOR CODIFICATIONS. --1981 Ed., § 1-2504.
1973 Ed., § 6-2204.

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01.



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PART A. GENERAL.

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D.C. Code § 2-1402.01 (2014)

§ 2-1402.01. General

Every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title II, § 201, 24 DCR 6038.

NOTES: CROSS REFERENCES. --Public accommodations licensed by District, prohibition against discrimination, see § 47-2901 et seq.

SECTION REFERENCES. --This section is referenced in § 2-1403.01.

PRIOR CODIFICATIONS. --1981 Ed., § 1-2511.
1973 Ed., § 6-2211.

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01. Establishment of Department of Human Rights and Minority Business Development: See Mayor's Order 89-247, November 1, 1989.



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D.C. Code § 2-1402.11 (2014)

§ 2-1402.11. Prohibitions

(a) General. -- It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual:

(1) By an employer. -- To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee;

(2) By an employment agency. -- To fail or refuse to refer for employment, or to classify or refer for employment, any individual, or otherwise to discriminate against, any individual; or

(3) By a labor organization. -- To exclude or to expel from its membership, or otherwise to discriminate against, any individual; or to limit, segregate, or classify its membership; or to classify, or fail, or refuse to refer for employment any individual in any way, which would deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his status as an employee or as an applicant for employment; or

(4) By an employer, employment agency or labor organization.

(A) To discriminate against any individual in admission to or the employment in, any program established to provide apprenticeship or other training or retraining, including an on-the-job training program;

(B) To print or publish, or cause to be printed or published, any notice or advertisement, or use any publication form, relating to employment by such an employer, or to membership in, or any classification or referral for employment by such a labor organization, or to any classification or referral for employment by such an employment agency, unlawfully indicating any preference, limitation, specification, or distinction, based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, gender identity or expression, family responsibilities, matriculation, genetic information, disability, or political affiliation of any individual.

(C) To request or require a genetic test of, or administer a genetic test to, any individual as a condition of employment, application for employment, or membership, or to seek to obtain, obtain, or use genetic information of an employee or applicant for employment or membership.

(b) Subterfuge. -- It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, genetic information, disability, or political affiliation of any individual.

(c) Accommodation for religious observance.

(1) It shall further be an unlawful discriminatory practice for an employer to refuse to make a reasonable accommodation for an employee's religious observance by permitting the employee to make up work time lost due to such observance, unless such an accommodation would cause the employer undue hardship. An accommodation would cause an employer undue hardship when it would cause the employer to incur more than de minimis costs.

(2) Such an accommodation may be made by permitting the employee to work:

(A) During the employee's scheduled lunch time or other work breaks;

(B) Before or after the employee's usual working hours;

(C) Outside of the employer's normal business hours;

(D) During the employee's paid vacation days;

(E) During another employee's working hours as part of a voluntary swap with such other employee; or

(F) In any other manner that is mutually agreeable to the employer and employee.

(3) When an employee's request for a particular form of accommodation would cause undue hardship to the employer, the employer shall reasonably accommodate the employee in a manner that does not cause undue hardship to the employer. Where other means of accommodation would cause undue hardship to the employer, an employee shall have the option of taking leave without pay if granting leave without pay would not cause undue hardship to the employer.

(4) An employee shall notify the employer of the need for an accommodation at least 10 working days prior to the day or days for which the accommodation is needed, unless the need for the accommodation cannot reasonably be foreseen.

(5) In any proceeding brought under this section, the employer shall have the burden of establishing that it would be unable reasonably to accommodate an employee's religious observance without incurring an undue hardship, provided, however, that in the case of an employer that employs more than 5 but fewer than 15 full-time employees, or where accommodation of an employee's observance of a religious practice would require the employee to take more than 3 consecutive days off from work, the employee shall have the burden of establishing that the employer could reasonably accommodate the employee's religious observance without incurring an undue hardship; and provided further, that it shall be considered an undue hardship if an employer would be required to pay any additional compensation to an employee by reason of an accommodation for an employee's religious observance. The mere assumption that other employees with the same religious beliefs might also request accommodation shall not be considered evidence of undue hardship. An employer that employs 5 or fewer full-time employees shall be exempt from the provisions of this subsection.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title II, § 211, 24 DCR 6038; Mar. 17, 1993, D.C. Law 9-211, § 2, 40 DCR 21; June 28, 1994, D.C. Law 10-129, § 2(c), 41 DCR 2583; Oct. 1, 2002, D.C. Law 14-189, § 2(b), 49 DCR 6523; Apr. 5, 2005, D.C. Law 15-263, § 2(d), 52 DCR 237; Mar. 8, 2006, D.C. Law 16-58, § 2(c), 53 DCR 14.

NOTES: CROSS REFERENCES. --Bonds and construction procurement, construction contracts and subcontracts, nondiscrimination provisions, see § 2-305.08.

Employment services, discrimination prohibited, see § 32-408.

SECTION REFERENCES. --This section is referenced in § 2-1401.02.

PRIOR CODIFICATIONS. --1981 Ed., § 1-2512.

1973 Ed., § 6-2221.

EFFECT OF AMENDMENTS. --D.C. Law 14-189, in subsecs. (a) and (b), substituted "actual or perceived: race" for "race".

D.C. Law 15-263, in subsecs. (a) and (b), substituted "genetic information, disability," for "disability,"; and added subpar. (C) of par. (4) of subsec. (a).

D.C. Law 16-58, in the lead-in language of subsec. (a), subsec. (a)(4)(B), and subsec. (b), substituted "sexual orientation, gender identity or expression," for "sexual orientation,".

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01.

LEGISLATIVE HISTORY OF LAW 9-211. --Law 9-211, the "Human Rights Act of 1977 Religious Observance Accommodation Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-276, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-340 and transmitted to both Houses of Congress for its review. D.C. Law 9-211 became effective on March 17, 1993.

LEGISLATIVE HISTORY OF LAW 10-129. --For legislative history of D.C. Law 10-129, see Historical and Statutory Notes following § 1-2501.

LEGISLATIVE HISTORY OF LAW 14-189. --For Law 14-189, see notes following § 2-1401.02.

LEGISLATIVE HISTORY OF LAW 15-263. --For Law 15-263, see notes following § 2-1401.01.

LEGISLATIVE HISTORY OF LAW 16-58. --For Law 16-58, see notes following § 2-1401.01.



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D.C. Code § 2-1402.12 (2014)

§ 2-1402.12. Exception

(a) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual.

(b) It shall not be an unlawful discriminatory practice for the District of Columbia to prescribe minimum and maximum age limits for appointment to the police officer and firefighter cadet programs.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title II, § 212, 24 DCR 6038; Mar. 9, 1983, D.C. Law 4-172, § 4(a), 29 DCR 5745.

NOTES: PRIOR CODIFICATIONS. --1981 Ed., § 1-2513.
1973 Ed., § 6-2222.

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01.

LEGISLATIVE HISTORY OF LAW 4-172. --Law 4-172 was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Genetic Testing & Information for Insurance Purposes



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D.C. Code § 2-1402.13 (2014)

§ 2-1402.13. Reports and records

Every employer, employment agency, and labor organization, subject both to this chapter and to title VII of the Civil Rights Act of 1964, as amended, is to furnish to the Office, all reports that may be required by the Equal Employment Opportunity Commission established under the Civil Rights Act of 1964.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title II, § 213, 24 DCR 6038.

NOTES: PRIOR CODIFICATIONS. --1981 Ed., § 1-2514.
1973 Ed., § 6-2223.

LEGISLATIVE HISTORY OF LAW 2-38. --For legislative history of D.C. Law 2-38, see Historical and Statutory Notes following § 2-1401.01.

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Genetic Testing & Information for Insurance Purposes



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*** Current through laws effective as of May 19, 2014, and through D.C. Act 20-306 ***

DIVISION I. GOVERNMENT OF DISTRICT
TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 14. HUMAN RIGHTS
UNIT A. HUMAN RIGHTS LAW
SUBCHAPTER II. PROHIBITED ACTS OF DISCRIMINATION
PART C. HOUSING AND COMMERCIAL SPACE.

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 2-1402.21 (2014)

§ 2-1402.21. Prohibitions

(a) General. -- It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim of an intrafamily offense, or place of residence or business of any individual:

(1) To interrupt or terminate, or refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction;

(3) To appraise a property, refuse to lend money, guarantee a loan, purchase a loan, accept residential real property as security for a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for a tenant or lessee;

(5) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business, of any individual;

(6) To discriminate in any financial transaction involving real property, on account of the location of residence or business (i.e. to "red-line"); or

(7) To limit access to, or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting residential real estate, or to discriminate against any person in terms or conditions of access, membership or participation in any organization, service or facility.

(b) Subterfuge. -- It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the actual or perceived: race, color, religion, national origin, sex, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as victim of an intrafamily offense, or place of residence or business of any individual.

(c) Families with children.

(1) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsections (a) and (b) of this section wholly or partially based on the fact that a person has one or more children who reside with that person.

(2) There shall be a rebuttable presumption that an unlawful discriminatory practice has occurred if the person alleging discrimination has 1 or more children who reside with that person and any of the acts prohibited by subsections (a) and (b) of this section are done to maintain residential occupancies more restrictive than the following:

(A) In an efficiency apartment, 2 persons; or

(B) In an apartment with one or more bedrooms, 2 times the number of bedrooms plus one.

(3) Nothing contained in this chapter limits the applicability of any District or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Nothing in this chapter regarding familial status applies to housing for older persons.

(4) For the purposes of this subsection "housing for older persons" means a premises which:

(A) The U.S. Department of Housing and Urban Development determines pursuant to a federal program, is specifically designed and operated to assist older persons;

(B) Is intended for, and solely occupied by persons 62 years of age or older; or

(C) Is intended and operated for occupancy by persons 55 years of age or older, provided that at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older, and the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required pursuant to this paragraph, and complies with rules issued by the Secretary of the U.S. Department of Housing and Urban Development for verification of occupancy.

(d) Disability.

(1) It shall be an unlawful discriminatory practice in the sale or rental of real estate to deny a dwelling to a buyer or renter or to otherwise make a dwelling unavailable to a buyer or renter because of a disability of:

(A) That buyer or renter; or

(B) Any person residing in or intending to reside in that dwelling after it is sold, rented or made available; or any person associated with that buyer or renter.

(2) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

(A) That buyer or renter; or

(B) Any person residing in or intending to reside in that dwelling after it is sold, rented or made available; or any person associated with that buyer or renter.

(3) For purposes of this subsection, "unlawful discrimination" includes:

(A) A refusal to permit, at the expense of the person with the disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modification may be necessary to afford the person full enjoyment of the premises of a dwelling. A landlord, where it is reasonable, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to afford any person equal opportunity to use and enjoy a dwelling;

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after April 20, 1999, a failure to design and construct these dwellings in a manner that:

(i) The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities; and

(ii) Doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with wheelchairs;

(D) All premises within the dwellings shall contain the following features of adaptive design:

(i) An accessible route into and through the dwelling;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installations of grab bars;

(iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space; and

(v) The premises within the dwellings shall have at least 1 building entrance on an accessible route unless it is impracticable because of the terrain or unusual characteristics of the site.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for persons with disabilities suffices to satisfy the requirements of paragraph (3) of this subsection.

(5) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(e) The monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937, approved August 22, 1974 (*88 Stat. 662; 42 U.S.C. § 1437f*), either directly or through a tenant, shall be considered a source of income under this section.

(f) Victims of intrafamily offenses.

(1) For purposes of this subsection, the term "record" means documentation produced by a law enforcement officer, as defined in § 4-1301.02(14), or a court order pursuant to § 16-1005.

(2) It shall be an unlawful discriminatory practice to do any of the acts prohibited in subsections (a) and (b) of this section wholly or partially based on the fact that a person residing, or intending to reside, in the dwelling is, has a record of being, a victim of an intrafamily offense, as defined in § 16-1001(8).

(3) It shall be an unlawful discriminatory practice to do any of the following additional acts, for purposes of this subsection, wholly or partially based on the fact that a person residing, or intending to reside, in the dwelling is, or has a record of being, a victim of an intrafamily offense, as defined in § 16-1001(8):

(A) Refusing to make a reasonable accommodation in restoring or improving security and safety measures beyond the housing provider's duty of ordinary care and diligence, the costs of which the housing provide may charge to the tenant, when an accommodation is necessary to ensure the person's security and safety;

(B) Refusing to permit a person to terminate the lease of the premises early, without penalty, upon notice to the landlord and upon a showing that the person is a victim of an intrafamily offense, pursuant to § 42-3505.07;

(C) (i) Barring or limiting the right of a person to call for police or emergency assistance, which right, for purposes of this subsection, shall not be waivable; or

(ii) Imposing any penalty for calling police or emergency assistance.

HISTORY: Dec. 13, 1977, D.C. Law 2-38, title II, § 221, 24 DCR 6038; July 26, 1980, D.C. Law 3-80, § 2, 27 DCR 2554; June 28, 1994, D.C. Law 10-129, § 2(d), 41 DCR 2583; Apr. 20, 1999, D.C. Law 12-242, § 2(d), 46 DCR 952; Oct. 1, 2002, D.C. Law 14-189, § 2(c), 49 DCR 6523; Apr. 13, 2005, D.C. Law 15-354, § 8(a), 52 DCR 2638; Mar. 8, 2006, D.C. Law 16-58, § 2(d), 53 DCR 14; Mar. 14, 2007, D.C. Law 16-273, § 3(c), 54 DCR 859; Apr. 24, 2007, D.C. Law 16-305, § 11, 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-368, § 4(a)(2), 56

**THE LEGAL RIGHTS OF LESBIAN, GAY, BISEXUAL,
AND TRANSGENDER YOUTH IN THE
CHILD WELFARE SYSTEM**



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THE LEGAL RIGHTS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN THE CHILD WELFARE SYSTEM

Lesbian, gay, bisexual, and transgender (LGBT) young people in the child welfare system, like all people in state custody, have clearly established civil rights under the U. S. Constitution, state and federal statutes and regulations, and agency policy. By examining how these rights apply to LGBT youth, child welfare professionals can gain a greater understanding of how to develop fair and appropriate policies and procedures to protect the rights and safety of LGBT youth.

LGBT YOUTH HAVE A RIGHT TO BE PROTECTED FROM EMOTIONAL AND PHYSICAL HARM IN THEIR CHILD WELFARE PLACEMENTS.

Like all young people in state custody, LGBT youth have a right to be safe in their child welfare placements.¹ Because young people in the child welfare system are under the care and protection of the state, social workers, foster parents, and other care providers have a legal responsibility to protect foster youth from physical, emotional, and sexual abuse at the hands of both adult caretakers and other youth in their placements.² To ensure that all service providers understand their legal obligations to protect LGBT youth, facilities should adopt non-discrimination policies and implement regular staff trainings that specifically addresses the needs of LGBT youth.³ Care providers also are required to protect foster children from harms that may exist outside the home.⁴ For example, if a foster youth is experiencing harassment and discrimination at school, service providers have an obligation to ensure that the situation is addressed appropriately. If an LGBT foster youth experiences physical or emotional harm, either inside their home, in the community, or at school, the caseworker or placing agency that arranged for this placement could be held liable if they knew or should have known that by placing the youth in this home he or she would be at risk.

TO ENSURE CONTINUED SAFETY, CHILD WELFARE PROFESSIONALS MUST APPROPRIATELY MONITOR AND SUPERVISE AN LGBT YOUTH'S PLACEMENT.

The obligation to protect the safety and welfare of children in the child welfare system places a duty on child welfare professionals to maintain regular contact with the youth on their caseload to insure the continued safety of all youth in care.⁵ Because LGBT young people, and those perceived to be LGBT, are vulnerable to mistreatment and harm from a variety of sources, both inside and outside their placements, it is imperative that child welfare workers provide appropriate oversight and supervision so that youth who are at risk of

* This document summarizes a longer article published in the Summer 2006 issue of the *Temple Law Review*, co-authored by Rudy Estrada, Staff Attorney at Lambda Legal Defense and Education Fund and Jody Marksamer, Staff Attorney at the National Center for Lesbian Rights.

harm are and continue to be safe and appropriately cared for. If child welfare professionals fail to monitor and supervise an LGBT youth's placement and this youth is subsequently injured, this could constitute a breach of the duty to protect if the professional had actual knowledge of the abuse or the professional *deliberately failed to learn* what was occurring in the placement.⁶

LGBT YOUTH IN THE CHILD WELFARE SYSTEM HAVE A RIGHT TO RECEIVE APPROPRIATE MEDICAL AND MENTAL HEALTH CARE AND SHOULD NOT BE SENT TO “CONVERSION THERAPIES” OR DENIED OTHER SUPPORTIVE SERVICES.

All youth in the child welfare system have a right to receive adequate physical and mental health care.⁷ This includes a right to receive health care that may be unique to LGBT youth. For example, child welfare institutions and other care providers should provide appropriate health care for a transgender youth. Also, a child welfare agency should not permit providers to ignore the instructions of a transgender youth's treating physician or otherwise choose not to provide the youth with necessary health care, as this act or omission may constitute a violation of the youth's right to health care.⁸

In addition, LGBT foster youth should not be forced to undergo inappropriate or unethical services that are damaging to their emotional well-being, including “conversion therapies” or other controversial practices intended to involuntarily change a person's sexual orientation or gender identity. These practices have been condemned by all of the major medical and mental health associations because they cause emotional harm.⁹ LGBT youth, especially those facing extreme forms of anti-LGBT abuse and harassment, may be at an increased risk for suicide.¹⁰ Thus, facility administrators must ensure that care providers respond in a timely and appropriate manner to all anti-LGBT harassment and abuse in order to alleviate conditions that could cause or exacerbate suicidal feelings.¹¹ In addition, care takers should not withhold supportive services, such as peer support groups or other community resources that would help to ameliorate feelings of isolation and depression for an LGBT foster youth.

LGBT FOSTER YOUTH HAVE A RIGHT TO BE TREATED EQUALLY AND WITHOUT DISCRIMINATION.

All youth in state custody have a federal constitutional right to equal protection under the law.¹² This means that child welfare providers must treat LGBT youth equally when determining placements, delivering services, and responding to complaints of harassment or abuse.¹³ Child welfare institutions should not refuse to accept a youth for placement because of the youth's sexual orientation or gender identity, nor should an institution treat an LGBT youth differently in its provision of care and services. For example, if a facility allows young people to participate in extracurricular activities, they must allow young people to participate in gay/straight alliances or other such school clubs. LGBT youth, like all youth in the child welfare system are entitled to the least restrictive placement appropriate and to assistance in achieving permanency. Child welfare professionals should not automatically place LGBT youth in congregate care settings, but rather should make individualized placement decisions in line with the youth's permanency goals.

In addition, child welfare professionals and care providers should appropriately respond to complaints of sexual orientation or gender identity harassment or abuse by peers, following the agency's adopted procedures for handling incidents of harassment or violence on other bases. Agency staff should never ignore LGBT related abuse, move LGBT youth from placement to placement rather than address the harassment, or tell youth that they should expect to be harassed because they are openly LGBT. To ensure equal treatment, child welfare professionals should also be aware of the professional standards and nondiscrimination principles related to the fair treatment of LGBT people espoused by the National Association of Social Workers, the Child Welfare League of America, and other organizations.¹⁴

LGBT YOUTH HAVE A RIGHT TO EXPRESS THEIR SEXUAL ORIENTATION AND GENDER IDENTITY.

All youth have a constitutional right to freedom of speech and freedom of expression,¹⁵ which includes the right to be open about one's sexual orientation¹⁶ and the right to express one's gender through clothing and grooming.¹⁷ Child welfare agencies and care providers should not require a youth to hide his or her sexual orientation or gender identity in order to receive services or refuse to allow transgender or gender-nonconforming youth to express their gender through their clothing and accessories.¹⁸

LGBT YOUTH IN CHILD WELFARE PLACEMENTS HAVE A RIGHT NOT TO PARTICIPATE IN RELIGIOUS ACTIVITIES THAT CONDEMN LGBT PEOPLE.

The First Amendment also guarantees young people in state custody a right to religious freedom and a right to be free from religious indoctrination.¹⁹ LGBT youth in the child welfare system should not be forced to hide their identities because of religious objections or be required to participate in religious activities that condemn homosexuality and gender difference. In addition, foster parents and other care providers must not be permitted to intimidate or coerce a young person into adopting any particular religious practices or beliefs.

CONCLUSION

Professionals who work for child welfare agencies or institutions have a tremendous responsibility to protect the safety and well-being of all youth in their care, including those who are LGBT. Accordingly, these agencies and institutions should educate themselves on the needs of LGBT youth and the scope of their civil rights. They also should enact non-discrimination policies, train child welfare staff, foster parents, and other care providers on how to work with LGBT youth, and establish practices that deal effectively with anti-LGBT abuse. These actions should be taken proactively, prior to any abuses of LGBT young people, rather than in response to complaints or in the course of time-consuming and resource-intensive litigation. Fortunately, there are a wealth of educational tools and materials available to help child welfare agencies comply with professional standards of care for LGBT youth and ensure that LGBT youth are provided with the protection and care they deserve. For more information or to learn more about these resources visit www.nclrights.org.

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ENDNOTES

- ¹ This right to safety is derived from the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See *Omar v. Lindsey*, 334 F.3d 1246, 1248 (11th Cir. 2003) (per curiam) (“[t]here is no doubt that foster children have a fourteenth amendment liberty interest in physical safety...”); *Hernandez ex rel. Hernandez v. Texas Department of Protective and Regulatory Services*, 380 F.3d 872, 880 (5th Cir. 2004) (explaining based on “special relationship” between foster children and the state, foster children have clearly established right to personal security and safe living arrangements); *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989) (“[A] child who is in the state’s custody has a substantive due process right to be free from unreasonable and unnecessary intrusion on both [his or her] physical and emotional well-being.”); *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987).
- ² See *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 848-49 (7th Cir. 1990) (finding that having removed a child from the custody of her parents, the state could not place her in a position of danger without violating her rights under the due process clause); *Howard et al. v. Malac, et al.*, 270 F.Supp.2d 132, 138, (D. Mass 2003) (plaintiffs had viable substantive due process claim, as children “taken into state custody have the right not to be placed with foster parents having a known propensity to neglect or abuse children.”).
- ³ See *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1157 (D.Hawai’i, 2006) (finding supervisory defendants’ failure to adopt policies and procedures and to provide training regarding how to ensure safety of LGBT wards supports a finding of deliberate indifference to plaintiffs’ safety); Unpublished Order Dismissing Writ of Habeas Corpus Without Prejudice, Family Court of the First Judicial Circuit, Hawaii, Judge Wong, March 17, 2005 (“The Court is concerned that the problems raised by this case are systemic and must be addressed ... with the adoption, with deliberate speed, of policies and operation procedures that are appropriate to the treatment of lesbian, gay, and transgender youths, that set standards for the conduct of youth correctional officers and other staff, and that provide on-going staff training and oversight.”).
- ⁴ *Camp v. Gregory*, 67 F.3d 1286, 1296 (7th Cir. 1995) (“Commensurate with the parental obligation to supervise a child’s activities outside the home is a duty on the part of the state not to place one of its charges with an adult that it knows will not or cannot exercise that responsibility.”).
- ⁵ *Taylor v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (“The state’s action in assuming the responsibility of finding and keeping the child in a safe environment placed an obligation on the state to insure the continuing safety of that environment. The state’s failure to meet that obligation, as evidenced by the child’s injuries, in the absence of overriding societal interests, constituted a deprivation of liberty under the fourteenth amendment”); *LaShawn A. v. Dixon*, 762 F. Supp. 959, 993 (D.D.C. 1991) (“[C]ertain services, such as appropriate placements and case planning, are essential to preventing harm”). Monitoring requirements are also spelled out in state regulations and departmental policies and practice guidelines.
- ⁶ See e.g. *Ray v. Foltz*, 370 F.3d 1079, 1083-84 (11th Cir. 2004).
- ⁷ See *Norfleet v. Arkansas Dep’t of Human Serv.*, 989 F.2d 289, 293 (8th Cir. 1993) (state has an obligation to provide appropriate medical care for children in foster care); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d at 851 (explaining Constitution requires state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically).
- ⁸ Child welfare agencies must provide some form of appropriate treatment for transgender youth diagnosed with Gender Identity Disorder. Even under the more restrictive minimally adequate medical care standard applicable to adult prisoners, courts have held that “transsexualism” constitutes a “serious medical need” therefore, 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. See, e.g., *Allard v. Gomez*, 9 Fed. App. 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).
- ⁹ For example, in 1993, the American Academy of Pediatrics issued a Policy Statement on Homosexuality and Adolescence: “Therapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.” In 1997, the American Psychiatric Association explained “there is no published scientific evidence supporting the efficacy of ‘reparative therapy’ as a treatment to change one’s sexual orientation” and it developed a policy in opposition to “any psychiatric treatment, such as ‘reparative’ or ‘conversion’ therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon a prior assumption that the patient should change his/her homosexual orientation.” Also in 1997, the American Psychological Association (APA) issued a *Resolution on Appropriate Therapeutic Responses to Sexual Orientation*, stating, “The APA opposes portrayals of lesbian, gay, bisexual youth and adults as mentally ill due to their sexual orientation and supports the dissemination of accurate information about sexual orientation, and mental health, and appropriate interventions in order to counter bias that is based in ignorance or unfounded beliefs about sexual orientation.”
- ¹⁰ In a recent survey of high school students in California, students who were harassed based on their actual or perceived sexual orientation were more than three times as likely seriously to consider suicide and have a plan for how they would do it compared with students who were not harassed. California Safe Schools Coalition, *Safe Place to Learn: Consequences of Harassment Based on Actual or*

Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer, available at <http://www.casafeschools.org/SafePlacetoLearnLow.pdf>. Although LGBT youth may be at risk for suicide, LGBT youth should never automatically be placed on suicide watch or in isolation simply because they are LGBT.

¹¹ See *K.H. ex rel. Murphy v. Morgan*, 914 F.2d at 851 (explaining Constitution requires state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically). See also *R.G. v. Koller*, 415 F.Supp.2d at 1157 (concerned lack of minimally adequate policies, procedures, and training to ensure ward safety resulted in severe harassment and abuse by staff and wards which exacerbated plaintiffs' suicidal feelings).

¹² The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides: "No state shall...deny to any person within its jurisdiction the equal protection of the laws." In addition to the protections provided by the Equal Protection clause, some states also have statutes that prohibit discrimination against LGBT youth in juvenile justice facilities. For example, a number of states have laws that protect individuals from discrimination by governmental agencies, which may include child welfare agencies or institutions. See, e.g., R.I. GEN. LAWS § 28-5.1-7 (a) ("Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning those patterns or practices."); MINN. STAT. § 363A.02 (4) (prohibiting discrimination in public services based on race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance). Other states have non-discrimination laws that protect children and adults who are living in "institutional settings", which likely would include group homes. See, e.g., IOWA CODE ANN. § 19B.12 (2) (prohibiting state employees from discriminating against a person in the care or custody of the employee or a state institution based on sex). Still other states have non-discrimination laws that apply to businesses and other facilities considered to be "public accommodations." See, e.g., LA. REV. STAT. § 51:2232 (10) (explicitly including as part of the Louisiana public accommodations nondiscrimination law any place which is supported directly or indirectly by government funds, although the law is not inclusive of sexual orientation and gender identity); *Chisolm v. McManimom*, 275 F.3d 315, 325 (adult jail, like a hospital, is place of public accommodation under New Jersey's Law Against Discrimination); *Ortland v. County of Tehama*, 939 F. Supp. 1465, 1470 (California Unruh Act is applicable in claims against governmental agencies). Finally, child welfare institutions may be prohibited from discriminating against LGBT youth pursuant to state laws prohibiting discrimination in housing, since such facilities provide publicly assisted housing accommodations. See *Doe v. Bell*, 754 N.Y.S.2d 846, 850 (N.Y. Sup. Ct. 2003) (recognizing residential foster care facility as "publicly-assisted housing accommodation" for purposes of disability discrimination claim under New York's Human Rights Law).

¹³ Although there is not a large body of equal protection case law in the child welfare or juvenile justice context, the right to equal protection has been clearly established within the public school context. These cases illustrate the types of violations that would also be actionable in child welfare placements. For example, in the first federal appellate case addressing anti-gay violence in schools, a court awarded nearly a million dollars in damages to Jamie Nabozny, a student who suffered severe anti-gay abuse in his Wisconsin high school. *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996). In that case, school administrators told Nabozny that the abuse should be expected because he was openly gay. The court, however, disagreed explaining, "The Equal Protection Clause ... require[s] the state to treat each person with equal regard, as having equal worth, regardless of his or her status....We are unable to garner any rational basis for permitting one student to assault another based on the victim's sexual orientation." *Id.* at 456 and 458. This reasoning has obvious applications in situations where an LGBT young person in a child welfare placement may be singled out for mistreatment on the basis of sexual orientation or gender identity.

¹⁴ National Association of Social Workers *Code of Ethics of 1999*: 4.02 Discrimination: Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability; 6.04 Social and Political Action (d): Social Workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability; CWLA's *Standards of Excellence for Adoption Services*, 4.7 "Nondiscrimination in provision of services to adoptive applicants. All applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing life style, or sexual orientation. Applicants should be accepted on the basis of an individual assessment of their capacity to understand and meet the needs of a particular available child at the point of the adoption and in the future." CWLA's *Standards of Excellence for Family Foster Care Services*: 3.18 "Nondiscrimination in selecting foster parents. The family foster care agency should not reject foster parent applicants solely due to their age, income, marital status, race, religious preference, sexual orientation, physical or disabling condition, or location of the foster home."

¹⁵ The First Amendment to the Constitution guarantees that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

¹⁶ See *Henkle v. Gregory*, 50 F. Supp. 2d 1067 (D. Nev. 2001) (allowing claims under Title IX for discrimination and harassment by other students and under First Amendment based on demands by school officials that student keep his sexual orientation to himself).

¹⁷ See, e.g., *Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. 2000), aff'd sub nom. *Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. 2000) (holding that transgender student had First Amendment right to wear clothing consistent with her gender identity and that treating transgender girl differently than biological girls was discrimination on the basis of sex). Although it did not need to reach the plaintiff's First Amendment claim, a New York court found that an all boys group must make a reasonable accommodation in its dress code and allow the plaintiff, a transgender youth, to wear skirts and dresses. See *Doe v. Bell*, 754 N.Y.S.2d at 853. Of particular concern to the court in reaching this decision was adhering to plaintiff's prescribed medical treatment for Gender Identity Disorder, which called for her to wear feminine clothing as well as preventing the significant emotional distress plaintiff experienced when prohibited from wearing feminine attire. See *Id.*

¹⁸ Although there is not a large body of First Amendment case law in the child welfare or juvenile justice context, in the public school context, courts have held school officials liable for forcing LGBT youth to conceal their sexual orientation as a condition of enrollment, for not permitting a transgender student to dress in accordance with their gender identity, and for prohibiting students from bringing a same-sex date to the high school prom. These cases illustrate the types of violations that may be actionable for youth in the child welfare system. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000); *Doe v. Yunits*, 2000 WL 33162199 at *3; *Fricke v. Lynch*, 491 F. Supp. 387 (D.R.I. 1980).

¹⁹ See *Wilder v. Bernstein*, 848 F.2d 1338, 1347 (2d Cir. 1988).

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THE LEGAL RIGHTS OF YOUNG PEOPLE IN STATE CUSTODY


WHAT CHILD WELFARE AND JUVENILE JUSTICE PROFESSIONALS NEED TO KNOW WHEN WORKING WITH LGBT YOUTH

by

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In 2003, a young transgender¹ woman sued the New York City Administration for Children's Services ("ACS") for not allowing her to wear female attire in her all-boys group home.² While in state care, she was prohibited from expressing her female gender identity in ways that did not conform with her birth sex, despite the fact that she had been previously diagnosed with Gender Identity Disorder.³ The young woman alleged that not being allowed to wear dresses and skirts caused her great psychological distress and amounted to illegal discrimination on the basis of disability and sex under the New York State housing non-discrimination law, as well as a violation of her First Amendment freedom of expression. Without reaching her sex discrimination or First Amendment claims, the court found that in order to not discriminate against her based on her disability, ACS was required to make reasonable accommodations for her transgender status and had to permit her to dress and otherwise present herself consistently with her female gender identity.

In 2005, three youth who identified as, or were perceived to be, LGBT sued the Hawai'i Youth Correctional Facility ("HYCF") after experiencing anti-LGBT abuse while confined there.⁴ Like so many other lesbian, gay, bisexual, and transgender ("LGBT") youth around the country, these youth were constantly verbally, physically, and sexually harassed and threatened while in the facility, by both the other youth and facility staff. As is a common response in these situations, the facility responded to the harassment by placing two of the plaintiffs in isolation, but did nothing further to address the abuse. Not surprisingly, when the youth were returned to the general population the attacks continued.

The federal judge who heard this case held 1) HYCF's use of isolation to "protect" LGBT wards was not within the range of acceptable professional practices and constituted punishment in violation of their Due Process rights, and 2) HYCF officials acted with deliberate indifference in violation of due process in allowing pervasive verbal, physical, and sexual abuse to persist against these youth. The judge was particularly concerned that HYCF was aware of the ongoing abuse, yet took no adequate or reasonable steps to protect these youth:

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The court's conclusion that the defendants acted with deliberate indifference is based on the totality of the circumstances at HYCF. Specifically, it is based on the court's findings that the defendants were aware that conditions at HYCF were unsafe for the plaintiffs and that, with this knowledge, defendants failed 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. ... [I]n light of ongoing abuse and harassment directed at LGBT youth at HYCF, the supervisory defendants' failure to adopt policies and procedures and to provide training regarding how to ensure the safety of LGBT wards supports a finding of deliberate indifference to plaintiffs' safety.⁵

There are thousands of LGBT youth in child welfare and juvenile justice systems throughout the country. Unfortunately these youth are routinely left unprotected from violence and harassment, subjected to differential treatment or denied appropriate services. An increasing number of advocates working with LGBT youth in state custody have brought this issue to light through lawsuits and system reform efforts. This article will describe the legal rights of young people in these systems, focusing on the particular scenarios that may arise when child welfare and juvenile justice professionals work with LGBT youth.

I. THE CONSTITUTIONAL RIGHT TO SAFETY

The most basic of the fundamental civil rights guaranteed to all people in state custody is the right to safety – a right that is conferred to those in custody because of their unique legal status as wards of the state. The right to safety is grounded in the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution.⁶ It imposes a corresponding affirmative duty on the state to protect those in its custody from harm. In the child welfare and juvenile justice contexts, this right is called the “substantive due process liberty interest in safety,” or the “right to safety” for short.

A. The Right to Safety in Foster Care

The first, and thus far, only U.S. Supreme Court case to address the legal rights of children vis-a-vis the child welfare system is *DeShaney v. Winnebago County Dep't of Soc. Serv.* decided in 1989. Joshua DeShaney, a minor child, was severely abused and permanently injured by his biological father. Although Joshua was not in state custody at the time of the abuse, child protective services in his state had received several credible reports of suspected abuse yet chose not to intervene. His mother brought suit against the county for its failure to protect him. The U.S. Supreme Court ruled that child protective services could not be held liable for Joshua's injuries because they did not have a legal obligation to protect him. In a famous footnote the Court opined, “Had the State...removed Joshua from free society and placed him in a foster home operated by its agents, we might have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect....We express no view on the validity of this analogy, however, as it is not before us in the present case.”⁷

Since the *DeShaney* decision every court that has considered the issue has found that children in the care and custody of the state have an affirmative right to safety, which imposes a corresponding duty on the state to provide protection from harm.⁸ Even prior to *DeShaney*, lower courts in various jurisdictions had ruled that the state must protect children in foster care from harm and that the state's failure to do so is actionable.⁹

Based upon these and other published court decisions, it is now well settled that a young person has a legally enforceable right to safety while in foster care. This right includes, among other things, the right to protection against threats to a young person's physical, mental, and emotional well-being, the right to services to prevent harm, and the right to monitoring and supervision.

Right to protection of physical, mental, and emotional well-being

Children in foster care have the right to be protected from physical and sexual abuse at the hands of foster parents, social workers, other foster children, and other individuals that provide care for foster children. In addition to protection from these physical harms, courts have determined that the state must also protect foster children from mental and emotional harm, which also can have gravely negative effects on a child's development.¹⁰ The purpose of the child welfare system is to shield young people from abuse and neglect, and children are indeed removed by Child Protective Services from situations where their psychological and emotional well-being is threatened or harmed. Accordingly, it is now clear that a foster child's right to safety includes the right to a child welfare placement that protects the child's physical, mental, and emotional well-being.

This right applies equally to all children in the child welfare system, including those who are or who are perceived to be lesbian, gay, bisexual, or transgender. The physical and emotional well-being of these youth is at risk if the young person is harassed or mistreated based upon their actual or perceived sexual orientation or gender identity. LGBT youth in the child welfare system often face disapproval and rejection from their caretakers – including foster parents, kinship care providers and group home staff. As one young person described her experience: “My foster family took away my clothes, called me a ‘dyke’ and tried to remake me.”¹¹ Additionally, they may face harassment or mistreatment from the other young people in the placement: “Right now, I’m in a shelter. I don’t like it there because most people there are very homophobic... I got into a fight just because I’m gay, and people don’t accept that fact... I’m trying to get the heck out of there.”¹² In some instances, caseworkers and caretakers excuse this harassment as acceptable childish behavior, or worse, lay blame on the LGBT youth for openly identifying as LGBT or for acting in ways that do not conform to gender stereotypes. As one youth explained, “I told my social worker that I was beaten up and she said, ‘It’s your fault. Try not to be so feminine.’”¹³ In situations where LGBT youth in foster care are mistreated and their physical or emotional well-being is harmed as a result, the caretakers, as well as the professionals responsible for making the placement decision and providing on-going monitoring of the placement, are legally responsible and may face liability in court.

The right to physical, mental, and emotional safety for children in state custody also extends outside of the foster home or placement and protects foster children from mistreatment by persons *other than* the foster parents or caretakers. This is so because there is an expectation that caretakers of foster children will supervise them appropriately and protect them from harms that may exist outside the home.¹⁴ Therefore, professionals on a particular case are expected to place children in homes only where the caretakers are capable of providing protection from harm, particularly when a youth is vulnerable to mistreatment.

Child welfare professionals must exercise sound professional judgment in making placement decisions, taking into consideration the needs of a particular child, the unique environmental appropriateness of each placement, and any environmental cues or signals that might provide indications that a youth will be at risk in a particular placement. The professional must also be prepared to address harassment and mistreatment in school, the

neighborhood, and the community. If an LGBT youth is placed with caretakers who are unable or unwilling to provide them with protection from harm, both inside and outside the home, this youth's right to safety could be violated, and the caseworker or placing agency could be held liable if they knew or should have known of this risk.

Right to services to prevent harm

The right to safety also includes the right to receive services to prevent physical or psychological harm or deterioration while in foster care.¹⁵ Children removed from homes where they may have been abused or neglected often are in need of intervention and services. They may be suffering silently or in obvious pain as a result of their experiences. Professional services, including medical and mental health care, are vital to restoring a child's sense of safety and trust. In addition, some children do not adjust well to life in foster care placements and require additional support and services to help ease the transition.

A child has a right to receive necessary services in order to prevent psychological harm. This right is broad in scope. It takes into account a particular child's unique needs and also recognizes that some forms of harm are difficult to observe. Some services, such as counseling, are routinely provided to children in foster care and help avoid further trauma. Other services, such as counseling to help a child who has been negatively affected by parental rejection or abuse because of the child's actual or perceived sexual orientation or gender identity, may also be required. Further, it is clearly a violation of this right to provide services, including psychological counseling, that are damaging to a young person's emotional well-being.

Child welfare professionals must be vigilant to avoid contracting for services that use inappropriate or unethical practices when dealing with LGBT youth, such as so-called "conversion therapies" and other controversial practices intended to involuntarily change a youth's sexual orientation or gender identity.¹⁶ As one young man described his experience: "In my first group home, they sat me down with a big family Bible and described to me why it was wrong to be gay."¹⁷ Other inappropriate and unethical practices include the withholding of necessary services, or the failure to assist an LGBT young person in identifying community resources, peer support groups, and other resources in order to ameliorate feelings of isolation and depression.

Right to monitoring and supervision

The right to safety includes the right to appropriate monitoring, supervision, and case planning.¹⁸ The duty to protect young people in the child welfare system imposes a corresponding duty on the professionals involved to maintain regular contact with them in order to insure their continued safety.¹⁹ In assessing whether a child welfare professional has fulfilled this duty, courts will take into consideration what the professionals should have known had they been fulfilling their professional obligations. Accordingly, failure to provide regular monitoring and supervision of a child's placement may rise to the level of a breach of the duty to protect, even in situations where the professional had no actual knowledge of the abuse because the professional deliberately failed to learn what was occurring in the placement.²⁰ If child welfare professionals fail to monitor and supervise an LGBT youth's placement and this youth is subsequently injured, this could constitute a breach of the duty to protect. A child injured in a foster home who was not properly monitored by child welfare professionals may sue the professionals and caretakers for damages.

LGBT young people in state custody are vulnerable to mistreatment and harm from a variety of sources, both inside and outside their placements. In order for a caseworker adequately to monitor the appropriateness of the placement, as well as the services that are being provided, it is imperative that there be regular communication, investigation, and supervision in each child's case. This is important for all children, but it is particularly important for LGBT youth, due to the high level of prejudice and misinformation regarding these youth. When working with a young person who is or may be perceived as LGBT, the caseworker must be prepared regularly to investigate the safety and appropriateness of the placement, the school, and the community within which the young person lives. The goal in working effectively with LGBT young people, whether "out of the closet" or not, is to provide a level of monitoring, supervision, and case management that takes into consideration the unique needs of each child and ensures that any mistreatment is quickly addressed at its source. By maintaining regular contact with a young person, the lines of communication are more likely to be open, and the caseworker is more likely to learn of harassment and abuse and be better prepared to take the necessary steps to stop it.

LGBT youth who have been in foster care stress the importance of developing and maintaining open communication. In the words of one such youth, "When I was in foster care, I was assaulted...because I 'came out'....In foster care, [the caseworkers] need to know first [that you're LGBT] so they can know where to put you and to make you feel safe."²¹

B. The Right to Safety in Juvenile Detention and Correctional Facilities

Youth in juvenile detention and correctional facilities also have civil rights derived from the Fourteenth Amendment Due Process Clause of the U. S. Constitution. Unlike adult inmates, children in the custody of the juvenile justice system have not been "convicted" of crimes.²² They are also understood to be less mature and responsible for their behavior than adults.²³ Therefore, the purpose and public policy of institutional confinement of children emphasizes rehabilitation and treatment rather than punishment, making the constitutional rights of institutionalized juveniles broader than those of adult inmates,²⁴ and more like those of young people in the child welfare system, mentally retarded individuals who are institutionalized²⁵ and adult pre-trial detainees.²⁶

For convicted adults, conditions of confinement violate the U.S. Constitution when they amount to "cruel and unusual" punishment as proscribed by the Eighth Amendment.²⁷ Although courts sometimes look to adult cases when deciding cases involving detained or incarcerated children, it is clearly established that children in state custody are entitled to more protection than incarcerated adults, and most courts analyze their claims under the federal Due Process Clause using the framework developed in *Bell v. Wolfish*, *Youngberg v. Romeo*, and related cases.²⁸ These due process rights include the right to reasonably safe conditions of confinement, freedom from unreasonable bodily restraint, freedom from conditions that amount to punishment, access to treatment of mental and physical illnesses and injuries, and minimally adequate rehabilitation. These rights extend to children whether they are confined in juvenile detention centers, adult jails, training schools or other secure institutions for delinquent children.²⁹

Right to safe conditions of confinement

Juveniles who are incarcerated or detained have the right to reasonably safe conditions of confinement, including the right to reasonable protection from the aggression of other juveniles or staff.³⁰ Accordingly, juvenile correctional staff have a duty to protect juveniles from harassment and violence at the hands of

other wards as well as staff. Staff cannot ignore a substantial risk of harm to a particular youth, especially if the youth is known to be vulnerable because he or she is young, has a mental illness, is openly LGBT, or is perceived to be LGBT.³¹ In addition, juvenile justice administrators must ensure that they maintain reasonably safe conditions of confinement. To avoid liability, they should have adequate numbers of qualified staff who are sufficiently trained on issues of safety and establish policies and procedures that address youth safety, including a written policy or procedure for reviewing and following up on incident reports, and an adequate classification system. In order to protect LGBT youth from harassment and harm, it may be necessary to have non-discrimination policies and staff training that specifically address the needs of these youth.³²

Juvenile detention and correctional facilities also must have a sound classification system to provide safety for youth, especially for LGBT youth who are often vulnerable to attack if placed with aggressive juveniles.³³ A facility should consider the age, size, offense history, and other risk factors, including sexual orientation, in its determination of the appropriate level of confinement for a particular juvenile and whether that particular juvenile needs to be segregated from more vulnerable youth because he or she presents a threat.³⁴ Classification of youth usually occurs at intake and requires periodic reviews to ensure that safety is maintained. Individuals who are charged with making classification decisions in a juvenile facility must have an understanding of the safety risks that LGBT youth face in detention and must take these risks into account when determining placements. Unfortunately, in many instances, this understanding is sorely lacking. Due to misinformation and prejudice, staff in many detention and correctional facilities may erroneously assume that gay youth are sexual predators or desire to have sexual relations with the other youth. As one youth explained, “The staff think that if a youth is gay, they want to have sex with all of the other boys, so they did not protect me from unwanted sexual advances.”³⁵ These stereotypes are not only false; they are extremely dangerous to LGBT youth, who are at high risk of being sexually and physically abused by other youth and who must be protected from this risk. Accordingly, LGBT youth should not be placed in an aggressive population, with known sex offenders, or with other youth who display anti-gay or anti-transgender animus.

Right to be free from unreasonably restrictive conditions of confinement

Youth in juvenile justice facilities also have the right to be free from unreasonably restrictive conditions of confinement.³⁶ Conditions that unduly restrict a youth’s freedom of action and are not reasonably related to legitimate security or safety needs of the institution are unconstitutional.³⁷ A restriction violates this standard if it is arbitrary, discriminatory, or purposeless, or if it is a substantial departure from accepted professional judgment. A restriction that falls into one of these categories unconstitutionally impinges upon the individual’s liberty interests and is considered punitive in violation of the Fourteenth Amendment Due Process Clause.

The use of isolation within juvenile institutions for more than short periods may violate a youth’s right to be free from unreasonably restrictive conditions of confinement and constitute impermissible punishment.³⁸ Although institutions generally are permitted to use isolation briefly to remove disruptive or out-of-control individuals from the general population, the use of isolation as a form of punishment for breaking facility rules, or for any other purpose, receives close scrutiny by the courts.³⁹ One reason for this is that isolation can have damaging psychological effects on children, including extreme loneliness, anxiety, rage, and depression, because children have a very different perception of time and a lower capacity than adults to cope with sensory deprivations.

LGBT youth should never be placed in isolation because of their sexual orientation or gender identity or as punishment for expressing their identities.⁴⁰ The following statement provides an example of improper treatment: “I was put in a room by myself because I was gay. I wasn’t allowed to be around anyone else.”⁴¹ It is an outdated myth that LGBT youth are a danger to other youth and should therefore be placed in isolation.⁴² In light of the well-known adverse psychological and physical effects isolation has on young people, reliance on such misplaced stereotype, whether for administrative convenience or even a desire to protect LGBT youth from harassment and abuse, would be an insufficient basis to subject an LGBT youth to extended periods of isolation. If, on the other hand, an LGBT youth is harassed in a detention facility, it is constitutionally appropriate to segregate his or her harassers, since they pose a known threat to the safety of others. But, a facility should never punish the victim of harassment with isolation simply because doing so is cheaper or more convenient than providing adequate staffing, supervision, or training. Although an LGBT youth may be vulnerable while in detention, automatically placing all LGBT youth in segregation “for their own safety” is unconstitutionally punitive, especially if a more effective and less stigmatizing and isolating response is available.⁴³

Right to mental and physical health care

Juveniles who are confined in institutions have the right to adequate medical and mental health care. A juvenile detention or correctional facility has a duty to provide, or arrange for, treatment of mental and physical illnesses, injuries, and disabilities.⁴⁴ An act or omission that constitutes a knowing disregard of a ward’s health interests can be a constitutional violation. For example, if juvenile justice facility professionals know of a transgender youth’s significant mental or medical health needs, such as the needs that may attend a diagnosis of Gender Identity Disorder, but do not take the steps necessary to address them, or if they ignore the instructions of the treating physician, the facility is violating the youth’s right to medical care.⁴⁵ Facilities must provide appropriate treatment and accommodation for transgender wards or risk facing liability.

In addition, a facility must have appropriate mental health screening and sufficient mental health services. It must also have adequate policies governing the supervision and treatment of suicidal wards.⁴⁶ LGBT youth, especially those facing extreme forms of anti-LGBT abuse and harassment, may be at an increased risk for suicide.⁴⁷ Individuals responsible for conducting mental health screenings must be aware of this increased risk in order to ensure that LGBT youth who are suicidal receive the constitutionally required mental health services they need. They must also ensure that anti-LGBT harassment and abuse that could exacerbate suicidal feelings is prevented.⁴⁸

Right not to be placed in conditions that amount to punishment

Youth in juvenile detention or correctional facilities should not be placed in conditions that amount to punishment or be stigmatized or humiliated as part of their treatment.⁴⁹ Measures that may violate a youth’s constitutional rights include punishing a youth with degrading or humiliating tasks, restricting their personal appearance in ways that are unrelated to legitimate penological interests, or otherwise singling them out from the rest of the population for ridicule.⁵⁰ A youth in a detention or correctional facility should never be punished solely because he or she is openly LGBT. In addition, requiring LGBT youth to dress differently than the other youth in the facility, requiring LGBT youth to perform different chores, or singling out LGBT youth in any other way, are actions that are likely to be found to be unconstitutionally punitive. Staff and administrators also must refrain from violating an LGBT youth’s confidentiality by inappropriately revealing his or her sexual orientation or gender identity. In addition to being unethical, such conduct is unconstitutional and may place that young person at risk of serious harm.

LGBT youth also should not automatically be treated as sex offenders or housed with sex offenders, simply because they are gay or transgender. In the adult context, the classification of an inmate as a “sex offender” has been found to affect a liberty interest.⁵¹ As one court explained in holding that an adult inmate has a protected liberty interest and is entitled to a hearing before being classified as a sex offender, “We can hardly conceive of a state’s action bearing more ‘stigmatizing consequences’ than the labeling of a prison inmate as a sex offender.”⁵² Although no appellate decisions have addressed this issue in the juvenile justice context, juveniles are entitled to greater protections than adult inmates, and branding a juvenile with a sex offender label clearly would have the same, if not an even greater, stigmatizing effect. Accordingly, a youth should not be labeled or treated as a sex offender without adequate due process protections, such as a hearing, an evaluation by a qualified mental health professional with expertise in juvenile sex offender issues, and an opportunity to appeal. For LGBT youth, this means that unless the youth has a history of sex-offense adjudications, they should never be arbitrarily labeled as a sex offender, “sexually aggressive,” or any other euphemism used to describe sex offender status, simply because they are LGBT. This would result in a constitutional violation and could result in further physical harm, for which the institution would also be liable.

II. OTHER CONSTITUTIONAL RIGHTS

In addition to the due process right to safety, LGBT youth in state custody enjoy other significant constitutional rights, including the right to freedom of speech and expression and the right to equal protection under the law. Child welfare and juvenile justice service providers should have an understanding of how these civil rights apply to LGBT youth in state custody.

A. The Right to Equal Protection

All youth in state custody have a federal constitutional right to equal protection under the law.⁵³ This means that LGBT youth in child welfare and juvenile justice systems must be treated equally in the provision of placements and services and must be protected from harassment on an equal basis with other youth.⁵⁴ In practice, however, this right to equal treatment is often breached, either because staff and administrators are callous or indifferent toward the mistreatment of LGBT youth, or because they wrongly assume that LGBT youth are responsible for bringing such mistreatment upon themselves, simply by existing. One gay youth described his experience as follows: “I got jumped by a bunch of guys in my group home, and when I told the Director he said, ‘Well, if you weren’t a faggot they wouldn’t beat you up.’”⁵⁵ If a child welfare or juvenile justice professional fails to take action against anti-LGBT harassment because they believe that LGBT youth in care should expect to be harassed, or because they believe that the LGBT youth brought the harassment upon him or herself simply by being openly LGBT, or because the agency is uneducated about LGBT issues and is uncomfortable addressing the situation, there may be a violation of the youth’s right to equal protection, in addition to a potential violation of the right to safety.

This was exactly the kind of failure that was alleged in a 1998 class action lawsuit brought against the City of New York’s child protective services on behalf of LGBT youth in foster care.⁵⁶ The plaintiffs in that case, six LGBT foster youth, experienced severe abuse – including alleged harassment, physical violence, and rape -- by peers, foster parents, and child welfare staff. These young peoples’ appeals for protection were met with indifference, blame or isolation of the victims rather than the abusers. The youth alleged that they were denied equal protection on the ground that, if the abuse was based on something other than their sexual

orientation, the staff would have taken appropriate actions to protect them. The case ultimately settled out of court, resulting in monetary awards for damages and attorney's fees, as well as important policy and practice changes within the local child welfare system order to improve the standard of care for LGBT youth.

B. First Amendment Rights

The First Amendment's guarantee of freedom of speech is one of the most fundamental civil rights in this country.⁵⁷ It guarantees the right to be open about one's sexual orientation⁵⁸ and the right to expressive conduct, such as dressing in the manner of one's choice.⁵⁹ In the public school context, courts have found school officials liable for denying this right to LGBT students who were forced to conceal their sexual orientation as a condition of enrollment, to transgender students who were not permitted to dress in accordance with their gender identity, and to students who were prohibited from bringing a same-sex date to the high school prom or who were not protected after coming "out of the closet."⁶⁰ Similarly, child welfare and juvenile justice professionals may violate a youth's First Amendment rights if they require an LGBT youth in state care to hide his or her sexual orientation or gender identity in order to receive services, or if they refuse to allow transgender or gender-nonconforming youth to express their gender through clothing and accessories.

The First Amendment also guarantees young people in state custody the right to religious freedom and the right to be free from religious indoctrination.⁶¹ Many LGBT youth in state custody are forced to hide their identities from their caretakers and to join religious organizations that condemn homosexuality. As one young woman explained: "After 'coming out' to one of my foster families, I was told I was going to hell and forced to go to church with them. I became very 'closeted' after that and didn't tell any other foster families that I'm gay. I was in twenty-two different homes, many of them were very religious."⁶² Another youth described a similar experience: "Three of my foster homes were very religious and they told me to go to church and read the bible and sometimes they would have the nuns come back to the house and lecture me."⁶³ In sum, foster families and group home staff are not permitted to intimidate or coerce a young person into adopting any particular religious practices or beliefs. Such practices not only violate the First Amendment, they also may violate a youth's right to safety if they are intended to shame, humiliate, or pressure a young person to alter his or her sexual orientation or gender identity.

III. STATE NON-DISCRIMINATION LAWS

In addition to the protections the U.S. Constitution provides for young people in state custody, depending on the state where the young person lives, there may be additional protections that come from the state's constitution⁶⁴ or its statutes.

Some states have non-discrimination laws that explicitly protect LGBT youth in juvenile justice and child welfare systems. For example, in California, the Foster Care Non-discrimination Act makes it unlawful for county child welfare departments, group home facilities, and foster family agencies to discriminate on a number of bases, including actual or perceived sex, sexual orientation, gender identity, or HIV status.⁶⁵ Under this law, all foster children and persons engaged in providing care and services to foster children in California have the right to fair and equal access to all available child welfare services, placements, care, treatment, and benefits, and to be free from discrimination or harassment on these bases.⁶⁶

Other states have protections that are less explicit, but that also may protect LGBT youth in state care. For example, a number of states have laws that protect individuals from discrimination by governmental agencies, which would include child welfare programs and juvenile detention and correctional facilities.⁶⁷ Other states

have non-discrimination laws that protect children and adults who are living in “institutional settings,” which may include juvenile justice facilities, treatment hospitals, group homes, and other such facilities that provide institutional care.⁶⁸ Still other states have non-discrimination laws that apply to businesses and other facilities considered to be “public accommodations.” Some of these laws explicitly include juvenile justice and child welfare programs within the definition of public accommodation,⁶⁹ while in other states, courts have interpreted these laws to apply to these programs.⁷⁰ Finally, child welfare and juvenile justice facilities may be prohibited from discriminating against LGBT youth in residential care pursuant to state laws prohibiting discrimination in housing, since such facilities provide publicly assisted housing accommodations.⁷¹ In sum, regardless of whether a facility is considered a governmental agency or a public accommodation, child welfare and juvenile justice facilities may fall under a variety of state laws that prohibit sexual orientation or gender identity discrimination and require nondiscriminatory care.⁷²

In addition to statutory protections from discrimination, some states have adopted policies or practice guides that include protections for LGBT youth in state care. For example, Connecticut policy provides: “The Department of Children and Families has an obligation to ensure fair, equal, and non-discriminatory treatment of all individuals who identify themselves as Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex....”⁷³ This policy, and others like it in Illinois and Massachusetts, as well as in the cities of New York and Los Angeles, serve as clear statements of support for LGBT youth and demonstrate a commitment to providing non-discriminatory care.

IV. CONCLUSION

All young people in state custody are entitled to equal protection of the law and have the right to safety while in care. These rights, as well as other well-established constitutional and statutory rights apply to LGBT youth. If a child welfare or juvenile justice facility violates the rights of a youth in their care, anyone involved in the violation may be held liable. Child welfare and juvenile justice professionals must be aware of the constitutional and statutory rights of LGBT young people. They also must take these rights into consideration in both practice and policy making.

As discussed above, some of the actions that may violate the civil rights of LGBT young people in care include:

- failing to protect LGBT youth from harassment and violence at the hands of caretakers or other youth.
- requiring a young person to participate in controversial therapies intended to change their sexual orientation or gender identities.
- failing to assist an LGBT young person in identifying community supports and resources in order to ameliorate feelings of isolation and depression.
- automatically classifying LGBT youth as sex offenders or placing them in isolation
- not providing appropriate medical care for transgender youth.
- punishing LGBT youth for behaviors that non-LGBT youth are not punished for.
- moralizing, ignoring, or pathologizing LGBT youth.
- placing LGBT youth in humiliating, embarrassing, or dangerous situations.⁷⁴

In the last few years, legal advocates have begun to bring lawsuits to address the serious abuses faced by LGBT youth in state care, and courts have begun to hold state agencies and professionals responsible for these

abuses. In the years ahead, it is inevitable that more such cases will be litigated and that facilities that violate the rights of LGBT youth will be held accountable -- thanks to increased advocacy on behalf of LGBT youth in state care and the development of national support networks,⁷⁵ publications, and best practice guidelines.⁷⁶ Courts can now look to these advocates and materials for additional guidance to determine standards of care expected of professionals working with LGBT youth in state custody.⁷⁷

Agencies and facilities that provide care to youth in state custody must educate themselves on the needs of LGBT youth and the scope of their civil rights. They also must train providers on how to work with LGBT youth, enact non-discrimination policies, and establish practices that deal effectively with anti-LGBT abuse. These actions should be taken proactively, prior to any abuses of LGBT young people, rather than in response to complaints or in the course of time-consuming and resource-intensive litigation. Professionals who work for child welfare and juvenile justice agencies have a tremendous responsibility to protect the safety and well-being of all youth in their care, including those who are LGBT. Fortunately, these professionals now have access to a wealth of educational tools and materials to help them comply with professional standards of care for LGBT youth and ensure that the rights of these youth are protected.

THE LEGAL RIGHTS OF YOUNG PEOPLE IN STATE CUSTODY

WHAT CHILD WELFARE AND JUVENILE JUSTICE PROFESSIONALS NEED TO KNOW WHEN WORKING WITH LGBT YOUTH

ENDNOTES

¹ We use the term “transgender” to describe individuals who have a gender identity or gender expression that differs from that traditionally associated with their sex at birth. The phrase “gender identity” refers to one’s internal identification or self-image of their gender. Everyone has a gender identity. For most people, it is consistent with their assigned sex; however, for transgender individuals, their internal identification of their gender differs from their assigned sex. A “transgender woman” is a transgender individual who currently identifies as female, and a “transgender man” is a transgender individual who currently identifies as male.

² *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003).

³ Some transgender youth experience clinically significant distress or impairment in important areas of functioning in relation to their gender identities. These youth may be diagnosed with “Gender Identity Disorder,” or “GID,” according to the American Psychiatric Association’s fourth edition and text revision of the *Diagnostic and Statistical Manual* (“DSM-IV-TR”). Gender Identity Disorder is described in the DSM-IV-TR as a “strong and persistent cross-gender identification” and “[p]ersistent discomfort with [one’s] sex or sense of inappropriateness in the gender role of that sex,” which causes “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *Id.* at 581. The DSM-IV-TR notes that “[i]n older children [with GID], failure to develop age-appropriate same-sex peer relationships and skills often leads to isolation and distress, and some children may refuse to attend school because of teasing or pressure to dress in attire stereotypical of their assigned sex. In adolescents and adults, preoccupation with cross-gender wishes often interferes with ordinary activities. Relationship difficulties are common, and functioning at school or work may be impaired.” *Id.* at 577.

⁴ See *R.G. v. Koller*, 415 F.Supp 2d 1129 (D.Hawai’i 2006).

⁵ *Id.* at 1157.

⁶ The Fourteenth Amendment states in part, “No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The two clauses in the above sentence are often referred to as the Fourteenth Amendment Due Process and Equal Protection Clauses, respectively. The right to liberty in the Due Process Clause has been interpreted to include a variety of rights related to personal autonomy – such as safety, privacy, and intimate association with the people of one’s choosing. The evolving legal doctrine regarding the contours of the Fourteenth Amendment due process rights is often referred to as “substantive due process.”

⁷ *DeShaney v. Winnebago County Dep’t of Soc. Serv.*, 489 U.S. 189, 201 n.9 (1989).

⁸ A leading post-*DeShaney* case is *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846 (7th Cir. 1990). At seventeen-months old, K.H. contracted gonorrhea while in foster care in Illinois from one of her foster parents. The Seventh Circuit court held that K.H. stated a Fourteenth Amendment substantive due process claim: “This is not a positive liberties case, like *DeShaney*, where the question was whether the Constitution entitles a child to governmental protection against physical abuse by his parents or by other private persons....Here, in contrast, the state removed a child from the custody of her parents; and having done so, it could no more place her in a position of danger...without thereby violating her rights under the due process clause...than it could...place a criminal defendant in a jail or prison in which his health or safety would be endangered....In either case the state would be a doer of harm rather than merely an inept rescuer....” *Id.* at 848-49.

⁹ *Taylor v. Ledbetter*, 818 F.2d 791, 797 (11th Cir. 1987) (“In the foster home setting, recent events lead us to believe that the risk of harm to children is high. We believe the risk of harm is great enough to bring foster children under the umbrella of protection afforded by the Fourteenth Amendment. Children in foster homes...are isolated.... The children are helpless... [and] at the mercy of the foster parents... [I]t is time that the law give to these defenseless children at least the same protection afforded adults who are imprisoned as a result of their own misdeeds.”).

¹⁰ *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989) (“[A] child who is in the state’s custody has a substantive due process right to be free from unreasonable and unnecessary intrusion on both [his or her] physical and emotional well-being. Our conclusion is grounded in common sense: A child’s physical and emotional well-being are equally important. Children are by their nature in a developmental phase of their lives and their exposure to traumatic experiences can have an indelible effect upon their emotional and psychological development and cause more lasting damage than many strictly physical injuries.”).

¹¹ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System. Since 2002, CWLA and Lambda have been working together on a multi-year national collaboration entitled, “Fostering Transitions: CWLA/Lambda Joint Initiative to Support LGBTQ Youth and Adults Involved with the Child Welfare System.” As part of this collaboration, CWLA and Lambda convened thirteen Regional Listening Forums in cities around

the country between September 2003 and December 2004. Each Listening Forum brought together diverse groups of stakeholders from each community for an in-depth discussion on the needs of LGBTQ youth and adults involved with the child welfare system. A published report summarizing the results of the Regional Listening Forums is available at www.cwla.org/pubs/.

¹² *Id.*

¹³ Anonymous transgender youth, personal interview, Model Standards Project, February 2003. The Model Standards Project (MSP) is a collaboration of Legal Services for Children and the National Center for Lesbian Rights. In 2003, MSP staff interviewed more than 25 LGBTQ youth about their experiences in both the child welfare and juvenile justice systems.

¹⁴ *Camp v. Gregory*, 67 F.3d 1286, 1296 (7th Cir. 1995) ("Commensurate with the parental obligation to supervise a child's activities outside the home is a duty on the part of the state not to place one of its charges with an adult that it knows will not or cannot exercise that responsibility.").

¹⁵ *Norfleet v. Arkansas Dep't of Human Serv.*, 989 F.2d 289, 293 (8th Cir. 1993) ("In this case, a special custodial relationship...was created by the state when it took Taureen from his caregiver and placed him in foster care. Cases from this and other circuits clearly demonstrate that imprisonment is not the only custodial relationship in which the state must safeguard an individual's civil rights. In foster care, a child loses his freedom and ability to make decisions about his own welfare, and must rely on the state to take care of his needs. It cannot be seriously doubted that the state assumed an obligation to provide adequate medical care for Taureen; the reason Taureen was placed in foster care was precisely because he was not able to take care himself and needed the supervision and attention of an adult caregiver.").

¹⁶ Attempts by child welfare and mental health professionals to alter a person's sexual orientation or gender identity through "conversion therapy" have been condemned by the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the American Counseling Association.

¹⁷ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

¹⁸ *LaShawn A. v. Dixon*, 762 F. Supp. 959, 993 (D.D.C. 1991) ("[C]ertain services, such as appropriate placements and case planning, are essential to preventing harm").

¹⁹ Monitoring requirements are also spelled out in state regulations and departmental policies and practice guidelines.

²⁰ See e.g. *Ray v. Foltz*, 370 F.3d 1079, 1083-84 (11th Cir. 2004); *Taylor v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (finding agency personnel can be held responsible for injury of foster child if they had actual knowledge of abuse or they deliberately failed to learn what was occurring in the foster home).

²¹ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

²² See *Kent v. United States*, 383 U.S. 541, 554 (1966) ("The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.").

²³ *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982) ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.").

²⁴ *Santana v. Collazo*, 714 F.2d 1172, 1180 (1st Cir. 1983) ("[B]ecause the state has no legitimate interest in punishment, the conditions of juvenile confinement...are subject to more exacting scrutiny than conditions imposed on convicted criminals."); see also *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40 (1977) ("Eighth Amendment scrutiny is appropriate only after the state has complied with the constitutional guarantees traditionally associated with criminal prosecutions.").

²⁵ The Supreme Court has held that a mentally retarded individual who was involuntarily committed to a state institution has a constitutionally protected liberty interest under the Fourteenth Amendment to reasonably safe conditions of confinement and freedom from unreasonable bodily restraint. *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982).

²⁶ The Supreme Court held that the appropriate standard for assessing the constitutionality of the conditions under which pretrial detainees are confined emanates from the Due Process Clause of the Fourteenth Amendment rather than the Eighth Amendment Cruel and Unusual Punishment Clause and requires a court to consider whether the conditions "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

²⁷ The Eighth Amendment prohibits the cruel and unusual punishment of adults convicted of crimes. *Whitley v. Albers*, 475 U.S. 312 (1986).

²⁸ The First, Third, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuit Courts have held that the appropriate standard to use in reviewing the conditions at juvenile facilities comes from the Due Process Clause of the Fourteenth Amendment. See *A.M. v. Luzerne County Juvenile Detention Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004); *Alexander S.*, 876 F. Supp. 773, 782 (D.S.C. 1995), *aff'd in part and rev'd in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S.Ct. 880 (1998) ("[J]uveniles possess a clearly recognized liberty interest in being free from unreasonable threats to their physical safety."); *A.J. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431-32 (9th Cir. 1987); *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1084-85 (11th Cir. 1986); *Santana v. Collazo*, 714 F.2d 1172,

- 1179 (1st Cir. 1983); *Milonas v. Williams*, 691 F.2d 931, 942, n. 10 (10th Cir. 1982). But see *Nelson v. Heyne*, 491 F.2d 352, 355 (7th Cir. 1974) (applying the cruel and unusual punishment test of the Eighth Amendment). The United States Supreme Court has not yet decided the issue.
- ²⁹ See, e.g., *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1084-85 (11th Cir. 1986) (applying due process clause to conditions of confinement for juvenile confined pending trial on delinquency charges); *Milonas v. Williams*, 691 F.2d at 942, n. 10 (applying due process clause to conditions involving juveniles confined for crimes).
- ³⁰ See *Alexander S.*, 876 F. Supp. at 797-798; *A.M.*, 372 F.3d at 787; *Guidry v. Rapides Parish Sch. Bd.*, 560 So.2d 125 (La. Ct. App. 1990) (holding that the failure to protect children from sexual behavior of other confined children may result in liability). Juveniles in confinement also have the right to reasonable protection from facility staff. Courts have held that facility staff are prohibited from using physical force against juveniles for any purpose other than to restrain a juvenile who is either physically violent and immediately a danger to himself or others, or who is physically resisting institutional rules. See *Pena v. N. Y. Div. for Youth*, 419 F. Supp. 203, 208 (S.D.N.Y. 1976) (holding that unless child is uncontrollable and constitutes a serious and evident danger to himself or others, use of physical restraints is prohibited); *Milonas v. Williams*, 691 F.2d 931, 935, 943 (10th Cir. 1982).
- ³¹ See, e.g., *A.M. v. Luzerne County Juvenile Detention Ctr.*, 372 F.3d at 579 (noting a lack of training on identifying and protecting youth in the population who would be easily victimized in case brought on behalf of 13 year old with mental illness); *R.G. v. Koller*, 415 F. Supp. 2d 1129 (finding juvenile correctional facility did not take into account needs of LGBT youth who were abused).
- ³² See *R.G. v. Koller*, 415 F. Supp. 2d at 1157 (“[I]n light of ongoing abuse and harassment directed at LGBT youth at HYCF, the supervisory defendants’ failure to adopt policies and procedures and to provide training regarding how to ensure the safety of LGBT wards supports a finding of deliberate indifference to plaintiffs’ safety. Most notable is the complete lack of training for staff about their obligations to refrain from harassment and discrimination, to intervene in ward-on-ward harassment, and to investigate claims of harassment.”).
- ³³ Appropriate classification is particularly important for the physical and emotional safety of transgender youth. In *R.G.* the transgender plaintiff was originally placed in the girls unit. Because of physical plant repairs, she was transferred to the general boys unit where she was subjected to physical and sexual assaults. The defendants’ own experts submitted declarations stating that in their expert opinion, they believed that male to female transgender wards, like the plaintiff, were “better off in O & A with the girls than anywhere else at HYCF and that the placement kept them physically and psychologically safe.” *R.G. v. Koller*, 415 F. Supp. 2d at 1145.
- ³⁴ *Alexander S.*, 876 F. Supp. at 787 (facilities must have a system for screening and separating aggressive juveniles from vulnerable juveniles).
- ³⁵ Anonymous youth, personal interview, Model Standards Project, March 2003.
- ³⁶ See, e.g., *Alexander S.*, 876 F. Supp. at 798.
- ³⁷ See *Id.*
- ³⁸ See *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 14th Amendment); *Milonas v. Williams*, 691 F.2d at 941-42 (use of isolation rooms for periods less than 24 hours violated the 14th 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).
- ³⁹ See *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1983).
- ⁴⁰ A case on behalf of young people in a juvenile detention facility in Philadelphia resulted in a settlement under which the facility agreed no longer to place gay youth in isolation. *Santiago v. City of Philadelphia*, Civ. Act. No. 74-2589 (E.D. Pa. 1978). The settlement provided: “Homosexuals shall be protected from harassment, and shall not be stigmatized by putting them in isolation, segregating them by unit or otherwise discriminating against them....”
- ⁴¹ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.
- ⁴² “Attorneys representing gay or lesbian juveniles should be aware of the possibility that a youth’s homosexuality itself may be perceived as a danger to others, rather than the individual circumstances of the specific child. They should, of course, vigorously oppose any attempts by the institution to characterize gay or lesbian youths as dangerous or potential rapists.” *Santiago* stipulation, *supra* note 40.
- ⁴³ See *R. G. v. Koller*, 415 F. Supp. 2d at 1155-56 (“After examining expert opinions and case law regarding the use of isolation on children, the court concludes that the defendants’ use of isolation was not within the range of acceptable professional practices and constitutes punishment in violation of the plaintiffs’ Due Process rights...The likely perception by teenagers that isolation is imposed as punishment for being LGBT only compounds the harm...Consistently placing juvenile wards in isolation, not to impose discipline for violating rules, but simply to segregate LGBT wards from their abusers, cannot be viewed in any reasonable light as advancing a legitimate nonpunitive governmental objective.”).
- ⁴⁴ See *A.M.*, 372 F.3d 572, 585 n.3; *Jackson v. Johnson*, 118 F. Supp. 2d 278 at 289; *Alexander S.*, 876 F. Supp. at 788.
- ⁴⁵ See *A.M.*, 372 F.3d at 584-85 (discussing lack of medical and mental health care for ward with mental illness).
- ⁴⁶ See *Viero v. Bufaro*, 925 F. Supp. 1374 (N.D. Ill. 1996) (finding officials not entitled to qualified immunity concerning suicide of boy with

- well-documented mental health needs who did not receive any services, medication, or close supervision); *see also Dolihite v. Maughon*, 74 F.3d 1027 (11th Cir. 1996).
- 47 In a recent survey of high school students in California, students who were harassed based on their actual or perceived sexual orientation were more than three times as likely seriously to consider suicide and have a plan for how they would do it compared with students who were not harassed. California Safe Schools Coalition, *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer*, available at <http://www.casafeschools.org/SafePlacetoLearnLow.pdf>.
- 48 Although LGBT youth may be at increased risk for suicide, LGBT youth should never automatically be placed on suicide watch simply because they are LGBT.
- 49 With the understanding that some restrictions of liberty may be constitutional, a court will look at whether a particular restriction is “reasonably related” to a legitimate governmental interest. If it is not, it may be inferred that the purpose of the restriction is punishment. *Bell*, 441 U.S. at 539. *See also Milonas v. Williams*, 691 F.2d 931, 942 (10th Cir. 1982) (“Any institutional rules that amount to punishment of those involuntarily confined ...are violative of the due process clause per se.”).
- 50 *See, e.g., Gerks v. Deathe*, 832 F. Supp. 1450 (W.D. Okla. 1993) (due process rights may be violated by requiring child to clean her own excrement); *Gary W. v. Louisiana*, 437 F. Supp. 1209, 1230 (E.D. La. 1976) (addressing types of work performed by youth).
- 51 *See Neal v. Shimoda*, 131 F.3d 818, 830 (9th Cir. 1997).
- 52 *Id.* at 829 (finding due process violation where inmate had never been convicted of a sex offense and had not had an opportunity to challenge his classification).
- 53 The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides: “No state shall...deny to any person within its jurisdiction the equal protection of the laws.”
- 54 Although there is not a large body of equal protection case law in the child welfare or juvenile justice context, the right to equal protection has been clearly established within the public school context. These cases illustrate the types of violations that would also be actionable in the child welfare and juvenile justice systems. For example, in the first federal appellate case addressing anti-gay violence in schools, a court awarded nearly a million dollars in damages to Jamie Nabozny, a student who suffered severe anti-gay abuse in his Wisconsin high school. *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996). In that case, school administrators told Nabozny that the abuse should be expected because he was openly gay. The court, however, disagreed explaining, “The Equal Protection Clause ... require[s] the state to treat each person with equal regard, as having equal worth, regardless of his or her status....We are unable to garner any rational basis for permitting one student to assault another based on the victim’s sexual orientation.” *Id.* at 456 and 458. This reasoning has obvious applications in situations involving state custody, where an LGBT young person in a group or foster home may be singled out for mistreatment on the basis of sexual orientation or gender identity. *See also Flores v. Morgan High School District*, 324 F.3d 1130 (9th Cir. 2003) (students could maintain claims alleging discrimination on basis of sexual orientation under Equal Protection Clause where school district failed to protect students to same extent that other students were protected from harassment and discrimination).
- 55 Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.
- 56 *Marisol A. v. Giuliani*, 929 F. Supp. 662 (S.D.N.Y. 1996).
- 57 The First Amendment to the Constitution guarantees that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- 58 *See Henkle v. Gregory*, 50 F. Supp. 2d 1067 (D. Nev. 2001) (allowing claims under Title IX for discrimination and harassment by other students and under First Amendment based on demands by school officials that student keep his sexual orientation to himself).
- 59 *See, e.g., Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. 2000) *aff’d sub nom. Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. 2000) (holding that transgender student had First Amendment right to wear clothing consistent with her gender identity and that treating transgender girl differently than biological girls was discrimination on the basis of sex).
- 60 *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000); *Doe v. Yunits*, 2000 WL 33162199 at *3; *Fricke v. Lynch*, 491 F. Supp. 387 (D.R.I. 1980).
- 61 *See Bellmore v. United Methodist Children’s Home and Department of Human Resources of Georgia*, 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.”).
- 62 Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.
- 63 Anonymous youth, personal interview, Model Standards Project, February 2003.
- 64 The civil rights protections guaranteed by the federal constitution set the minimum level of protection a state must guarantee to its citizens. No state may choose to provide less constitutional guarantees. The rights established through state constitutional protections, including the liberty interest in safety, equal protection, and freedom of speech and of religion, often mirror the scope of

the rights guaranteed under the U.S. Constitution. Many state constitutional guarantees may, however, be more protective than analogous federal rights. In Oregon, for example, state courts have interpreted the state constitution's equal protection clauses to provide broader protections from sexual orientation discrimination than those guaranteed under the Equal Protection Clause of the U.S. Constitution. See *Tanner v. Oregon Health Serv. Univ.*, 971 P.2d 435 (Or. Ct. App. 1998). In states such as these, LGBT youth in care may have a stronger case for sexual orientation discrimination under their state constitution than they would under the U.S. Constitution.

⁶⁵ CAL. WELF. & INST. CODE § 16001.9(a)(22).

⁶⁶ CAL. WELF. & INST. CODE § 16001.9(a)(22); CAL. WELF. & INST. CODE § 16013(a).

⁶⁷ See, e.g., R.I. GEN. LAWS § 28-5.1-7 (a) ("Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning those patterns or practices."); MINN. STAT. § 363A.02 (4) (prohibiting discrimination in public services based on race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance).

⁶⁸ See, e.g., IOWA CODE ANN. § 19B.12 (2) (prohibiting state employees from discriminating against a person in the care or custody of the employee or a state institution based on sex).

⁶⁹ See, e.g., LA. REV. STAT. § 51:2232 (10) (explicitly including as part of the Louisiana public accommodations nondiscrimination law any place which is supported directly or indirectly by government funds, although not inclusive of sexual orientation and gender identity).

⁷⁰ *Chisolm v. McManimom*, 275 F.3d 315, 325 (adult jail, like a hospital, is place of public accommodation under New Jersey's Law Against Discrimination); *Ortland v. County of Tehama*, 939 F. Supp. 1465, 1470 (California Unruh Act is applicable in claims against governmental agencies).

⁷¹ See *Doe v. Bell*, 754 N.Y.S.2d at 850 (recognizing residential foster care facility as "publicly-assisted housing accommodation" for purposes of disability discrimination claim under New York's Human Rights Law).

⁷² Many of the non-discrimination laws described above, like the California Foster Care Non-discrimination Act, explicitly include the terms "sexual orientation" and "gender identity" in the language of the law, or they include a term which incorporates these characteristics. Sometimes these statutes will also include the language "actual or perceived" in front of these terms in order to protect people from discrimination who are not actually LGBT, but are perceived to be. In states where "sexual orientation" or "gender identity" is not explicitly included in the language of a non-discrimination law, LGBT people are still protected from discrimination on the basis of other characteristics. For example, there are many states where courts have found that the discrimination an LGBT person experienced was unlawful sex-based discrimination. In addition, there are a number of states where courts have determined that discrimination against a transgender person diagnosed with Gender Identity Disorder is prohibited under disability discrimination protections. Therefore, even if your particular state does not explicitly provide nondiscrimination protections based on sexual orientation or gender identity, LGBT youth in care may still have the right to receive non-discriminatory services under the applicable state law based on their sex or disability.

⁷³ CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES, STATE OF CONNECTICUT POLICY MANUAL, Chapter 30-9 (2004).

⁷⁴ These examples are not intended to be exhaustive.

⁷⁵ As part of "Fostering Transitions: CWLA/Lambda Joint Initiative to Support LGBTQ Youth and Adults Involved with the Child Welfare System" CWLA and Lambda established a 100-member National Advisory Network of young people and professionals from around the country. Similar statewide and regional networks have been developed in California, Colorado, Connecticut, Wisconsin, New York, Washington, and Pennsylvania.

⁷⁶ For example, in June of 2006, CWLA will be publishing a "best practices guide" for working with LGBT youth in the child welfare and juvenile justice systems, co-authored by Legal Services for Children and the National Center for Lesbian Rights. In addition, CWLA develops and disseminates practice standards, known as the *CWLA Standards of Excellence for Child Welfare Services*. Some of these standards specifically address sexual orientation. Additional standards regarding LGBT youth are in development. *The Standard of Excellence for Family Foster Care Services*, Section 3.18 establishes a policy of nondiscrimination in the selection of foster parents: "The family foster care agency should not reject foster parent applicants solely due to their age, income, marital status, race, religious preference, sexual orientation, physical or disabling condition, or location of the foster home." *The Standard of Excellence for Adoption Services*, Section 4.7 states, "All applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing lifestyle, or sexual orientation. Applicants should be accepted on the basis of an individual assessment of their capacity to understand and meet the needs of a particular available child at the point of the adoption and in the future."

⁷⁷ In a 2004 decision in a class action lawsuit, the State Supreme Court of Washington upheld a lower court ruling that found officials had violated foster children's constitutional right to safety. *Braam ex rel. Braam v. Washington*, 81 P.3d 851 (Wash. 2003). In that case, the jury was permitted to review evidence of what professional standards require, including the *Standards of Excellence for Foster Family Care Services*, and the *Standards for Health Care Services for Children in Out of Home Care*, published by CWLA.

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**"LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUNG
PEOPLE IN STATE CUSTODY:
Making the Child Welfare and Juvenile Justice Systems Safe for All
Youth through Litigation, Advocacy and Education"**

**Rudy Estrada¹
and Jody Marksamer²**

There are thousands of lesbian, gay, bisexual, and transgender³ ("LGBT") young people in the child welfare and juvenile justice systems throughout the country. Unfortunately these systems routinely subject LGBT youth to differential treatment, deny them appropriate services and fail to protect them from violence and harassment.⁴ Increasingly, through lawsuits and other system reform efforts, advocates around the country are calling attention to this issue in order to bring about much needed change.

For example, in 2003, a young transgender woman won a landmark lawsuit against the New York City Administration for Children's Services ("ACS") for not

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² Jody Marksamer is a staff attorney at the National Center for Lesbian Rights (NCLR). NCLR is a national legal resource center with a primary commitment to advancing the rights and safety of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. NCLR was founded in 1977 and serves more than 5,000 clients each year, including youth clients, in all fifty states. NCLR has an extensive history of providing legal support to LGBT youth and working for institutional and policy change that protects the rights of LGBT youth, with considerable success particularly in Safe Schools work. In recent years, NCLR has also developed a complementary component of this work that addresses the specific needs of LGBT youth in state care.

³ We use the term "transgender" to describe individuals who have a gender identity or gender expression that differs from that traditionally associated with their sex assigned at birth. The phrase "gender identity" refers to one's internal identification or self-image of their gender. For most people, their gender identity is consistent with their sex assigned at birth; however, for transgender individuals, their gender identity differs from their assigned sex. A "transgender woman" is a transgender individual who identifies as female, and a "transgender man" is a transgender individual who identifies as male. Some transgender individuals experience clinically significant distress or impairment in important areas of functioning in relation to their gender identities. These individuals may be diagnosed with Gender Identity Disorder. According to the American Psychiatric Association's fourth edition and text revision of the Diagnostic and Statistical Manual ("DSM-IV-TR"), Gender Identity Disorder is described as a "strong and persistent cross-gender identification" and "[p]ersistent discomfort with [one's] sex or sense of inappropriateness in the gender role of that sex," which causes "clinically significant distress or impairment in social, occupational, or other important areas of functioning." *Id.* at 581.

⁴ The types of harassment that LGBT youth experience include verbal abuse, such as derogatory name calling, demeaning and insulting comments and threats of physical or emotional acts or negative consequences (including religious condemnation); physical abuse, including destroying property, pushing, hitting, and other acts of violence; sexual abuse, including unwanted sex acts, touching, pantomime and threats; and emotional abuse such as shunning or isolation.

allowing her to wear female attire in her all-boys group home.⁵ That same year, California passed a state law – the first of its kind in the country – that prohibits discrimination in the foster care system on the basis of sexual orientation and gender identity,⁶ and the Illinois Department of Children and Families Services promulgated a model Policy Guide that provides clear direction to child welfare staff and improves coordination of services for LGBT youth.⁷ And in 2006, three youth who either identified as or were perceived to be LGBT, were granted a preliminary injunction by a federal court in Hawai'i based partially on the court's finding that the Hawai'i Youth Correctional Facility's use of isolation to "protect" LGBT wards was unconstitutional.⁸

Two innovative national projects - *Fostering Transitions*, a joint initiative of the Child Welfare League of America ("CWLA")⁹ and Lambda Legal, and *The Model Standards Project*, a collaboration of Legal Services for Children (LSC)¹⁰ and the National Center for Lesbian Rights ("NCLR") - have each been working to improve the living conditions for LGBT young people in state custody around the country.¹¹ These national projects, as well as numerous state, local, and regional coalitions,¹² are utilizing a multi-disciplinary approach that brings together many of the stakeholders involved in the provision of state care. In addition to bringing lawsuits, these projects advocate for, among other things, training and education on LGBT issues and improvements in policies that will protect LGBT young people in state custody from discrimination. While these

⁵ *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003). Plaintiff argued that not being allowed to wear dresses and skirts caused her great psychological distress and amounted to illegal discrimination on the basis of her disability (Gender Identity Disorder) and sex under the New York State housing non-discrimination law, as well as a violation of her First Amendment freedom of expression. The court agreed and ordered ACS to make reasonable accommodations to allow her to dress and otherwise present herself consistently with her female gender identity.

⁶ The California Foster Care Non-discrimination Act, CAL. WELF. & INST. CODE § 16001.9(a)(22). Under this law, all foster youth and persons engaged in providing care and services to foster youth in California have the right to fair and equal access to all available child welfare services, placements, care, treatment, and benefits, and to be free from discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Because training is crucial to enable service providers to fulfill their responsibilities to provide safe and nondiscriminatory care, placement, and services to foster youth, this law also mandates initial and ongoing training for all group home administrators, foster parents, and department licensing personnel. CAL. WELF. & INST. CODE §§ 16013(a), 1529.2(b)(3)(F), 529.2(b)(4)(F), 1563(c)(5), 1522.41(c)(1)(H).

⁷ Policy Guide 2003.02 *Assessment and Treatment of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youths*, February 3, 2003.

⁸ *R.G. v. Koller*, 415 F.Supp.2d 1129 (D.Hawai'i, 2006).

⁹ CWLA is the nation's oldest and largest advocate for children and youth, with a membership of more than 1,000 public and private agencies, including every state child welfare system.

¹⁰ LSC, founded in 1975, provides direct legal representation and social work services to children and youth in the San Francisco Bay Area, with a mission to provide free legal and social services to children and youth in order to stabilize their lives and help them realize their full potential.

¹¹ LSC and NCLR, in collaboration with the National Juvenile Defender Center ("NJDC") also recently started a new initiative, the *Equity Project*, to identify and promote strategies to ensure that LGBT youth receive excellent legal representation and fair and equitable treatment in juvenile delinquency courts.

¹² E.g., The Administration for Children's Services in New York City, LGBTQQ Action Group, the Los Angeles County Task Force to End Homophobia, the San Francisco-based Out of Home Youth Advocacy Coalition, the Rocky Mountain Equal Care Coalition in Colorado, the Safe Harbors Project in Connecticut, and the Alliance for LGBTQ Youth in Foster Care in Milwaukee, Wisconsin.

are not the first efforts to call attention to the needs of LGBT youth in state care,¹³ they represent the emergence of a coordinated national effort that is bringing about lasting positive systemic change that has greatly increased the capacity of the child welfare and juvenile justice systems to support and protect LGBT young people in their charge.

Part One: LGBT youth: At home, in the Community, in the System

*"I ran away a lot because my parents didn't like that I was gay. One time I had a physical fight with my dad and ended up in juvenile hall. Finally, I was kicked out for good and put into foster care."*¹⁴

*"Gay youth . . . are treated as the lowest of the low."*¹⁵

Despite the increased acceptance of LGBT people in contemporary society, LGBT youth still face rejection and hostility from their families, classmates, peers, and social institutions. Many LGBT young people in out-of-home care enter these systems for reasons directly related to their LGBT identities -- including youth who have been rejected, neglected or abused by their families of origin, and runaway or "throwaway" youth. A 1996 study found that 26% of LGBT youth were forced to leave their families of origin as a result of conflicts with their parents regarding their sexual orientation or gender identity.¹⁶ Another study found that over 30% of lesbian and gay youth reported suffering physical violence at the hands of a family member after "coming out."¹⁷ LGBT youth also face discrimination in schools, where all too often they are subjected to verbal

¹³ See Urban Justice Center, *"Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System,"* (May 2001)(hereinafter "*Justice for All?*"); Lambda Legal Defense and Education Fund, *Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care* (2001)(hereinafter "*Youth in the Margins?*"); Child Welfare League of America, *Serving Gay & Lesbian Youths: The Role of Child Welfare Agencies* (1991) and *Serving Transgender Youth: The Role of Child Welfare Systems* (2000). In addition, notable pioneer organizations providing appropriate services to LGBT youth in state custody are Gay and Lesbian Social Services (GLASS), www.glassla.org in Los Angeles and the New York City branch of Green Chimneys Children's Services www.greenchimneys.org.

¹⁴ Anonymous bisexual youth, personal interview, Model Standards Project, Jan. 17 2003.

¹⁵ Anonymous gay youth, personal interview, Model Standards Project, March 12, 2003.

¹⁶ See Colleen Sullivan, *Kids, Courts and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems*, 6 *Law & Sexuality* 31, 57 (1996) (citing Paul Gibson, U.S. Dep't Health and Human Serv., *Gay Male and Lesbian Youth Suicide, in Report of the Secretary's Task Force on Youth Suicide* 113 (1989)).

¹⁷ See *Youth in the Margins*, at 11 (citing Philadelphia Lesbian and Gay Task Force, *Discrimination and Violence Against Lesbian Women and Gay Men in Philadelphia and the Commonwealth of Pennsylvania* (1996)). Whether an LGBT youth is accepted by his or her family or experiences violence or rejection, has a lasting affect on his or her health, development, and is often a factor that leads to involvement in state care. Many LGBT youth who are harassed and rejected by peers and/or family members develop mental health or substance abuse problems stemming from self-esteem issues and feelings of isolation. And youth with substance abuse and/or mental health issues are more likely to have family problems that result in child welfare involvement, become involved in the juvenile justice system, or end up living on the streets. A.R.D'Augelli, *Incidence and Mental Health Impact of Sexual Orientation Victimization of Lesbian, Gay, and Bisexual Youths in High School*, 17 *School Psychology Quarterly* 2, 148-176 (2002); Gary Remafedi, *Adolescent Homosexuality: Psychological and Medical Implications*, 79 *Pediatrics* 331 (1987).

and physical harassment at the hands of their peers.¹⁸ If school officials do not appropriately address this, an LGBT youth may enter the system for truancy,¹⁹ or for defending themselves against homophobic attacks.²⁰

Unfortunately, LGBT youth in the foster care and juvenile justice systems often experience further rejection, harassment, and discrimination at the hands of their peers as well as the caretakers and professionals charged with their care.²¹ A 1994 study in New York City found that 100% of LGBT youth in area group homes reported verbal harassment and 70% reported physical violence due to their sexual orientation or gender identity.²² LGBT youth in juvenile justice facilities face similar harassment and assault.²³ When LGBT youth seek assistance, they frequently encounter adults who ignore them or even blame them for the abuse they are experiencing.²⁴ In response, many LGBT youth resort to living on the streets.²⁵ Studies conducted in urban centers around the country have found that a shockingly disproportionate number – between 20% and 40% – of all homeless and runaway youth identify as LGBT.²⁶ Almost two-thirds of homeless LGBT

¹⁸ For example, a 2005 national school climate study found that over 90% of LGBT students reported being harassed or assaulted during the past year. Harris Interactive and GLSEN (2005). *From Teasing to Torment: School Climate in America, A Survey of Students and Teachers*. New York: GLSEN.

¹⁹ One study found that 28% of lesbian and gay youth dropped out of school due to peer harassment. See RC Savin-Williams, *Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations With School Problems, Running Away, Substance Abuse, Prostitution, and Suicide*, 62 *J. Consult. Clin. Psychol.* 26 (1994). See also Sullivan, *supra* note 16, at 57.

²⁰ LGBT students who were harassed at school were found to be more than three times as likely to carry a weapon to school, to seriously consider suicide, or to miss at least one day of school in the last 30 days because they felt unsafe. California Safe Schools Coalition, 2004 *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer*, p. 15, available at <http://www.casafeschools.org/SafePlaceToLearnLow.pdf>

²¹ See Gerald P. Mallon, *We Don't Exactly Get the Welcome Wagon: The Experience of Gay and Lesbian Adolescents in the Child Welfare System* (1998) and Al Desetta, *In the System and In the Life: A Guide for Teens and Staff to the Gay Experience in Foster Care* (2003).

²² See Joint Task Force of New York City's Child Welfare Administration and the Council of Family and Child Caring Agencies, *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System: A Task Force Report* (1994) (hereinafter *New York Task Force Report*).

²³ See Mary Curtin, *Lesbian and Bisexual Girls in the Juvenile Justice System*, 19 *Child and Adolescent Social Work Journal* 285 (2002); *Justice for All*; see also *R.G. v. Koller*, 415 F.Supp.2d 1129 at 1144 (D.Hawai'i, 2006) (“The record before the court contains extensive documentation of anti-LGBT sexual assaults, physical assaults and threats of sexual assault, including rape [at the Hawai'i Youth Correction Facility (HYCF)].”).

²⁴ See *R.G. v. Koller*, *supra* at 1145 (“Many incidents of verbal abuse and harassment occurred in the presence of HYCF staff or were reported to staff, but the paucity of disciplinary records submitted by defendants indicates that, with respect to the vast majority of instances, staff took no action.”).

²⁵ 56% of LGBT youth interviewed in a New York City study spent time living on the streets because they felt “safer” there than they did living in their group or foster home. See *Justice for All*, at 16 (citing *New York Task Force Report*).

²⁶ See Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 *Berkeley Women's L. J.* 40 (1999); *Youth in the Margins*, at 11; *Justice for All*, at 1; Bryan N. Cochran et al., *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 *Am. J. Pub. Health* 773 (2002).

youth have previously been in a child welfare placement.²⁷ LGBT youth who runaway, or are homeless, are at an increased risk of other problems, including criminal victimization, physical and sexual assault, and arrest.²⁸

Although it is impossible to know their exact numbers, LGBT youth are over-represented in the child welfare and juvenile justice systems.²⁹ Yet these youth often remain invisible, both because they have been socialized to hide their identities and because many child welfare and juvenile justice professionals persist in the belief that they simply do not exist.³⁰ As a result, even well-meaning professionals often fail to provide supportive and appropriate services for LGBT young people.³¹

Part Two: Reforming the System: Litigation, Education, Policy

Advocates and attorneys from around the country are addressing these problems both through traditional legal approaches, including bringing litigation and advocating for legislation, as well as through innovative multi-disciplinary strategies that collaboratively work with a range of service providers and administrators to develop the tools and supports the system needs to create change from within. While these efforts have brought about significant advances, there is still much work to be done; the experiences of LGBT youth in state custody described above remain systemic.

A. Using Litigation to Protect LGBT Youth in State Custody and for Reform

²⁷ A 2004 study of 400 homeless LGBT youth in San Diego found that 64% reported having previously been in a child welfare placement. "Serving LGBTQ Youths in Foster Care---Challenges and Solutions," July 31, 2004, APA National Convention 2004. Another study in New York City found that 78% of LGBT youth living in group homes were removed or ran away from at least one prior placement because of hostility toward their sexual orientation or gender identity. See *Justice for All*, at 16 (citing *New York Task Force Report*).

²⁸ LGBT youth living on the streets often end up in the juvenile justice system following an arrest for committing non-violent survival crimes like prostitution and shoplifting. See *Justice for All*, at 18-20; Sullivan, at 41.

²⁹ See *Justice for All?*, at 6; *Youth in the Margins*, at 11; Laurie Schaffner, *Violence and Female Delinquency: Gender Transgressions and Gender Invisibility*, 14 Berkeley Women's L. J. 40 (1999).

³⁰ E.g., *Youth in the Margins*, at 103; Gerald P. Mallon, *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems* (1998).

³¹ When child welfare or juvenile justice professionals lack the proper guidance or training on providing appropriate services to LGBT youth, they may unknowingly cause harm. For example, without proper guidance, staff may respond to the harassment or assault of an LGBT youth by isolating or moving the LGBT youth to a more restrictive facility rather than addressing the underlying homophobia or transphobia. See note 51 *sub*. Uninformed or biased staff members may also try to segregate or isolate LGBT youth based on the erroneous assumption that LGBT youth will "prey" on other youth. LGBT youth often are not allowed access to supportive programs such as LGBT youth groups and community centers, or other social activities either because staff do not understand why these services are important or because they think it is not appropriate to support a young person's sexual orientation or gender identity. See *Youth in the Margins*, at 15; Mallon, *supra* note 21. Furthermore, transgender youth in state custody often are not allowed to dress or groom in accordance with their gender identity, not called by their name, and not placed appropriately in sex-segregated facilities.

Over the past several years attorneys have filed a number of important cases on behalf of LGBT youth in state custody.³² These cases apply the general civil rights principals afforded to all young people in state custody to the unique experiences of LGBT youth and often include state and local nondiscrimination claims. The following is a discussion of the ways attorneys and advocates can use both general child welfare protections and LGBT specific nondiscrimination protections in the courtroom and in the development of best practices, policies and training materials, to address the mistreatment of LGBT young people in state custody.

I. The Constitutional Right to Safety

All young people in state custody have a right to safety – a right that is conferred because of their unique legal status as wards of the state. This right to safety is grounded in the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution³³ and applies in both the child welfare³⁴ and juvenile justice context.³⁵

³² See e.g. *Marisol A. v. Giuliani*, 929 F. Supp. 662 (S.D.N.Y. 1996) see discussion *infra* note 62; *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003) see discussion *infra* note 5; *Rodriguez v. Johnson, et al*, No. 06CV00214 (S.D. NY filed Jan. 11, 2006) see discussion *infra* note 57; Unpublished Order Dismissing Writ of Habeus Corpus Without Prejudice, Family Court of the First Judicial Circuit, Hawaii, Judge Wong, March 17, 2005 (hereinafter “the Hawaii case”) see discussion *infra* note 47; and *R.G. v. Koller*, 415 F.Supp.2d 1129 (D.Hawai‘i, 2006) The Plaintiffs in *R.G.* are a 17-year-old male-to-female transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay. In their federal civil rights lawsuit against the Hawai‘i Youth Correctional Facility (HYCF), the plaintiffs allege that the defendants operate HYCF in the absence of policies and procedures, fail to supervise or train directors, administrators and staff and are responsible for (a) a pervasive climate of hostility, discrimination, and harassment against Plaintiffs based on their actual or perceived sexual orientation, sex, and/or transgender status in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment; (b) acts of religious preaching by HYCF staff in violation of the Establishment Clause of the First Amendment; (c) content-based and viewpoint-discriminatory silencing of Plaintiff’s speech regarding their lives as LGBT teenagers, in violation of their free speech rights under the First Amendment; and (d) interference with access to counsel and the courts in violation of the First, Sixth and Fourteenth Amendments. See complaint at 6, *R.G. v. Koller et al*, No. 05-566 JMS/LEK (D. HI filed Sept. 1, 2005). The plaintiffs also allege that staff at the Hawaii Department of Human Services (DHS) and HYCF ignored and sometimes even participated in an atmosphere of harassment, humiliation, and fear for lesbian, gay, bisexual, and transgender youth in the facility, despite repeated pleas by doctors and psychologists concerned about the wards’ safety and well-being. The plaintiffs are represented by the ACLU. *Id.* At the time of publication, the court appointed expert in this case was guiding the development and implementation of the policies, procedures, and training that are consistent with the court’s findings in its order granting preliminary injunction.

³³ In 1976, the U.S. Supreme Court ruled that a prison official’s deliberate indifference toward a prisoner’s known medical needs is a violation of the right to protection from “cruel and unusual punishment” under the Eighth Amendment to the U.S. Constitution. *Estelle v. Gamble*, 429 U.S. 97 (1976). In 1982, the U.S. Supreme Court ruled that people involuntarily committed to state mental institutions are also entitled to a standard of care that takes into consideration their complete dependence on the government for protection and necessary care. Since these patients are not convicted criminals, the Supreme Court reasoned that the Eighth Amendment’s protection from cruel and unusual punishment does not apply. Instead, the court found that the Fourteenth Amendment’s guarantee of liberty is a more appropriate basis for the right to the state’s protection from harm and the right to receive necessary services. *Youngberg v. Romeo*, 457 U.S. 307 (1982).

³⁴ The first and, thus far, only U.S. Supreme Court case to address the legal rights of children vis-a-vis the child welfare system is *DeShaney v. Winnebago County Dep’t of Soc. Serv.* 489 U.S. 189 (1989). Although Joshua DeShaney was not in state custody, child protective services in his state had received several credible reports of suspected abuse yet chose not to intervene. After suffering permanent brain damage as a

A. The Right to Safety in the Child Welfare System

LGBT youth should be protected from emotional and physical harm in their child welfare placements

“My foster family took away my clothes, called me a ‘dyke’ and tried to remake me.”³⁶

“I had at least two fights a day. The boys used to do stupid things like throw rocks at me or put bleach in my food because I was gay. Once I was thrown down a flight of stairs, and I’ve had my nose broken twice. They even ripped up the only picture of my mother that I had.”³⁷

result of the abuse by his father, his mother brought suit against the county for its failure to protect him. The U.S. Supreme Court ruled that child protective services could not be held liable for Joshua’s injuries because they did not have a legal obligation to protect him. In a famous footnote the Court opined, “Had the State...removed Joshua from free society and placed him in a foster home operated by its agents, we might have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect...We express no view on the validity of this analogy, however, as it is not before us in the present case.” *Id* at 201 n.9. A Fourteenth Amendment right to safety in the child welfare system has been upheld by every circuit court that has been asked to decide the question since *DeShaney*. See e.g. *Howard et al. v. Malac, et al.*, 270 F.Supp.2d 132, 138, (D. Mass 2003) (citing *K.H. v. Morgan*, 914 F.2d 846, 852 (7th Cir. 2001) (holding that children in state custody have a liberty interest in being free from harm and the state has a duty to protect them); *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987).³⁵ Unlike adult prisoners, children in the custody of the juvenile justice system have not been “convicted” of crimes. See *Kent v. United States*, 383 U.S. 541, 554 (1966) (“The theory of the District’s Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal.”); see also *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40 (1977) (“Eighth Amendment scrutiny is appropriate only after the state has complied with the constitutional guarantees traditionally associated with criminal prosecutions.”). For convicted adults, conditions of confinement violate the U.S. Constitution when they amount to “cruel and unusual” punishment as proscribed by the Eighth Amendment. For detained youth who are entitled to more protection than incarcerated adults, most courts analyze their conditions of confinement claims under the federal Due Process Clause of the Fourteenth Amendment. The First, Third, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuit Courts have held that the appropriate standard to use in reviewing the conditions at juvenile facilities comes from the Due Process Clause of the Fourteenth Amendment. See *A.M. v. Luzerne County Juvenile Detention Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004); *Alexander S.*, 876 F. Supp. 773, 782 (D.S.C. 1995), *aff’d in part and rev’d in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S.Ct. 880 (1998) (“[J]uveniles possess a clearly recognized liberty interest in being free from unreasonable threats to their physical safety.”); *A.J. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431---32 (9th Cir.1987); *H.C. ex rel. Hewett v. Jarrard*, 786 F.2d 1080, 1084 - 85 (11th Cir.1986); *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir.1983); *Milonas v. Williams*, 691 F.2d 931, 942, n. 10 (10th Cir. 1982) (“[B]ecause the state has no legitimate interest in punishment, the conditions of juvenile confinement...are subject to more exacting scrutiny than conditions imposed on convicted criminals.”). *But see Nelson v. Heyne*, 491 F.2d 352, 355 (7th Cir.1974) (applying the cruel and unusual punishment test of the Eighth Amendment). The United States Supreme Court has not yet decided the issue.

³⁶ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

³⁷ Al Desetta, *In the System and In the Life: A Guide for Teens and Staff to the Gay Experience in Foster Care*, 46-47 (2003).

LGBT youth in the child welfare system often face strong disapproval and rejection from their caretakers, and harassment and violence from the other young people in their placements. Like all youth in care, LGBT youth have the legal right to protection from harassment and abuse.³⁸ This right goes beyond protection from strictly physical harms and includes the right to protection from mental and emotional harm as well.³⁹ Caretakers of foster children also are required to protect foster children from harms that may exist outside the home.⁴⁰ If an LGBT youth experiences physical or emotional harm, either inside their home, in the community, or at school, the caseworker or placing agency that arranged for this placement could be held liable if they knew or should have known that by placing the youth in this home he or she would be at risk.

LGBT youth should not be sent to “conversion therapies” or denied supportive services

LGBT foster youth should not be denied appropriate medical or mental health care,⁴¹ or be forced to undergo inappropriate or unethical services that are damaging to their emotional well-being, including “conversion therapies” and other controversial practices intended to involuntarily change a person’s sexual orientation or gender

³⁸ See *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 848-49 (7th Cir. 1990) (“This is not a positive liberties case, like *DeShaney*, where the question was whether the Constitution entitles a child to governmental protection against physical abuse by his parents or by other private persons...Here, in contrast, the state removed a child from the custody of her parents; and having done so, it could no more place her in a position of danger...without thereby violating her rights under the due process clause...than it could...place a criminal defendant in a jail or prison in which his health or safety would be endangered...In either case the state would be a doer of harm rather than merely an inept rescuer....”); *Howard et al. v. Malac, et al.*, 270 F.Supp.2d 132, 138, (D. Mass 2003) (plaintiffs had viable substantive due process claim, as children “taken into state custody have the right not to be placed with foster parents having a known propensity to neglect or abuse children.”); *Hernandez ex rel, Hernandez v. Texas Department of Protective and Regulatory Services*, 380 F.3d 872, 880 (5th Cir. 2004) (explaining based on “special relationship” between foster children and the state, foster children have clearly established right to personal security and safe living arrangements); *Omar v. Lindsey*, 334 F.3d 1246, 1248 (11th Cir. 2003) (per curiam)(“[t]here is no doubt that foster children have a fourteenth amendment liberty interest in physical safety, including a freedom from the sort of shocking abuse Plaintiff endured.”).

³⁹ *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989) (“[A] child who is in the state’s custody has a substantive due process right to be free from unreasonable and unnecessary intrusion on both [his or her] physical and emotional well-being. Our conclusion is grounded in common sense: A child’s physical and emotional well-being are equally important. Children are by their nature in a developmental phase of their lives and their exposure to traumatic experiences can have an indelible effect upon their emotional and psychological development and cause more lasting damage than many strictly physical injuries.”).

⁴⁰ *Camp v. Gregory*, 67 F.3d 1286, 1296 (7th Cir. 1995) (“Commensurate with the parental obligation to supervise a child’s activities outside the home is a duty on the part of the state not to place one of its charges with an adult that it knows will not or cannot exercise that responsibility.”).

⁴¹ *Norfleet v. Arkansas Dep’t of Human Serv.*, 989 F.2d 289, 293 (8th Cir. 1993) (“In this case, a special custodial relationship...was created by the state when it took Taureen from his caregiver and placed him in foster care. In foster care, a child loses his freedom and ability to make decisions about his own welfare, and must rely on the state to take care of his needs. It cannot be seriously doubted that the state assumed an obligation to provide adequate medical care for Taureen; the reason Taureen was placed in foster care was precisely because he was not able to take care of himself and needed the supervision and attention of an adult caregiver.”); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d at 851(explaining Constitution requires state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically).

identity. These practices have been condemned by all of the major medical and mental health associations because they cause emotional harm.⁴² In addition, supportive services, such as peer support groups or other community resources that help to ameliorate feelings of isolation and depression, should not be withheld from an LGBT foster youth. Child welfare professionals should adhere to the professional standards and nondiscrimination principles related to the fair treatment of LGBT people espoused by the National Association of Social Workers, the Child Welfare League of America, and other organizations.⁴³

To ensure safety, child welfare professionals must monitor and supervise an LGBT youth's placement

Because LGBT young people, and those perceived to be LGBT, are especially vulnerable to mistreatment and harm from a variety of sources, both inside and outside their placements, it is imperative that child welfare workers provide appropriate oversight and supervision so that vulnerable young people are identified and adequately monitored. If child welfare professionals fail to monitor and supervise an LGBT youth's placement, and the child is subsequently injured, this could constitute a breach of the duty to protect, even in situations where the professional had no actual knowledge of a specific risk of harm.⁴⁴

⁴² E.g., In 1993, the American Academy of Pediatrics issued a Policy Statement on Homosexuality and Adolescence: "Therapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation." In 1997, the American Psychiatric Association explained "there is no published scientific evidence supporting the efficacy of 'reparative therapy' as a treatment to change one's sexual orientation" and it developed a policy in opposition to "any psychiatric treatment, such as 'reparative' or 'conversion' therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon a prior assumption that the patient should change his/her homosexual orientation." Also in 1997, the American Psychological Association (APA) issued a *Resolution on Appropriate Therapeutic Responses to Sexual Orientation*, stating, "The APA opposes portrayals of lesbian, gay, bisexual youth and adults as mentally ill due to their sexual orientation and supports the dissemination of accurate information about sexual orientation, and mental health, and appropriate interventions in order to counter bias that is based in ignorance or unfounded beliefs about sexual orientation."

⁴³ National Association of Social Workers *Code of Ethics of 1999*: 4.02 Discrimination: Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability; 6.04 Social and Political Action (d): Social Workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability; CWLA's *Standards of Excellence for Adoption Services*, 4.7 "Nondiscrimination in provision of services to adoptive applicants. All applicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their race, ethnicity or culture, income, age, marital status, religion, appearance, differing life style, or sexual orientation. Applicants should be accepted on the basis of an individual assessment of their capacity to understand and meet the needs of a particular available child at the point of the adoption and in the future." CWLA's *Standards of Excellence for Family Foster Care Services*: 3.18 "Nondiscrimination in selecting foster parents. The family foster care agency should not reject foster parent applicants solely due to their age, income, marital status, race, religious preference, sexual orientation, physical or disabling condition, or location of the foster home."

⁴⁴ *Taylor v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) ("The state's action in assuming the responsibility of finding and keeping the child in a safe environment placed an obligation on the state to

B. The Right to Safety in the Juvenile Justice System

LGBT youth should be protected from emotional and physical harm in their juvenile justice placements

“The Staff think that if a youth is gay, they want to have sex with all of the other boys. It’s not true. They would not help me when the other youth abused and raped me.”⁴⁵

Like young people in the child welfare system, LGBT youth in juvenile justice placements are entitled to protection from physical, emotional, and sexual abuse by other youth or facility staff.⁴⁶ Staff cannot ignore a substantial risk of harm to a particular youth, especially if the youth is known to be vulnerable because he or she is young, has a mental illness, is openly LGBT, or is perceived to be LGBT.⁴⁷ In addition, juvenile

insure the continuing safety of that environment. The state's failure to meet that obligation, as evidenced by the child's injuries, in the absence of overriding societal interests, constituted a deprivation of liberty under the fourteenth amendment”); *LaShawn A. v. Dixon*, 762 F. Supp. 959, 993 (D.D.C. 1991) (“[C]ertain services, such as appropriate placements and case planning, are essential to preventing harm”). Monitoring requirements are also spelled out in state regulations and departmental policies and practice guidelines.

⁴⁵ Anonymous gay youth, personal interview, Model Standards Project, March 12, 2003

⁴⁶ See *R.G. v. Koller*, 415 F.Supp.2d at 1157 (finding facility violated plaintiff’s due process rights by allowing pervasive verbal, physical, and sexual abuse to persist); *A.M. v. Luzerne County Juvenile Detention Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004); *Alexander S.*, 876 F. Supp. 773, 782 (D.S.C. 1995), *aff’d in part and rev’d in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S.Ct. 880 (1998). See also *Guidry v. Rapides Parish Sch. Bd.*, 560 So.2d 125 (La. Ct. App. 1990) (holding that the failure to protect children from sexual behavior of other confined children may result in liability). Courts have held that facility staff are prohibited from using physical force against juveniles for any purpose other than to restrain a juvenile who is either physically violent and immediately a danger to himself or others, or who is physically resisting institutional rules. See *Pena v. N. Y. Div. for Youth*, 419 F. Supp. 203, 208 (S.D.N.Y. 1976) (holding that unless child is uncontrollable and constitutes a serious and evident danger to himself or others, use of physical restraints is prohibited); *Milonas v. Williams*, 691 F.2d 931, 935, 943 (10th Cir. 1982).

⁴⁷ See, e.g., *R.G. v. Koller*, 415 F.Supp.2d at 1158 (finding placing vulnerable LGBT youth in unit with aggressive boys amounts to deliberate indifference); *A.M. v. Luzerne County Juvenile Detention Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004) (finding sufficient evidence individuals were deliberately indifferent to the substantial risk of harm to 13 year old boy with mental illness who was placed in general population). In 2005, a young man who was experiencing anti-gay abuse petitioned for a Writ of Habeas Corpus to be removed from the Hawai’i Youth Correctional Facility (“HYCF”) because his constitutional right to safety was being violated. He was constantly verbally, physically, and sexually harassed and threatened while in the facility. Other young people in the facility regularly exposed themselves to him, pressured him for sexual favors, and acted out violently toward him whenever they had the opportunity. He eventually filed a written grievance. As is a common response in these situations, the facility administrator moved him to a single cell, but did nothing further to address the abuse. Not surprisingly, even after he was isolated, the attacks continued. After writing a second grievance and receiving no additional protection, he filed a writ seeking removal.

Although the judge who eventually heard his case dismissed his petition without prejudice based on a lack of sufficient evidence in the record (minor did not make himself available for cross-examination and did not adopt his previous written complaints), the court was particularly concerned that HYCF was aware of the ongoing abuse that he suffered because of his sexual orientation, yet took no adequate or reasonable steps to protect him. The court ordered HYCF to adopt policies and procedures to address this known problem, stating:

detention and correctional facilities also must have a sound classification system that provides safety, especially for vulnerable youth.⁴⁸

LGBT youth must be placed in appropriate juvenile justice settings and not isolated

“I was put in a room by myself because I was gay. I wasn’t allowed to be around anyone else.”⁴⁹

If an LGBT youth is placed in extended isolation, either as punishment for expressing their identity⁵⁰ or based on the unfounded and illogical myth that all LGBT youth are a danger to other youth, his or her constitutional rights have been violated.⁵¹ Although an LGBT youth may be especially vulnerable while in detention, automatically placing all LGBT youth in segregation “for their own safety” also is unconstitutionally

“The Court is concerned that the problems raised by this case are systemic and must be addressed by the HYCF with the adoption, with deliberate speed, of policies and operation procedures that are appropriate to the treatment of lesbian, gay, and transgender youths, that set standards for the conduct of youth correctional officers and other staff, and that provide on-going staff training and oversight. ...[A]n effective start to protection of Minor could have been something as simple as having a policy that required staff to immediately provide verbal reprimands to offending wards whenever staff observed offending wards’ verbal and physical mistreatment of Minor. The court is also concerned that ‘protective’ actions such as placing Minor in ‘isolation’ is not ‘protective,’ but punitive.”

The Petitioner in this case became one of the plaintiffs in R.G. All information about this case was gathered from an unpublished and redacted decision of the Family Court of the First Judicial Circuit in the State of Hawai‘i. There is no identifying information available. Unpublished Order Dismissing Writ of Habeus Corpus Without Prejudice, Family Court of the First Judicial Circuit, Hawaii, Judge Wong, March 17, 2005.

⁴⁸ Appropriate classification is particularly important for the physical and emotional safety of transgender youth. In *R.G.* the transgender plaintiff was originally placed in the girls unit. Because of physical plant repairs, she was transferred to the general boys unit where she was subjected to physical and sexual assaults. The defendants’ own experts submitted declarations stating that in their expert opinion, they believed that male to female transgender wards, like the plaintiff, were “better off in O & A with the girls than anywhere else at HYCF and that the placement kept them physically and psychologically safe.” *R.G. v. Koller*, 415 F. Supp. 2d at 1145. See also *Alexander S.*, 876 F. Supp. 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 1158 (same).

⁴⁹ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

⁵⁰ In addition to isolation, forcing LGBT youth to dress differently than other youth in the facility, requiring LGBT youth to perform different chores, or singling out LGBT youth in any other way, are actions that a court would likely find unconstitutionally punitive. See, e.g., *Gerks v. Deathe*, 832 F.Supp. 1450 (W.D. Okla.1993) (finding due process rights of girl may have been violated for asking her to clean her own excrement); *Gary W. v. Louisiana*, 437 Supp. at 1230 (addressing types of work performed by youth).

⁵¹ Youth in juvenile detention or correctional facilities should not be placed in conditions that amount to punishment or be stigmatized or humiliated as part of their treatment. With the understanding that some restrictions of liberty may be constitutional, a court will look at whether a particular restriction is “reasonably related” to a legitimate governmental interest to determine if there is a violation. If it is not, it may be inferred that the purpose of the restriction is punishment. *Bell v. Wolfish*, 441 U.S. 520, 539. See also *Milonas v. Williams*, 691 F.2d 931, 942 (10th Cir. 1982) (“Any institutional rules that amount to punishment of those involuntarily confined ...are violative of the due process clause per se.”).

punitive, and a more effective and less stigmatizing and isolating response is legally required.⁵² Along these same lines, if an LGBT youth is labeled or treated as sex offender or housed with sex offenders⁵³ without adequate due process protections, such as a hearing, an evaluation by a qualified mental health professional, and an opportunity to appeal, the facility has violated the youth's constitutional rights.⁵⁴

LGBT youth in the juvenile justice system have the right to receive appropriate mental and physical health care

Like young people in the child welfare system, youth in detention and correctional facilities have the right to adequate medical and mental health care.⁵⁵ Facilities must provide general medical services for both prevention and treatment as well as any medical services that may be unique to LGBT youth.⁵⁶ An act or omission that constitutes a knowing disregard of a ward's health interests can be a constitutional violation. For example, a youth's right to medical care is violated if juvenile justice professionals know of a transgender youth's significant mental or medical health needs, such as the needs that may attend a diagnosis of Gender Identity Disorder, but do not take

⁵²See *R.G. v. Koller*, *supra* at 1155-56 (“After examining expert opinions and case law regarding the use of isolation on children, the court concludes that the defendants’ use of isolation was not within the range of acceptable professional practices and constitutes punishment in violation of the plaintiffs’ Due Process rights... The likely perception by teenagers that isolation is imposed as punishment for being LGBT only compounds the harm... Consistently placing juvenile wards in isolation, not to impose discipline for violating rules, but simply to segregate LGBT wards from their abusers, cannot be viewed in any reasonable light as advancing a legitimate nonpunitive governmental objective.”). A lawsuit on behalf of young people in a juvenile detention facility in Philadelphia in the 1970’s also addressed the use of isolation for protection and segregation and resulted in a settlement under which the facility agreed no longer to place gay youth in isolation. *Santiago v. City of Philadelphia*, Civ. Act. No. 74-2589 (E.D. Pa. 1978). The settlement provided: “Homosexuals shall be protected from harassment, and shall not be stigmatized by putting them in isolation, segregating them by unit or otherwise discriminating against them... Attorneys representing gay or lesbian juveniles should be aware of the possibility that a youth’s homosexuality itself may be perceived as a danger to others, rather than the individual circumstances of the specific child. They should, of course, vigorously oppose any attempts by the institution to characterize gay or lesbian youths as dangerous or potential rapists.” Stipulation, *Santiago*.

⁵³In some juvenile detention facilities, LGBT youth who are not accused or convicted of a sex offense have been housed in sex offender units because they were perceived as having a “sexual” issue or problem merely because they are LGBT. See *Justice for All*, at 7. These practices are both discriminatory and extremely harmful and may cause permanent psychological damage. Unless a youth has a history of sex-offense adjudications, a juvenile justice facility should never arbitrarily label an LGBT youth as a sex offender, “sexually aggressive,” or any other euphemism used to describe sex offender status, simply because of their sexual orientation or gender.

⁵⁴In the adult context, the classification of an inmate as a “sex offender” has been found to have such stigmatizing consequences that unless the inmate has a sexual offense history, additional constitutional requirements must be met before this classification can take place. See *Neal v. Shimoda*, 131 F.3d 818, 830 (9th Cir. 1997) (“We can hardly conceive of a state’s action bearing more ‘stigmatizing consequences’ than the labeling of a prison inmate as a sex offender.”). Juveniles are entitled to greater protections than adult inmates, and branding a juvenile with a sex offender label clearly would have the same, if not an even greater, stigmatizing effect.

⁵⁵See *Youngberg v. Romeo*, 457 U.S. 307 (1982); *Burton v. Richmond*, 276 F.3d 973 (8th Cir. 2002); *A.M.*, 372 F.3d 572, 585 n.3; *Jackson v. Johnson*, 118 F. Supp. 2d 278 at 289; *Alexander S.*, 876 F. Supp. at 788.

⁵⁶See *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; *Alexander S.*, 876 F. Supp. at 788.

the necessary steps to address them, or if they ignore the instructions of the youth's treating physician.⁵⁷

In addition, a facility should have adequate policies governing the supervision and treatment of suicidal wards.⁵⁸ LGBT youth, especially those facing extreme forms of anti-LGBT abuse and harassment, may be at an increased risk for suicide.⁵⁹ Facility administrators and staff also must ensure anti-LGBT harassment and abuse that could exacerbate suicidal feelings is prevented.⁶⁰

II. The Constitutional Right to Equal Protection

*"I got jumped by a bunch of guys in my group home, and when I told the Director he said, 'Well, if you weren't a faggot they wouldn't beat you up.'"*⁶¹

⁵⁷ Child welfare and juvenile justice professionals must provide some form of appropriate treatment for transgender youth diagnosed with Gender Identity Disorder. Even under the more restrictive minimally adequate medical care standard applicable to adult prisoners, courts have held that "transsexualism" constitutes a "serious medical need" therefore, 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. *See, e.g., Allard v. Gomez*, 9 Fed. Appx. 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). *See Rodriguez v. Johnson, et al*, No. 06CV00214, (S.D. NY filed Jan. 11, 2006). Plaintiff, a transgender young woman diagnosed with Gender Identity Disorder, filed this lawsuit against officials of the New York State Office of Children and Family Services alleging that the abrupt termination of her feminizing hormone treatment while she was in a juvenile detention facility caused physical and psychological harm. Plaintiff is represented by attorneys from Lambda Legal, Sylvia Rivera Law Project, and Debevoise & Plimpton. At the time of publication, this case has not been decided.

⁵⁸ The failure to provide mental health screening, sufficient mental health services, or policies governing the supervision and treatment of suicidal wards can contribute to the liability of facilities in cases brought forward by the families of young people who have committed suicide while in juvenile facilities. *See Viero v. Bufaro*, 925 F. Supp. 1374 (N.D. Ill. 1996) (finding officials not entitled to qualified immunity concerning suicide of boy with well-documented mental health needs who did not receive any services, medication, or close supervision); *see also A.M.*, 372 F.3d at 585, FN3 (finding that juvenile detention center has a duty to protect detainees from harm, whether self-inflicted or inflicted by others); *Dolihite v. Maughon*, 74 F.3d 1027 (11th Cir. 1996).

⁵⁹ In a recent survey of high school students in California, students who were harassed based on their actual or perceived sexual orientation were more than three times as likely seriously to consider suicide and have a plan for how they would do it compared with students who were not harassed. California Safe Schools Coalition, *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer*, available at <http://www.casafeschools.org/SafePlacetoLearnLow.pdf>. Although LGBT youth may be at risk for suicide, LGBT youth should never automatically be placed on suicide watch or in isolation simply because they are LGBT.

⁶⁰ *See R.G. v. Koller*, 415 F.Supp.2d at 1157 (concerned lack of minimally adequate policies, procedures, and training to ensure ward safety resulted in severe harassment and abuse by staff and wards which exacerbated plaintiffs' suicidal feelings).

⁶¹ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

If an LGBT youth in state custody is refused access to a program because of his or her sexual orientation or gender identity or is treated differently in the provision of care and services, his or her constitutional right to equal protection has been violated.⁶² Furthermore, if child welfare or juvenile justice professionals fail to take action against anti-LGBT harassment because they are uneducated about LGBT issues and are uncomfortable addressing the situation, they believe that the LGBT youth brought the harassment upon him or herself simply by being openly LGBT, or they think LGBT youth in care should expect to be harassed, a court could find that the agency violated the youth's right to equal protection, in addition to his or her right to safety.⁶³

III. The Constitutional Right to Free Speech and Freedom of Religion

LGBT youth should be allowed to express their sexual orientation and gender identity while in state custody.

All youth have a constitutional right to freedom of speech and freedom of expression. Courts have found that this right includes the right to be open about one's sexual orientation⁶⁴ and the right to express one's gender identity through clothing and grooming.⁶⁵ Child welfare and juvenile justice professionals may violate a youth's First Amendment rights if they require an LGBT youth in state care to hide his or her sexual

⁶² Although there is not a large body of equal protection case law in the child welfare or juvenile justice context, the right to equal protection has been clearly established within the public school context. These cases illustrate the types of violations that would also be actionable in the child welfare and juvenile justice systems. For example, in the first federal appellate case addressing anti-gay violence in schools, a court awarded nearly a million dollars in damages to Jamie Nabozny, a student who suffered severe anti-gay abuse in his Wisconsin high school. *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996). In that case, school administrators told Nabozny that the abuse should be expected because he was openly gay. The court, however, disagreed explaining, "The Equal Protection Clause ... require[s] the state to treat each person with equal regard, as having equal worth, regardless of his or her status.... We are unable to garner any rational basis for permitting one student to assault another based on the victim's sexual orientation." *Id.* at 456 and 458. This reasoning has obvious applications in situations where an LGBT youth in state custody, is singled out for mistreatment on the basis of sexual orientation or gender identity. *See also Flores v. Morgan High School District*, 324 F.3d 1130 (9th Cir. 2003) (students could maintain claims alleging discrimination on basis of sexual orientation under Equal Protection Clause where school district failed to protect students to same extent other students were protected from harassment and discrimination).

⁶³ This was exactly the kind of failure that was alleged in a 1998 class action lawsuit brought against the City of New York's child protective services on behalf of LGBT youth in foster care. *Marisol A. v. Giuliani*, 929 F. Supp. 662 (S.D.N.Y. 1996). The plaintiffs alleged severe abuse -- including harassment, physical violence, and rape -- by peers, foster parents, and child welfare staff. The youth alleged they were denied equal protection on the ground that, if the abuse was based on something other than their sexual orientation, the staff would have taken appropriate actions to protect them. The case ultimately settled out of court, resulting in monetary awards for damages and attorney's fees, as well as important policy and practice changes within the New York City child welfare system order to improve the standard of care for LGBT youth.

⁶⁴ *See Henkle v. Gregory*, 50 F. Supp. 2d 1067 (D. Nev. 2001) (allowing claims under Title IX for discrimination and harassment by other students and under First Amendment based on demands by school officials that student keep his sexual orientation to himself).

⁶⁵ *See, e.g., Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. 2000) *aff'd sub nom. Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. 2000) (holding that transgender student had First Amendment right to wear clothing consistent with her gender identity and that treating transgender girl differently than biological girls was discrimination on the basis of sex).

orientation or gender identity in order to receive services, or if they refuse to allow a transgender or gender-nonconforming youth to express his or her gender through clothing and accessories.⁶⁶

LGBT youth should not be required to participate in religious activities that condemn LGBT people

“After ‘coming out’ to one of my foster families, I was told I was going to hell and forced to go to church with them.”⁶⁷

“Three of my foster homes were very religious and they told me to go to church and read the bible and sometimes they would have nuns come back to the house and lecture me.”⁶⁸

The First Amendment guarantees young people in state custody the right to religious freedom and the right to be free from religious indoctrination.⁶⁹ LGBT youth should never be forced to hide their identities from caretakers with religious objections, required to participate in religious activities that condemn homosexuality and gender difference, or intimidated or coerced into adopting any particular religious practices or beliefs.⁷⁰

IV. State Non-Discrimination Protections

“When I arrived at [the juvenile detention facility] they ripped the weave out of my hair, broke off my nails, wiped my makeup off, stripped me of my undergarments, and made me wear male underwear and clothes.”⁷¹

In addition to the legal protections available under the U.S. Constitution, LGBT youth in the child welfare and juvenile justice systems can also allege state and local law violations based upon nondiscrimination statutes and ordinances.⁷²

⁶⁶ Although there is not a large body of First Amendment case law in the child welfare or juvenile justice context, in the public school context, courts have held school officials liable for forcing LGBT youth to conceal their sexual orientation as a condition of enrollment, for not permitting a transgender student to dress in accordance with their gender identity, and for prohibiting students from bringing a same-sex date to the high school prom. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000); *Doe v. Yunits*, 2000 WL 33162199 at *3; *Fricke v. Lynch*, 491 F. Supp. 387 (D.R.I. 1980).

⁶⁷ Anonymous youth participant at a CWLA/Lambda Regional Listening Forum Addressing the Needs of LGBTQ Young People and Adults Involved in the Child Welfare System.

⁶⁸ Anonymous gay youth, personal interview, Model Standards Project, Feb 28, 2003

⁶⁹ 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).

⁷⁰ See *Bellmore v. United Methodist Children's Home and Department of Human Resources of Georgia*, 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.”).

⁷¹ Anonymous Youth, Personal Interview, Model Standards Project, February 28, 2003.

⁷² Many of the non-discrimination laws, like the California Foster Care Non-discrimination Act, explicitly include the terms “sexual orientation” and “gender identity” in the language of the law, or they include a

For example, in California a youth who is denied a foster care placement because the youth is lesbian, gay, bisexual, or transgender, can bring a claim under the Foster Care Non-discrimination Act which makes it unlawful for county child welfare departments, group home facilities, and foster family agencies to discriminate on the basis of actual or perceived sexual orientation or gender identity.⁷³ Other states have nondiscrimination statutes that although not specifically directed at child welfare or juvenile justice systems, they are enforceable in these systems.⁷⁴

B. Non-Litigation Strategies to Effectuate Change for LGBT Youth in State Custody

While litigation can encourage system-wide reform, litigation alone is not enough to secure the changes necessary to protect and support LGBT youth in state care. Legal and child welfare organizations are now working in partnership to develop non-adversarial

term which incorporates these characteristics. Sometimes these statutes will also include the language “actual or perceived” in front of these terms in order to protect people from discrimination who are not actually LGBT, but are perceived to be. In states where “sexual orientation” or “gender identity” is not explicitly included in the language of a non-discrimination law, LGBT people are still protected from discrimination on the basis of other characteristics. For example, there are many states where courts have found that the discrimination an LGBT person experienced was unlawful sex-based discrimination. In addition, there are a number of states where courts have determined that discrimination against a transgender person diagnosed with Gender Identity Disorder is prohibited under disability discrimination protections *See Doe v. Bell* discussion *supra* note 5. Therefore, even if a particular state does not explicitly provide nondiscrimination protections based on sexual orientation or gender identity, LGBT youth in care may still be able to make a claim under the applicable state law based on their sex or disability.

⁷³ CAL. WELF. & INST. CODE § 16001.9(a)(22); CAL. WELF. & INST. CODE § 16013(a).

⁷⁴ For example, a number of states have laws that protect individuals from discrimination by governmental agencies, which would include child welfare programs and juvenile detention and correctional facilities. *See, e.g.*, R.I. GEN. LAWS § 28-5.1-7 (a) (“Every state agency shall render service to the citizens of this state without discrimination based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. No state facility shall be used in furtherance of any discriminatory practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning those patterns or practices.”); MINN. STAT. § 363A.02 (4) (prohibiting discrimination in public services based on race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance). Other states have non-discrimination laws that protect children and adults who are living in “institutional settings”, which may include juvenile justice facilities and group homes. *See, e.g.*, IOWA CODE ANN. § 19B.12 (2) (prohibiting state employees from discriminating against a person in the care or custody of the employee or a state institution based on sex). Still other states have non-discrimination laws that apply to businesses and other facilities considered to be “public accommodations.” *See, e.g.*, LA. REV. STAT. § 51:2232 (10) (explicitly including as part of the Louisiana public accommodations nondiscrimination law any place which is supported directly or indirectly by government funds, although not inclusive of sexual orientation and gender identity); *Chisolm v. McManimom*, 275 F.3d 315, 325 (adult jail, like a hospital, is place of public accommodation under New Jersey’s Law Against Discrimination); *Ortland v. County of Tehama*, 939 F. Supp. 1465, 1470 (California Unruh Act is applicable in claims against governmental agencies). Finally, child welfare and juvenile justice facilities may be prohibited from discriminating against LGBT youth in residential care pursuant to state laws prohibiting discrimination in housing, since such facilities provide publicly assisted housing accommodations. *See Doe v. Bell*, 754 N.Y.S.2d 846, 850 (recognizing residential foster care facility as “publicly-assisted housing accommodation” for purposes of disability discrimination claim under New York’s Human Rights Law).

multidisciplinary approaches for improving the care and outcomes of LGBT youth in the child welfare and juvenile justice systems. These grassroots efforts already have begun to make lasting positive changes. For example, several states including Massachusetts and Michigan now provide comprehensive training⁷⁵ on sexual orientation and gender identity to caseworkers, foster parents, group home staff, and direct service providers. Some jurisdictions, including Connecticut, Illinois, the City of Philadelphia, and Santa Clara County in California, have designated an LGBT point-person to conduct training and education on LGBT issues, as well as to address any other practical issues that may arise, including locating safe placements and appropriate services. A number of states and localities now include LGBT people in policies that prohibit discrimination and mistreatment in the child welfare and juvenile justice systems. In other places, advocates are developing explicit practice guidelines on how to work effectively with LGBT youth in state care.

Listening, Learning, and Educating Advocates and Providers:

In the last three years, two innovative collaborative projects have broken new ground in developing and disseminating resources to support systemic change for LGBT youth in the child welfare and juvenile justice systems: *Fostering Transitions*, the Child Welfare League of America (CWLA) and Lambda Legal's Joint Initiative; and the *Model Standards Project*, a collaboration of Legal Services for Children and the National Center for Lesbian Rights.

Fostering Transitions has made it a priority to engage LGBT youth voices and ideas for reform in its efforts to support LGBT youth and adults involved with the child welfare system. To that end, CWLA and Lambda Legal convened thirteen Listening Forums around the country between 2003-2004 to provide an opportunity for LGBT youth in care, as well as the adults who work with them, to share their real life experiences and create a picture of what life is really like for these young people. The stories and ideas shared during the Listening Forums will be published by CWLA in a report in 2006. This report will dispel the myth that LGBT youth do not exist and will be a resource for understanding, supporting, and advocating for LGBT youth in care. It will also demonstrate that there is consensus around the country, in big cities and small towns, that LGBT youth in state custody deserve more attention to their needs. To provide guidance to this project, CWLA and Lambda Legal assembled an Advisory Network comprised of individuals from around the country with a special interest in LGBT youth in child welfare systems. This Network now includes over 90 individuals committed to transforming the system, including caseworkers, agency executives, direct service

⁷⁵ Education and training on sexual orientation and gender identity for everyone living or working in the system has proven to be an effective means for combating homophobia and transphobia and improving the standard of care for LGBT youth in the child welfare and juvenile justice systems. An effective training curriculum on LGBT issues should include a discussion on myths and stereotypes, and the ways in which LGBT youth are mistreated and harmed while in care, often unintentionally. It should also include a discussion on the legal rights of LGBT youth in care and the professional practice standards such as those promulgated by CWLA, the National Association of Social Workers, the American Academy of Pediatrics, the American Psychological Association, and others. Training resources on LGBT youth are widely available through CWLA. www.cwla.org/programs/culture/glbqt.htm

providers, academics, attorneys, and LGBT young people who are or were in state custody. Members of the Network regularly consult with one another about the struggles that they encounter and the successful strategies that they are implementing. Through the Network, members are able to disseminate the many emerging resources and tools concerning LGBT youth in state care to individuals throughout the country who are actively working to reform these systems. Growing from this joint initiative, CWLA has planned additional events in 2006 to continue to raise awareness about LGBT youth. For example, this year CWLA will dedicate its entire annual best practices conference, “Finding Better Ways,” to LGBT youth. This national conference will showcase innovative programs and practices in child welfare and behavioral health care with the goal of finding more effective ways to work with LGBT youth and their families. CWLA has also dedicated its entire Spring 2006 edition of the Child Welfare Journal to LGBT issues.

The *Model Standards Project* is also committed to improving services and outcomes for LGBT youth in state care. Over the last three years, NCLR and Legal Services for Children have developed comprehensive recommendations about how child welfare and juvenile justice professionals can best serve and work with LGBT youth in state care. These recommendations, which will be published by CWLA in 2006 as part of their “Best Practices” series, draw on current research and informed practice⁷⁶ to provide guidance to child welfare and juvenile justice institutions, administrators and staff about how to provide safe and equitable environments for all youth, regardless of their sexual orientation or gender identity. The recommendations particularly focus on developing appropriate agency policies and practices, addressing the training needs of administrators and staff, and ensuring that programs respect the legal rights of LGBT youth.⁷⁷ Rather than addressing individual instances of discrimination, the Best Practices Guidelines empower agencies to look at their programs as a whole and incorporate appropriate supports for LGBT youth and their families throughout the range of services they provide. They enable agencies to make a cultural shift in their work, rather than merely create specialized services for LGBT youth. In conjunction with local multidisciplinary task forces, broader reform efforts, and the CWLA/Lambda Network, the Best Practices Guidelines will give child welfare and juvenile justice agencies across the country a powerful tool to help make this cultural shift to LGBT-inclusive programming and become the supportive systems that LGBT youth in state care need in order to develop into healthy and happy adults.

⁷⁶ The Best Practices Guidelines reflect a widely shared understanding of how child welfare and juvenile justice systems can be more responsive to LGBT youth. They were developed in consultation both with LGBT youth involved in state care and with the leading scholars and practitioners in the field. Over the course of three years, Model Standards Project staff conducted several focus groups and interviews with LGBT youth involved in these systems across the country. Staff also convened a national Advisory Committee composed of individuals with direct experience in the public agencies serving youth, including young people with direct systems experience and child welfare and juvenile justice professionals with a specific interest and expertise in the concerns of LGBT youth. In consultation with Advisory Committee members, project staff then collected additional research and materials, interviewed additional experts from around the country, and developed a draft set of guidelines, which were “piloted” in workshops and trainings nationally and reviewed by Advisory Committee members.

⁷⁷In addition, the Guidelines can be referenced in litigation when a court is looking to determine whether a state official has substantially departed from professional judgment.

Conclusion

For too long, LGBT young people in the child welfare and juvenile justice systems have been overlooked, ignored and mistreated. Because of the hard work of hundreds of advocates who have come together through coordinated national efforts, a cultural shift has begun. These advocates are creating effective nondiscrimination policies, best practices guidelines, and other resources to bring about changes that already have greatly increased the capacity of child welfare and juvenile justice systems to support and protect the LGBT youth in their charge. By combining the expertise and resources of individuals from the legal, child welfare, juvenile justice, social service and educational fields, we will continue to reform these systems to live up to their historic missions of protecting all youth and to ensure that the civil rights of LGBT youth are upheld.

CLC PRACTICE KIT 10

Federal Law Overview

Federal civil rights law does not provide universal protection against discrimination based upon sexuality or gender expression. This is a developing area of the law, however there are specific areas in which federal law does provide protections, discussed below.

Until 2013, federal law explicitly denied same sex couples many of the benefits available to opposite sex couples. In *US v. Windsor*, however, the US Supreme Court found that the denial of federal benefits to same sex couples constituted an equal protection denial under the Fifth Amendment.¹ The Court did not establish a federal right to marriage, limiting the holding to a requirement for equal treatment of all state sanctioned marriages. In response to *Windsor*, the federal government announced plans to revise existing regulations and policies in order to extend federal benefits to same sex couples, a process which is ongoing.

Existing federal civil rights laws do not provide explicit protection against discrimination based upon sexual or gender identity. Sexual identity is not a protected class under either the Fair Housing Act or the Civil Right Act of 1963. As a result, the wide-ranging protections against discrimination based on race, religion, gender, or disability are not available under existing federal laws. However, federal agencies have passed rules and issued guidance that provide some protection against discrimination based upon sexual or gender identity.

For students, Title IX of the Education Amendments of 1972 bans discrimination on the basis of sex in education. The U.S. Department of Education's Office for Civil Rights has indicated that, while Title IX does not explicitly prohibit discrimination on the basis of sexual orientation, Title IX's sex discrimination prohibition extends to prohibit discrimination based a student's failure to conform to gender stereotypes.² Public schools are required to take immediate and effective action to eliminate discrimination, bullying, or harassment of students on the basis of sex or sex-stereotyping.

The Equal Employment Opportunity Commission (EEOC), which enforces federal laws against discrimination in employment, has suggested that discrimination based upon sexual identity may be prohibited under certain circumstances. If the discrimination amounts to discrimination based upon gender stereotypes, the EEOC has found that it may have jurisdiction to act.³ Moreover, sexual identity is a protected class for the purposes of federal employment. Thus, much wider protections are available for persons seeking or holding employment with any part of the federal government; these protections also cover transgender persons.⁴

The Department of Housing and Urban Development has also indicated that while the Fair Housing Act does not protect against discrimination based upon sexual identity, discrimination on the basis of sexual identity is prohibited by anyone receiving federal funds. A copy of the regulatory issuance is provided in the housing section of this kit.

¹ *US v. Windsor*, 570 U.S. 12 (2013), available at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf.

² See United States Department of Education, Office for Civil Rights, October 26, 2010 Dear Colleague Letter, at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

³ See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012), available at <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>.


⁴ See Executive Order 13087 (issued May 28, 1998), at <http://www.gpo.gov/fdsys/pkg/FR-1998-06-02/pdf/98-14689.pdf>, and OPM's *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* at www.opm.gov/diversity/Transgender/Guidance.asp.

Additionally, Federal law specifically provides for the prosecution of certain violent acts based upon the victim's sexuality, or perceived sexuality.⁵ The text of this provision is included in the criminal justice section of this kit.

⁵ See <http://www.justice.gov/crt/about/crm/matthewshepard.php>.

**D.C. Transgender, Transsexual, &
Gender Non-Conforming People:**

KNOW YOUR RIGHTS!



**What they are...
and how to make
them a reality!**

A publication of the DC Trans Coalition

To learn more about **your rights**, find out about upcoming **community events**, get involved in **activism**, or to find trans-positive **social services, health care providers, and other resources** in D.C., visit us online:

www.dctranscoalition.org



About us: *The DC Trans Coalition (DCTC) is a volunteer, grassroots, community-based organization dedicated to fighting for human rights, dignity, and liberation for transgender, transsexual, and gender-diverse (hereafter: trans) people in the District of Columbia.*

We have rights!

This booklet contains a summary of the rights we have won for trans people in the District of Columbia. (You can find the original regulations in their entirety on our website.) Unless noted otherwise, this information only applies while you are *inside* D.C., regardless of where you reside. This includes our rights:

- under the **D.C. Human Rights Act**
- in regards to **employment and housing**
- with the Metropolitan **Police** Department
- at **jails** and the D.C. Department of Corrections
- with regard to **identity documents**
- for survivors of **partner violence**
- in D.C. public **schools**
- ...and more!

We have the best laws to protect trans people in the country. But they are useless unless we make sure that everyday people, the government, and businesses respect them. *How do we do that?*

- **Learn what they are.** Read this, and share it with others.
- **Defend them.** Carry this booklet with you. If you face harassment and discrimination, you can educate your harasser if it's safe to do so.
- **Report the incident.** Documenting a violation of your rights will help you obtain justice. For more on how to file a complaint, see the end of this booklet.
- **Get organized.** Alone we can be defeated, but together we have the power to get the respect we deserve. Join the DC Trans Coalition as we build community power! See the end of this booklet for more info.

(1) You have the right to be respected.

- People, your job, and D.C. agencies (for example: the Department of Employment Services or the Department of Human Services) must call you by your preferred name and pronoun.
- You can *always* use the bathroom you want to use.
- You can dress in the clothes you want to wear.
- You cannot be denied services – including from first responders such as the Fire Department and EMS.

(2) Employers can't discriminate against you.

- Your boss cannot limit your gender expression.
- If your job has a gender-segregated uniform, you may wear the uniform you prefer.
- A job can't refuse to hire or promote you.
- If you need time off for trans-related medical care, your job must reasonably accommodate you.

(3) Housing providers can't discriminate, either.

- You have the right to use a homeless shelter that is consistent with your gender identity.
- Shelter staff must ensure that you are safe from harm.
- Service providers cannot deny you access to facilities.
- Landlords can't refuse to rent to you.

(4) If someone finds out that you are trans, they can't harass or "out" you.

- This includes information about you that jobs or agencies get from background checks.
- Nobody can ask invasive questions about your body, your past, your medical history or diagnoses, etc.

(5) You have rights when interacting with police.

This is the only entire section that applies everywhere in the U.S. Adapted from the ACLU Know Your Rights guide.

If you're stopped by police:

- You do not have to talk to the police. You have the right to remain silence. You may have to give police your name, but no other information is required. You do not need to show your ID.
- Do not lie to police, it is a crime. However, police can lie to you, so it's important to know what your rights are.

If you're stopped on the street:

- Ask if you are free to go. If yes, walk away. If no, ask what you are being detained for. They need to have a reason to arrest you.
- Police can pat you down during a stop. You can refuse to consent (agree) to a search, but they may still do it. If you're trans and in D.C., see below.

If you're stopped in a car:

- If you are driving, you must show your license, registration, and proof of insurance.
- Keep your hands where police can see them.
- You may refuse to consent to have your car searched, but police may have legal grounds to search it anyway.
- Police may separate passengers and the driver to question them, but no one has to answer any questions.

If you're not a documented citizen:

- You do not have to reveal your immigration status to any government official.
- If you are arrested, you have the right to call your consulate or family or have the police inform the consulate of your arrest. Do not talk to ICE without talking to an immigration lawyer first.

(6) You have even more rights with the D.C. Metropolitan Police Department.

These rights only apply in D.C. and only if you declare to the officers that you are transgender. It is up to you whether you want to out yourself as trans. They also apply to anyone under 18.

- You cannot be stopped for being trans.
- You can't be frisked to "determine" your gender.
- Officers must respect your name and pronouns.
- Officers can't ask about your body, surgeries, etc.
- Officers cannot perform squat searches in front of other people or in public.
- Officers cannot make you remove clothes, hair, falsies, binding, etc unless they think it will pose a threat.
- During arrest and booking, you can ask to be searched by a male or female officer.
- You should be placed in an individual holding cell for the length of time you're held by MPD.
- If moved, you should be transported separately.
- If you have an old record with MPD, they must update it to reflect your current name and gender.

On Sex Work and the "Prostitution Free Zones"

- To crack down on street-based sex work, the MPD issues Prostitution Free Zones where a group of 2 or more people believed to be engaging in "prostitution" or "prostitution related offenses" can be asked to "move along" or face imprisonment for up to 180 days and/or fined \$300.
- Carrying 2+ condoms is NOT proof of sex work and you cannot be charged for it.
- Signs legally must be posted around the PFZ:
mpdc.dc.gov/mpdc/cwp/view,a,1238,q,560843.asp

- Being trans can *never* be used as evidence of prostitution, and police cannot stop you just because they think you are trans.
- For trans-positive, non-judgmental assistance, resources, and services for sex workers in D.C., call the **24-hour HIPS Hotline at 202.232.8150.**

(7) You have rights in the D.C. jails.

- **Intake.** At intake into the jail, any inmate identified as transgender will be referred to the Transgender Housing Committee. They will interview the inmate, and based on the interview and a review of the inmate files, the Committee will decide whether to place the inmate in the male or female unit, in general population or protective custody.
- **Safety.** Department of Corrections staff are obligated to keep inmates safe from harm and abuse, from other inmates or staff. Transgender inmates are recognized by DOC as potential targets for abuse and should have their safety concerns taken seriously and acted on.
- **Searches.** Any transgender inmate who is strip searched will be strip searched in private, not in front of other inmates or unnecessary staff.
- **Respect.** Staff must respect all inmates and not harass or discriminate against transgender inmates.
- **Clothing.** DOC will issue clothing to inmates according to the unit they are placed in. Medical staff will decide if a transgender woman placed in the male unit will be issued a bra.
- **Hormones.** DOC medical staff will continue a transgender inmate on their hormone dosage,

consistent with a medical evaluation and consultation with the inmate's doctor. An inmate who has not been on hormones, or who was not taking hormones from a doctor, can request hormone therapy from medical staff, who will evaluate the inmate and make a decision.

(8) You can protect yourself from violence.

- A survivor of domestic/partner violence may file a Civil Protection Order (CPO) against their abuser that orders the abuser to leave them alone, leave shared homes, enroll in anger management classes, etc.
- You may file a CPO against someone you have had a sexual or romantic relationship with, a roommate, a relative, a "common partner" (an ex's new partner), or someone who has stalked or assaulted you.
- A CPO does not require you to file criminal charges.
- For more information, visit: www.rainbowresponse.org.

(9) You have the right to identity documents that most accurately reflect your lived gender.

- If you are a D.C. resident, to obtain a new ID card or driver's license, the Department of Motor Vehicles needs only a Gender Designation Form signed by a doctor, social worker or therapist. No surgery or other medical treatment is required.
- The Gender Designation Form can be downloaded at: <http://dmv.dc.gov/info/forms/forms.shtm>
- Any documented citizen in the U.S. can change the gender marker on their U.S. passport. There is no surgery requirement. See: http://transequality.org/Issues/federal_documents.html

(10) You have rights in D.C. Public Schools.

Please note that private schools in the District are not required to adhere to these rules.

- If someone is harassing you at school because you are trans (including slurs), it must be taken seriously.
- If the uniform or dress code at your school is gender segregated, you have the right to follow the dress code that is consistent with your gender identity.
- Your school cannot stop you from participating in an activity or program because you are trans.

(11) If someone violates ANY of the above rights, you have the right to fight back!

If you've experienced discrimination or unfair treatment in D.C. from an employer, landlord, business, any city agency (such as the police or fire department) or in any public accommodation (such as a school, the D.C. jail or a homeless shelter), **we can help you file a complaint in the appropriate place.** See the next page for our contact info.

In order to help you obtain justice, it is important to record as much as possible. Some helpful details include:

- The offender's name and physical description.
- Badge numbers (if police are involved).
- The date, time, and location of the incident.
- A detailed description of what happened.
- Any physical evidence, including written documents or e-mails.

How to Contact the DC Trans Coalition

By e-mail: dctranscoalition@gmail.com.

By phone: 202-681-DCTC (202-681-3282).

In person: At our bi-monthly public meetings. Anyone who supports our work is welcome to attend!

- Date: Every first and third Tuesday of the month
- Time: 7:30-9:00pm
- Location: The Austin Center at Whitman Walker Health's Northwest Location (1711 14th Street NW)
- Public Transit: The closest Metrorail stations are U Street (Green) or Dupont Circle (Red). By bus: Take the 52, 53, 54 (R Street Stop) or G2 (P Street Stop).



Last Revised September 2011.

Please feel free to copy, reproduce, and distribute widely!



Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Overview of Tool Kit

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) young people are in America's child welfare and juvenile justice systems in disproportionate numbers. Like all young people in care, they have the right to be safe and protected. All too often, however, they are misunderstood and mistreated, leading to an increased risk of negative outcomes. This tool kit offers practical tips and information to ensure that LGBTQ young people in care receive the support and services they deserve. Developed in partnership by the Child Welfare League of America (CWLA) and Lambda Legal, the tool kit gives guidance on an array of issues affecting LGBTQ youth and the adults and organizations who provide them with out-of-home care.

TOPICS INCLUDED IN THIS TOOL KIT

- Basic Facts About Being LGBTQ
- Information for LGBTQ Youth in Care
- Families Supporting an LGBTQ Child
- Caseworkers with LGBTQ Clients
- Foster Parents Caring for LGBTQ Youth
- Congregate Care Providers Working with LGBTQ Youth
- Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth
- Working with Transgender Youth
- Keeping LGBTQ Youth Safe in Juvenile Justice & Delinquency Placements
- Working with Homeless LGBTQ Youth
- Faith-Based Providers Working with LGBTQ Youth
- Basic LGBTQ Policies, Training & Services for Child Welfare Agencies

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



- Recommendations for Training & Education on LGBTQ Issues
- What the Experts Say: Position & Policy Statements on LGBTQ Issues from Leading Professional Associations
- LGBTQ Youth Resources
- Teaching LGBTQ Competence in Schools of Social Work
- Combating Misguided Efforts to Ban Lesbian & Gay Adults as Foster & Adoptive Parents
- LGBTQ Youth Risk Data
- Selected Bibliography

CHILD WELFARE LEAGUE OF AMERICA

CWLA is the nation's oldest and largest nonprofit advocate for children and youth and has a membership of nearly 1000 public and private agencies, including nearly every state child welfare system.

LAMBDA LEGAL

Lambda Legal is the nation's oldest and largest legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV.

CWLA/LAMBDA JOINT INITIATIVE: FOSTERING TRANSITIONS

In 2002, Lambda Legal and CWLA combined their respective expertise in child welfare and LGBTQ issues and launched a historic partnership, entitled **Fostering Transitions**, to change the way LGBTQ youth and adults are treated in the nation's child welfare and juvenile justice systems. In addition to this tool kit, **Fostering Transitions** has published other educational and advocacy tools, including *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Care*.

Fostering Transitions is supported by a generous grant from the Andrus Family Fund (www.affund.org), a grantmaking foundation with a priority area of funding projects that help young people transition from foster care to adult independence. CWLA and Lambda Legal are profoundly grateful for the Andrus Family Fund's support and vision, without which **Fostering Transitions** and this tool kit would not have been possible.

To order free copies of the *Getting Down to Basics* tool kit, *Out of the Margins* and other resources, contact Lambda Legal at 1-866-LGBTeen (1-866-542-8336) (toll-free) or 212-809-8585, or download them for free at www.lambdalegal.org.



Lambda Legal

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



Child Welfare League of America

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

Basic Facts About Being LGBTQ

If you work with young people in child welfare systems, you work with young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ). Child welfare professionals and caregivers have the duty to serve these young people in their care with competence and compassion. Unfounded myths and stereotypes about LGBTQ people have no place in the child welfare profession. The first step toward competent care is to understand basic facts about LGBTQ people and the issues they face.

WHAT DOES “LGBTQ” MEAN?

In recent years it has become common to use the string of letters “LGBTQ” to be inclusive of all individuals and communities who identify as lesbian, gay, bisexual or transgender or who are questioning their sexual orientation and/or gender identity. There is no right or wrong way to order the letters (*e.g.*, GLBTQ), and some people add additional letters, including “I” for intersex (or what used to be called hermaphroditism), “Q” for queer, and “A” for non-LGBTQ allies (*e.g.*, LGBTQQIA).

Lesbian A woman who is emotionally, romantically and sexually attracted to other women.

Gay A man or woman who is emotionally, romantically and sexually attracted to the same gender; some use the term only to identify gay men. The word *gay* is preferred over the word *homosexual*, which has clinical overtones that some people find offensive.

Bisexual A man or woman who is emotionally, romantically and sexually attracted to both genders. Sometimes the attraction to each gender is equal, while for others there may be a preference for one gender over the other.

Transgender An umbrella term used to describe people whose gender identity, one’s

inner sense of being male or female, differs from the sex assigned to them at birth. **Gender-nonconforming** people are people whose gender expression, the outward communication of gender through behavior or appearance, differs from expectations associated with the sex assigned to them at birth. **Transgender girls** are people who were assigned the sex of male at birth but identify as female. **Transgender boys** are people who were assigned the sex of female at birth but identify as male. Everyone has both a sexual orientation and a gender identity. Gender identity is different from sexual orientation. Transgender people may identify as heterosexual, lesbian, gay, bisexual or questioning.

Transgender people may need specialized health care to assist with their gender transition. For more information, please see Lambda Legal’s factsheet about transition-related healthcare, available for download at www.lambdalegal.org/publications/trans-toolkit/trt_transition-related-health-care.html.

Questioning A person, often an adolescent, who has questions about his or her sexual orientation or gender identity. Some questioning people eventually come out as LGBT; some don’t.

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HOW MANY PEOPLE ARE LGBTQ?

Approximately 5–10% of the general population is lesbian, gay, bisexual or transgender. LGBTQ adolescents are estimated to make up a higher, disproportionate share of the foster care and delinquency pools. Because many LGBTQ young people face disapproval and overt rejection from their families, they are more likely to be forced from their homes into the foster care and homeless populations. Once in foster care, bias against them may make it harder to find permanent placements for them, prolonging their stay in child welfare systems.

AT WHAT AGE DO PEOPLE KNOW THEY ARE LGBTQ?

Many LGBTQ people report being aware of their orientations as very young children, well before their first sexual experiences. Others may not be aware of their sexual orientation or gender identity until they are older adults. Never assume that a person is either “too young” or “too old” to come out as LGBTQ.

HOW WILL I KNOW IF SOMEONE IS LGBTQ?

Not all LGBTQ young people identify as such, and many conceal that they are LGBTQ out of concern for their safety or privacy. Conversely, some people who are perceived by others to be LGBTQ in fact are not. The only certain way to know if someone is LGBTQ is if the person tells you. Until then, never rely on myths and stereotypes about LGBTQ people to make assumptions about a person’s sexual orientation or gender identity. However, if you work with a young person who is being harassed and mistreated because he or she is perceived by others to be LGBTQ, it’s imperative that you take immediate corrective action without first attempting to determine if the youth is in fact LGBTQ. The goal is to be open and accepting of all people and to signal to those who may be LGBTQ that you are a safe person who will help protect them from discrimination and mistreatment.

WHAT CAUSES A PERSON TO BECOME LGBTQ?

The reasons why some people are LGBTQ and others aren’t are not yet well understood. What is known is that sexual orientation and gender identity have proved to be generally impervious to interventions to change them. Indeed, so-called reparative or conversion therapies intended to change a same-sex sexual orientation have been criticized by all major mental health organizations as ineffective and potentially harmful. Moreover, it is incorrect to assume that all LGBTQ people have been traumatized or abused, or that coming out as LGBTQ is a form of acting out behavior. LGBTQ people exist around the world and have throughout time, although the concepts of identifying as LGBTQ, and LGBTQ communities, developed more recently.

HOMOSEXUALITY IS NOT A MENTAL ILLNESS.

Homosexuality is not a mental or physical disorder, and the mental health professions do not regard a same-sex orientation as harmful, undesirable or requiring intervention or prevention. It’s a core part of a person’s identity, just as a heterosexual orientation is for a heterosexual person. There was a time in this country when homosexuality was mistakenly classified as a mental illness. Extensive empirical research came to show that this assumption was wrong. Accordingly, in 1973 the American Psychiatric Association declassified homosexuality as an illness and removed it from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). All major mental health professional organizations, including the American Psychiatric Association, the American Psychological Association and the National Association of Social Workers, have long recognized that being lesbian or gay inherently poses no obstacle to leading a happy, healthy and productive life, and that the vast majority of lesbian and gay people function well in the full array of social institutions and interpersonal relationships.

GENDER IDENTITY DISORDER IS A DIAGNOSABLE MEDICAL CONDITION.

Some transgender people are eligible for a diagnosis of gender identity disorder, or GID. In order to meet the diagnostic criteria in the DSM-IV, an individual must show evidence of a strong and persistent cross-gender identification, a persistent discomfort about one’s sex assigned at birth and clinically significant distress or impairment in important areas of functioning. Because GID is a recognized medical condition, some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply, and that denying transgender people the right to dress in ways that are consistent with their gender identities is discrimination based on disability. Some transgender people would prefer that GID be declassified as an illness in the same way that homosexuality was. It is important to understand that once transgender people are able to express their gender identities they are able to go on to lead happy, fulfilled lives.

For more information about the rights of LGBTQ people, visit www.lambdalegal.org.

Lambda Legal

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212-809-8585
www.lambdalegal.org

Child Welfare League of America

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www.cwla.org

Information for LGBTQ Youth in Care

As a lesbian, gay, bisexual, transgender or questioning (LGBTQ) youth in care, you deserve support and respect from your caseworker, foster parents and the other adults involved in your life. You are also entitled to receive nonjudgmental services. You have the right to be heard, to feel supported and to be safe and free from harassment based on your sexual orientation or gender identity.

KNOW YOUR LEGAL RIGHTS IN CARE.

You have many legal rights while you are in care, including the right to be free from verbal, emotional and physical harassment in your placement, school and community. The adults involved in your care have a legal and ethical obligation to ensure that you are safe and protected. You also have the right to be treated equally, to express your gender identity and to be open about your sexual orientation.

YOUR CASEWORKER AND THE OTHER ADULTS IN YOUR LIFE HAVE AN OBLIGATION TO SUPPORT YOU.

Regardless of their personal beliefs, the adult professionals in your life have a legal duty to support and protect you from anti-LGBTQ harassment and mistreatment. Licensed and certified members of the National Association of Social Workers are bound by a code of ethics that prohibits discrimination on the basis of sexual orientation and requires your consent before the release of confidential information. If your placement is not safe, your caseworker must take steps to protect you, including moving you to a more appropriate placement.

Your caseworker and foster parents should also stick up for you in school if you are experiencing harassment and mistreatment there.

TELL YOUR CASEWORKER IF YOU FEEL UNSAFE.

Whether or not you are out to your caseworker, you should tell him or her if you do not feel safe and immediately report any mistreatment. Furthermore, it doesn't matter if you're actually LGBTQ or not. If you're being targeted because others think you're LGBTQ, you're still entitled to protection. If nothing is done to stop the abuse, you may want to file a formal complaint against the perpetrators and the adults who have failed to help stop it.

REPORT MISTREATMENT TO YOUR ATTORNEY OR GUARDIAN AD LITEM.

Your attorney may be able to take legal action on your behalf to protect you from discrimination and mistreatment. Your conversations with your attorney are confidential, and you do not need to come out to receive protection and legal advocacy. In especially bad cases, LGBTQ young people have sued for damages related to the mistreatment.

THE ADULTS IN YOUR LIFE SHOULD ACCEPT YOU FOR WHO YOU ARE AND NOT TRY TO CHANGE YOUR SEXUAL ORIENTATION OR GENDER IDENTITY.

You are not required to go along with any efforts, whether direct or indirect, to change your sexual orientation or gender identity. The

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leading mental health and child welfare experts have concluded that so-called reparative or conversion therapies are ineffective, potentially dangerous and unethical. You are likewise entitled to maintain your own religious beliefs and to be free from efforts to convert you.

BECOME AN AUTHORITY ON YOUR OWN HEALTH CARE NEEDS.

It's important that the adults in your life understand that being LGBTQ does not necessarily mean you have special mental or physical health care needs. On the other hand, it is also important that you can be yourself with your doctors and counselors and that you can openly express your LGBTQ-specific concerns with them. If you are transgender, you may well benefit from specialized mental and physical health care to help you express your gender identity. It's important that you avoid unsafe "black market" treatments and instead use safe and professional services. LGBTQ youth, like all youth, should have access to appropriate sexual health education and materials. Be sure to seek this out if it hasn't been offered to you.

Ask your caseworker or contact your local LGBT community center (www.lgbtcenters.org); Parents, Families and Friends of Lesbians and Gays (PFLAG) chapter (www.pflag.org) or the World Professional Association for Transgender Health (www.wpath.org) for a referral to supportive health care professionals in your community.

LOCATE LGBTQ RESOURCES IN YOUR COMMUNITY OR

SEEK OUT SUPPORTIVE ADULTS WHO CAN HELP.

If you have an LGBT community center in your area, inquire whether youth services are available there. You can also find helpful LGBTQ youth resources by contacting CWLA (www.cwla.org) or Lambda Legal at 1-866-LGBTeen (1-866-542-8336) (toll-free). Lambda Legal maintains a list of national and state-by-state resources for LGBTQ youth. It can be found here: www.lambdalegal.org/publications/fs_resources-for-lgbtq-youth.

IF YOU ARE IN CRISIS, CONTACT THE TREVOR PROJECT.

The Trevor Project is the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning youth. Call the Trevor Lifeline at 1-866-4UTREVOR (866-488-7386) or visit their website at www.thetrevorproject.org.

FOR INFORMATION TO SHARE WITH YOUR FAMILY, VISIT THE FAMILY ACCEPTANCE PROJECT™ WEBSITE.

The Family Acceptance Project™ is the only community research, intervention, education and policy initiative that works to decrease major health and related risks for LGBT youth, such as suicide, substance abuse, HIV and homelessness—in the context of their families. Visit their website at <http://familyproject.sfsu.edu>.

CONTACT LAMBDA LEGAL'S YOUTH IN OUT-OF-HOME CARE PROJECT FOR HELP.

You have the right to be safe, to be free from harassment and to have adults stick up for you. If you feel threatened or unsafe because of your sexual orientation or gender identity and the adults involved in your care are not supportive, call the Lambda Legal hotline at 1-866-LGBTeen (1-866-542-8336) (toll-free). We may also be able to help you to find LGBT friendly shelters, youth programs and other helpful resources.

“ I realized that being gay is not my problem. It's their problem. I see homophobia as a social disease. I try not to get involved in negative communities. But I do try to teach them. Otherwise, the ignorance will continue and nothing will ever be done about it. ”

—Youth in Care



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Families Supporting an LGBTQ Child

For some birth, foster or adoptive parents, learning that a child is lesbian, gay, bisexual, transgender or questioning (LGBTQ) can be a very difficult juncture. For others, this information is welcomed and recognized as a sign of trust. How a parent responds to their LGBTQ child will have an enormous impact on the child's development and on the quality of the parent-child relationship.

YOU ARE NOT ALONE.

Upon learning that your child is LGBTQ, you may feel a variety of emotions ranging from relief and acceptance to shock, denial, guilt and anger. It's important to know that you are not alone in this experience. In fact, approximately one in every four families in this country has a family member who is LGBTQ. Many families struggle in isolation, unaware of community resources to help them. You owe it to your child and to yourself to find the resources, support and education you may need to move toward understanding and acceptance. One of the most valuable resources is Parents, Families and Friends of Lesbians and Gays. PFLAG offers a volunteer-based network of peer support chapters around the country (see www.pflag.org to find the chapter nearest you). Most importantly, reassure your child of your unconditional love.

SHOW APPRECIATION FOR THE STRENGTH AND COURAGE IT TAKES TO COME OUT.

If your child has come out to you, it's likely that it took her or him a lot of strength and courage to make that disclosure. It's now up to you to match this with your own courage, commitment, love and support. Your expression of your love and acceptance is extremely important for your child's well-being. A study by the Family Acceptance Project™ "establishes a clear link between specific parental and caregiver rejecting behaviors and negative health problems in lesbian, gay, and bisexual adults."¹ These health problems include

attempted suicide, high levels of depression, illegal drug use and engaging in unprotected sexual intercourse.² A later study by the Family Acceptance Project™ found that "family acceptance in adolescence is associated with young adult positive health outcomes (self-esteem, social support, and general health) and is protective for negative health outcomes (depression, substance abuse, and suicidal ideation and attempts)."³ If you learned that your child is LGBTQ from another source, avoid confronting your child, and instead model strength, courage and respect so that your child will feel more comfortable confiding in you. Do your best to embrace your child, his or her identity and his or her decision to be open or not with you.

EXPAND YOUR KNOWLEDGE OF LGBTQ ISSUES.

Don't rely on unfounded myths and stereotypes about LGBTQ people. Supportive literature specifically intended for parents of LGBTQ youth can help you develop a better understanding of these issues and a better relationship with your child. Such resources can be obtained through PFLAG, your local library or bookstore, an LGBT community center (to locate the one nearest you, see the National Association of LGBT Community Centers at www.lgbtcenters.org), or the Family Acceptance Project™ (<http://familyproject.sfsu.edu>).

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1 Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346, 346 (2009).

2 *See id.* at 349-350.

3 Caitlin Ryan, Stephen T. Russell, David Huebner, Rafael Diaz & Jorge Sanchez, *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 *J. Child & Adolescent Psychiatric Nursing* 205, 210 (2010).

UNDERSTAND THE IMPORTANCE OF YOUR SUPPORT.

Be mindful that your reaction to your child's sexual orientation or gender identity will have a major impact on his or her life. LGBTQ children and youth who are rejected by their parents face a significantly higher risk of depression, suicide and substance abuse compared with LGBTQ youth from accepting families. Once they understand the importance of their support, many parents of LGBTQ youth find that they eventually develop a stronger, closer relationship with their child.

DON'T TRY TO CHANGE YOUR CHILD'S SEXUAL ORIENTATION OR GENDER IDENTITY.

While young people may go through a process to come to understand what their sexual orientation or gender identity may be, it's important to understand that these traits are a part of each person's identity and can no more be changed for an LGBT person than they can for anyone else. Be suspicious of religious and other organizations that promote "freedom from homosexuality" through conversion or reparative therapy. Such assertions are based upon the misguided belief that there is something wrong with LGBTQ people. Leading professional organizations such as the American Psychological Association, the American Psychiatric Association and the American Medical Association have issued warnings against such therapies and the harmful effects they have on those subjected to them.⁴

These organizations have long recognized that being lesbian or gay inherently poses no obstacle to leading a happy, healthy and productive life, and that the vast majority of lesbian and gay people function well in the full array of life activities and interpersonal relationships. Conversion therapies are regarded

⁴ The American Psychiatric Association states: "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm... APA recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation[.]" (Am. Psychiatric Ass'n, APA Document Reference No. 200001, *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000)).

The American Psychological Association affirms, stating: "Treatments that are based on assumptions that homosexuality or same-sex sexual attractions are, a priori, a mental disorder or psychopathology or based on inaccurate stereotypes regarding LGB people are to be avoided because they run counter to empirical data and because reports of harm suggest that such treatments can reinforce restricting stereotypes, increase internalized stigma, and limit a client's development." (Am. Psychological Assoc., Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (2009) at 86-87, available at www.apa.org/pi/lgbt/resources/therapeutic-response.pdf).

The American Medical Association also agrees, stating: "Our AMA... opposes the use of 'reparative' or 'conversion' therapy that is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that the patient should change his/her homosexual orientation." Am. Med. Ass'n, AMA Policies on GLBT Issues, Patient-Centered Policy H-160.991, Health Care Needs of the Homosexual Population (2005), available at www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-advocacy-committee/ama-policy-regarding-sexual-orientation.page.

by mental health experts as ineffective, unethical and the cause of increased risk of depression, anxiety and self-destructive behaviors. Instead of trying to change your LGBTQ child, give him or her support.

STAND UP FOR YOUR CHILD IF HE OR SHE IS BEING PICKED ON OR HARASSED OUTSIDE YOUR HOME.

As a parent, you should protect your LGBTQ child from harm and harassment—in school, your neighborhood and in the community—just as you would for any child. This is particularly important if your daughter or son recently made the decision to come out at school or to friends. Research consistently shows that LGBTQ youth face far greater risks of harassment and violence from their peers than non-LGBTQ youth. Assure your child that you are on his or her side.

RECONCILE THIS NEW INFORMATION WITH YOUR RELIGIOUS BELIEFS.

Learning that your child is LGBTQ can be especially challenging if you feel your faith or religion opposes homosexuality. Understand that being LGBTQ does not impact a person's ability to be spiritual or religious any more than being heterosexual does. While some religious denominations continue to condemn homosexuality and gender variance, others publicly support gay rights and LGBTQ individuals. In fact,

within many religious communities there are support groups for LGBTQ members and their families, including Dignity for Catholics (www.dignityusa.org) and Affirmation for Mormons (www.affirmation.org). You can seek supportive resources and counsel to help reconcile your religious beliefs with your commitment to your LGBTQ child.

“ My dream is to live in a family that will accept me and where I can just be a kid. ”
—Youth in Care



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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Caseworkers with LGBTQ Clients

If you work with young people in foster care, you probably have clients who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ). These young people are at high risk of harassment, abuse and self-destructive behaviors, and too often suffer from misunderstanding and mistreatment by the child welfare systems that should protect them. LGBTQ young people, like all of your clients, deserve to be treated with respect and sensitivity. There is much you can do to help your LGBTQ clients make healthy transitions from foster care to adulthood.

ACKNOWLEDGE THAT LGBTQ YOUNG PEOPLE ARE IN YOUR MIDST.

Don't assume that all of your clients are heterosexual. Even if you think you do not have clients who are LGBTQ, you most likely do. Many LGBTQ young people fear the negative reactions that come from revealing who they are and carefully hide that they are LGBTQ.

EXAMINE YOUR OWN BELIEFS AND ATTITUDES THAT MIGHT AFFECT YOUR PROFESSIONAL RESPONSIBILITIES TO YOUR LGBTQ CLIENTS.

Be aware of your own beliefs, prejudices and gaps in knowledge surrounding issues of sexual orientation and gender identity. Regardless of your personal beliefs, remember that above all you owe a professional duty of care to your LGBTQ clients. For example, licensed and certified members of the National Association of Social Workers are bound by a code of ethics that prohibits discrimination on the basis of sexual orientation and requires a client's express consent before the release of confidential information.

TREAT YOUR LGBTQ CLIENTS WITH THE SAME DIGNITY AND EXPECTATIONS AS YOU DO ALL OTHERS.

Don't assume that all the problems your LGBTQ clients have are related to their sexual orientation or gender identity. Don't address sexual orientation or gender identity questions or concerns as deviant or pathological. By the same token, don't allow an LGBTQ young person to be subjected to so-called conversion or reparative therapy for the purpose of changing his or her sexual orientation or gender identity. Such "therapies" have been

shunned by the leading national professional counseling organizations as unethical and potentially dangerous. Establish ground rules for behavior by LGBTQ clients, including standards for acceptable sexual behavior, that are the same as for heterosexual youth. Always respect and maintain an LGBTQ young person's privacy and never disclose confidential information about sexual orientation or gender identity without the client's permission.

BE AWARE OF YOUR LANGUAGE.

Eliminate antigay slurs from discussion. Use gender-neutral language with all of your clients. For example, rather than asking a teenage boy if he has a girlfriend, ask if he has "someone special" in his life. Learn the difference between "sexual orientation" and "gender identity" and use the words gay, lesbian, bisexual, transgender and questioning in appropriate contexts.

DON'T STEREOTYPE LGBTQ PEOPLE.

Don't assume that you can identify LGBTQ people based on stereotypical mannerisms or characteristics. Also avoid the assumption that all LGBTQ people "are the same" or necessarily share a common sense of community. Although LGBTQ people are in every corner of the country, the cultural responses to sexual orientation and gender identity may vary a great deal even within a particular community. The diversity of society in general is reflected within LGBTQ communities.

CREATE A POSITIVE PHYSICAL ENVIRONMENT IN YOUR OFFICE THAT WELCOMES AND AFFIRMS LGBTQ PEOPLE.

Display recognizable symbols of support such as pink triangles and rainbow flags to let all your

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clients know that you are a sensitive, safe and welcoming person for LGBTQ people to go to. You can post Lambda Legal's Youth in Out-of-Home Care poster, included in this tool kit and available in English and Spanish from the Lambda Legal website, as a sign that your LGBTQ clients are safe to be open with you.

KNOW WHAT TO DO IF A CLIENT DISCLOSES TO YOU THAT HE OR SHE IS LGBTQ.

Use the disclosure as an opportunity to show unconditional support for your client. Be willing to have an in-depth discussion, and allow your client to process her or his feelings. The goal in working effectively with LGBTQ young people is to create a safe, supportive and nurturing environment within which they can find the resources they need. Assist LGBTQ young people in deciding to whom, where, when and how to come out in order to ensure safety while maintaining privacy. If you lack knowledge on LGBTQ issues don't be afraid to admit it, but commit to learn what you need to know to provide competent supportive services.

SEEK OUT SAFE, AFFIRMING PLACEMENTS FOR LGBTQ YOUNG PEOPLE.

People who are perceived as LGBTQ are at a significantly higher risk of harassment and violence than their peers. Don't put your LGBTQ clients into placements, services, schools or neighborhoods where they will be unsafe or misunderstood. If seeking a foster or adoptive home placement, be sure that the home is accepting of LGBTQ people. Do outreach to LGBT and LGBT-friendly adults who can provide safe and nurturing homes for LGBTQ youth. If placing an LGBTQ young person in a group home setting, make sure that explicit nondiscrimination policies are in place and enforced. If such group homes do not exist in your community, inquire of a prospective home whether an LGBTQ person has ever been placed there and what the experience was like. Also inquire if the training provided to staff includes information about working with LGBTQ youth. Trust the instincts and observations of your LGBTQ clients when it comes to feeling safe and welcome. Respond promptly to anti-LGBTQ slurs and attacks. Be prepared to advocate for fair and equal treatment of your LGBTQ clients.

BE PREPARED TO WORK EFFECTIVELY WITH TRANSGENDER YOUTH.

Transgender youth may have unique medical and housing needs. They also often face serious risk of harassment and violence. It's important that you seek out additional resources, if necessary, to provide appropriate services and placements to transgender youth. Allow all of your clients to express their gender identities in ways that are most comfortable for them, including allowing transgender clients to dress in the manner that they choose. Support transgender young people's gender identity and expression by referring to them by the names and pronouns they prefer.

BECOME FAMILIAR WITH THE RESOURCES AVAILABLE TO LGBTQ YOUNG PEOPLE IN YOUR COMMUNITY.

Many LGBTQ young people benefit from attending a community-based peer support group. Those that require professional therapeutic intervention need access to supportive professional services. Your agency should develop and distribute an up-to-date list of LGBTQ community resources. If you don't know where to

find such resources, contact us, your nearest LGBTQ community center (www.lgbtcenters.org) or a local chapter of Parents, Families and Friends of Lesbians and Gays (PFLAG, www.pflag.org), or look online for national and community resources. Lambda Legal maintains a list of state and national resources that can be found at www.lambdalegal.org/publications/fs_resources-for-lgbtq-youth.

PROVIDE SUPPORT AND RESOURCES TO OTHERS IN THE LGBTQ YOUNG PERSON'S LIFE.

Be prepared to provide members of the birth, foster or adoptive families of LGBTQ clients with relevant resource materials on sexual orientation and gender identity, as well as with opportunities to discuss and process issues of concern.

ENSURE THAT YOUR LGBTQ CLIENTS RECEIVE DEVELOPMENTALLY APPROPRIATE SEXUAL HEALTH SERVICES.

Provide developmentally appropriate information and resources to all your clients about sexuality and sexual health, including about LGBTQ issues and prevention of HIV and other sexually transmitted infections. Encourage your agency to adopt written policies providing clients access to free and confidential HIV testing without guardian consent or notification, if not already in place. Protect the privacy of your clients' HIV status, with disclosure only on a need-to-know basis. For more information, visit the Center for HIV Law and Policy's page on the rights of youth in state custody to comprehensive sexual health education at www.hivlawandpolicy.org/public/teensense.

ADVOCATE FOR SUPPORTIVE, COMPETENT CARE FOR LGBTQ YOUTH AT YOUR AGENCY.

Take an inventory of the policies and training at your agency. Are LGBTQ people included in nondiscrimination policies? Are LGBTQ clients included in your best practice guidelines and standards? Are LGBTQ issues included in pre-service and in-service training curricula? Be prepared to advocate for changes at your agency to make the environment more LGBTQ-inclusive.

SCHEDULE A TRAINING FOR YOUR ORGANIZATION.

In 2009, Lambda Legal partnered with the National Association of Social Workers (NASW) on a Train-the-Trainer initiative designed to build the capacity, awareness and skills of out-of-home care professionals serving LGBTQ youth in foster care, juvenile justice centers and homeless shelters. Master Trainers are available to facilitate trainings throughout the country. To find Master Trainers in your area or to order copies of the NASW-Lambda Legal curriculum entitled *Moving the Margins: Training Curriculum for Child Welfare Services with LGBTQ Youth in Out-of-Home Care*, by Diane Elze, Robin McHaelen, NASW & Lambda Legal (2009), contact Lambda Legal at 1-866-LGBTeen (1-866-542-8336) (toll-free) or 212-809-8585, or download it for free at www.lambdalegal.org.

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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Foster Parents Caring for LGBTQ Youth

Whether you are aware of it or not, youth in your care may be lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ). These young people are dealing not only with the challenges of life in foster care but also with the risk of harassment and mistreatment because they are LGBTQ.

ACKNOWLEDGE THAT FOSTER YOUTH IN YOUR CARE MAY BE LGBTQ.

Don't assume that every young person in your care is heterosexual or comfortable in his or her assigned gender. Many LGBTQ young people fear the negative reactions that may come from revealing this aspect of their identity and carefully hide that they are LGBTQ. Indeed, some may have been abused by their families of origin or thrown out after coming out and are reluctant to risk harassment and rejection from the child welfare system charged with protecting them.

EXAMINE YOUR BELIEFS AND ATTITUDES THAT MIGHT IMPACT YOUR ABILITY TO SUPPORT LGBTQ YOUTH IN YOUR CARE.

Be aware of your own beliefs, prejudices and gaps in knowledge surrounding issues of sexual orientation and gender identity. Regardless of your personal beliefs, remember that above all it's your responsibility to provide a safe, nurturing and nonjudgmental environment for the LGBTQ young people in your care.

EDUCATE YOURSELF ON LGBTQ ISSUES.

You don't have to be an expert on LGBTQ youth in order to support an LGBTQ youth. There are plenty of resources available to help you better understand these issues. Seek out the support and information you need to feel comfortable engaging young people in frank and age-appropriate discussions about sexual orientation and gender identity.

UNDERSTAND THAT BEING LGBTQ ISN'T A "CHOICE" OR SOMETHING A YOUNG PERSON CAN CHANGE.

The leading mental health and child welfare associations have long recognized that a lesbian or gay sexual orientation is a normal variation on human sexuality and no more susceptible to change than is a heterosexual sexual orientation. A young person should never be subjected to conversion or reparative therapies for the purpose of changing his or her sexual orientation or gender identity. Such therapies have been shunned by national professional counseling organizations as unethical and potentially dangerous.

KNOW THAT YOUR ACCEPTANCE OR REJECTION AFFECTS THE HEALTH AND WELL-BEING OF THE LGBTQ YOUTH IN YOUR CARE.

Research shows that family acceptance is an important predictor of how well an LGBTQ youth will fare as an adult. As a foster parent, don't compound the rejection an LGBTQ youth may have suffered from his or her family of origin by exhibiting the same rejecting behaviors. The National Foster Parent Association has adopted a formal policy urging sensitivity and support for LGBTQ youth in foster care (see www.nfpainc.org under "Position Statements") and the Family Acceptance Project™ offers resources for families of LGBTQ young people. Their website states:

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“The Family Acceptance Project™ is the only community research, intervention, education and policy initiative that works to decrease major health and related risks for [LGBT] youth, such as suicide, substance abuse, HIV and homelessness—in the context of their families. We use a research-based, culturally grounded approach to help ethnically, socially and religiously diverse families decrease rejection and increase support for their LGBT children.”

For more information, research findings and support services, please visit <http://familyproject.sfsu.edu>.

RESPECT THE PRIVACY AND CONFIDENTIALITY OF LGBTQ YOUTH.

Most LGBTQ youth are aware of this aspect of their identity long before they disclose it to others. Some LGBTQ people report having been aware of their identity as young as at five years old, long before they were sexually active, while others were much older before they realized it. Understand that coming out is often a lifelong process and that LGBTQ youth may not be out in every context of their lives. Keep in mind that there are many factors LGBTQ people consider before disclosing their sexual orientation and gender identity, including that they may be exposing themselves to discrimination and harassment by revealing this information to others. Respect the confidentiality of the foster youth in your care while helping them to decide whether or not to come out and to whom.

APPLY THE SAME STANDARDS TO LGBTQ YOUTH THAT YOU APPLY TO OTHERS FOR AGE-APPROPRIATE ADOLESCENT ROMANTIC BEHAVIOR.

It's important for LGBTQ youth to be able to engage in developmentally-appropriate romantic behavior and to feel as validated and respected in this area as other young people. LGBTQ youth in your care should be held to the same standards you apply to non-LGBTQ youth regarding age-appropriate dating, displays of affection and romantic relationships. LGBTQ youth in care, like all young people, need developmentally appropriate information and resources about sexuality and sexual health, including about the prevention of HIV and other sexually transmitted diseases.

KNOW THE DANGERS AND RISKS FOR LGBTQ YOUTH.

Research reveals that LGBTQ youth may be at a higher risk for substance abuse, unsafe sexual practices, running away and suicidal ideation and behavior because of the social stigma and harassment they face from their peers and adults. As a caregiver, it's critical that you be aware of the warning signs and behaviors that may mean someone is struggling. If you provide a safe, supportive and bias-free home environment where young people can be themselves, they will be less likely to engage in these risky behaviors.

BE AN ADVOCATE FOR LGBTQ YOUTH.

LGBTQ youth often face verbal and physical abuse from their peers and families and the adults in their lives. Make sure the young people in your care know that you're there for them and will be their ally. Ensure that your foster child is safe at school and in the community. Advocate for your child and demand that he or she receives respectful treatment.

ACKNOWLEDGE THAT THERE'S MORE TO AN INDIVIDUAL THAN SEXUAL ORIENTATION AND GENDER IDENTITY.

Sexual orientation and gender identity are only part of what makes an individual a whole person. Avoid making assumptions about a young person based entirely upon these particular characteristics. In fact, you may find that some LGBTQ youth are very outspoken about their identities and feel that this is a defining part of who they are, while others may not give it much thought at all. Don't assume that every struggle faced by an LGBTQ young person is the result of this aspect of his or her identity. Understand that many of his or her struggles are in fact a result of the lack of support he or she has received from caretakers and peers.

“ My foster family took away my clothes, called me a 'dyke,' and tried to remake me. ”

—Youth in Care

TAKE ADVANTAGE OF COMMUNITY RESOURCES FOR YOU AND YOUR LGBTQ FOSTER CHILD.

Know where to look for LGBTQ resources in your community. A good place to start is Parents, Families and Friends of Lesbians and Gays (PFLAG) at www.pflag.org. PFLAG offers a variety of resources to help you be an effective and supportive parent or caregiver. It also lists local chapters and support group meetings where you can meet other parents of LGBTQ youth. Help your LGBTQ foster child find peer support groups in your community as well. For a list of national and state resources for LGBTQ youth, visit www.lambdalegal.org/publications/fs_resources-for-lgbtq-youth.



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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Congregate Care Providers Working with LGBTQ Youth

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth placed in group homes and other congregate care facilities are significantly more likely to be subjected to harassment, discrimination and violence than their non-LGBTQ peers. Blatant hostility and verbal abuse toward LGBTQ youth are often an accepted aspect of institutional culture. Congregate care providers should be aware of these dangers and create a safe and welcoming environment for LGBTQ youth.

ENSURE THE SAFETY OF LGBTQ YOUTH IN CONGREGATE CARE.

Child welfare and juvenile justice professionals have a legal obligation to protect the physical and psychological safety of LGBTQ youth in their care, whether these youth are placed in group homes, residential treatment centers, correctional centers or other facilities. As congregate care providers, you play an important role in creating an environment that ensures the protection of LGBTQ youth from harassment and discrimination. This includes intervening in situations between youth, or when other staff harass or disparage LGBTQ youth.

TAKE IMMEDIATE STEPS TO ADDRESS ANTI-LGBTQ HARASSMENT IN THE FACILITY.

Send a clear message throughout the facility that anti-LGBTQ harassment will not be tolerated. Consistently model and communicate that message to all staff and residents. Never blame LGBTQ youth for being open about their identity when others subject them to harassment or violence, and don't allow others to blame them for their own mistreatment.

PROVIDE OR PARTICIPATE IN LGBTQ SENSITIVITY AND AWARENESS TRAINING.

Inquire whether your agency offers training that prepares staff to work effectively and appropriately with LGBTQ young people. An ideal training program includes suggestions for

creating and maintaining a safe environment for LGBTQ young people, as well as strategies for responding to harassment and discrimination. If your agency does not offer training on LGBTQ issues, seek out the information and support you need from resources in your community, the Internet, books and videos. For more information, see the pullout entitled *Recommendations for Training & Education on LGBTQ Issues* in this tool kit.

ADHERE TO CONSISTENT POLICIES REGARDING AGE-APPROPRIATE ADOLESCENT ROMANTIC BEHAVIOR.

LGBTQ youth in congregate care should be afforded the same rights and privileges that non-LGBTQ youth have regarding dating, displays of affection and romantic relationships. It's important for LGBTQ youth to be able to express age-appropriate romantic behavior, and to feel validated and worthy.

MAKE APPROPRIATE, INDIVIDUALIZED CLASSIFICATION AND HOUSING DECISIONS.

Don't make housing decisions based on myths and stereotypes about LGBTQ people. For example, never assume that all LGBTQ youth are more likely to engage in sexual behaviors than their heterosexual peers, or that they're all potential sex offenders. Conversely, don't isolate or segregate LGBTQ young people, or prohibit them from having roommates, as a means of ensuring their safety. While you may

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have good intentions, this will only deprive LGBTQ youth of opportunities to interact with their peers and will compound their feelings of isolation.

In sex-segregated facilities, don't automatically assign transgender youth to the girls' or boys' units based on the sex assigned to them at birth. Instead, make housing decisions on a case-by-case basis, considering the physical and mental well-being of the youth. Safety and privacy should be prioritized without resorting to isolating these youth from the general population. However, single occupancy rooms, if available, may be an acceptable alternative for transgender youth in sex-segregated facilities.

BE AWARE OF THE NEEDS OF TRANSGENDER YOUTH IN CONGREGATE CARE SETTINGS.

Transgender youth in congregate care settings are often subject to discrimination. Staff in congregate care settings should be aware of the needs of these youth and support them in their gender identity without requiring them to

conform to traditional gender norms. Allow youth to express their gender identity through their attire, names, pronouns and grooming choices. Be prepared to advocate for transgender youth to receive competent and affirming mental health and medical services, including access to monitored use of hormones if deemed medically appropriate. For more information, please see the pullout entitled *Working with Transgender Youth* in this tool kit.

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

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

DISPLAY LGBTQ-SUPPORTIVE SIGNS AND SYMBOLS.

By displaying LGBTQ-supportive symbols such as pink triangles, rainbows or safe zone stickers, you send the clear message to all youth and staff that you support and affirm LGBTQ youth and are open to discussing LGBTQ issues. LGBTQ youth are quick to pick up on these cues from their environment, and it often makes an enormous difference just

having them displayed. LGBTQ-supportive materials are available free of charge online, and include Lambda Legal's LGBTQ Youth in Out-of-Home Care poster, included in this tool kit and available in English and Spanish (www.lambdalegal.org).

HELP LGBTQ YOUTH TO ACCESS COMMUNITY RESOURCES.

Reduce the alienation and isolation LGBTQ youth often experience by providing opportunities for them to interact positively with their LGBTQ peers, and by helping them realize that they're not alone and that other people their age share their experiences.

Develop an up-to-date list of LGBTQ resources in your community and distribute it to everyone in your agency,

including to youth who may wish privately to contact community resources on their own. For more information check www.lambdalegal.org and www.cwla.org, your nearest LGBT community center (see the National Association

“ I got jumped by a bunch of guys in my group home, and when I told the director he said, ‘Well, if you weren’t a faggot, they wouldn’t beat you up.’ ”

—Youth in Care

of LGBT Community Centers at www.lgbtcenters.org) or the local chapter of Parents, Families and Friends of Lesbians and Gays (www.pflag.com).

For sample LGBTQ policies in out-of-home care settings, contact Lambda Legal at 212-809-8585 or toll-free at 1-866-LGBTeen (1-866-542-8336).



Lambda Legal

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



Child Welfare League of America

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

Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth

Whether you are aware of it or not, if you advocate for young people in the child welfare and juvenile justice systems, you work with young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (LGBTQ). Lawyers and youth advocates should develop an understanding of the unique issues faced by these clients and cultivate advocacy strategies that are sensitive to their needs.

BE A VISIBLE ADVOCATE FOR LGBTQ YOUTH.

You don't have to be LGBTQ yourself to be an effective advocate for LGBTQ youth. By standing up for LGBTQ clients facing harassment and discrimination and publicly supporting their rights you act as a visible, much-needed advocate for LGBTQ youth in care. Let all of your clients know that you will not judge them and will work hard for them no matter what they tell you. Display LGBTQ-friendly signs and posters for your clients and others to see. Never use anti-LGBTQ slurs or rely on negative stereotypes of LGBTQ people.

BE AWARE THAT LGBTQ YOUTH ARE IN OUT-OF-HOME CARE IN DISPROPORTIONATE NUMBERS.

Research shows that young people facing family rejection, harassment and school failure are more likely to enter the child welfare and juvenile justice systems. At home, LGBTQ youth and those perceived to be LGBTQ are more likely to face disapproval, abuse and neglect—including being thrown out of their homes—than their non-LGBTQ peers. It may be harder to find supportive permanent placements for LGBTQ youth once they are in the foster care system, extending their length of time in care. On the streets, LGBTQ teens may be forced into illegal activities, including sex work, to support themselves. LGBTQ youth of color congregating in public places may face selective enforcement of “quality of life” offenses and “morals” regulations. Violations of age-of-consent laws among young people of the same sex are more likely to be criminally charged and punished more harshly

than violations among young people of the opposite sex. These factors contribute to the disproportionate numbers of LGBTQ youth in out-of-home care.

BE AWARE THAT LGBTQ YOUTH IN OUT-OF-HOME CARE ARE VULNERABLE TO MISTREATMENT AND DISCRIMINATION.

While of course parents have the right to inculcate their values in their children, this doesn't extend to a right to subject children to harm and abuse. You should be prepared to advocate on behalf of a child who is not safe at home because of parental intolerance. Often misunderstood within the child welfare and juvenile justice systems as well, many LGBTQ youth face abuse, harassment and isolation once in care. In foster family homes and group care facilities, LGBTQ youth are often mistreated and even harmed by staff, caregivers and other young people. Some are forced to convert to anti-LGBTQ religions and practices. In the delinquency system, LGBTQ youth may be placed in more restrictive and punitive settings than their offenses warrant, or isolated or segregated from the general population for their own protection or based on the misguided notion that others need to be protected from them. There currently is a serious dearth of LGBTQ-sensitive child welfare and juvenile justice services and placements. Your LGBTQ clients need your help to ensure they receive safe and appropriate treatment. Canvass the available resources in your community. Develop and maintain a network of LGBTQ-sensitive youth service providers to whom you can refer LGBTQ clients.

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



AS A ZEALOUS ADVOCATE, CONFRONT ANTI-LGBTQ DISCRIMINATION AT ITS SOURCE.

Rather than simply advocating for the removal of an LGBTQ client from an unsafe placement, zealously advocate for an institutional response to the discrimination and mistreatment. Whether in a child welfare or juvenile justice facility, in a school or in the community, confront the bias or abuse at its source in order to ensure that it will not happen again to another child. Be prepared to file a grievance or complaint against an offending institution on behalf of an LGBTQ client. At the same time, advise your vulnerable clients of the realities of congregate care. Advocate for them in their decisions regarding dress and gender expression.

PROTECT THE PRIVACY OF YOUR CLIENTS.

Even if your client is open with you and others about his or her sexual orientation and gender identity, the client should always be treated as the gatekeeper of this information. Never “out” your client without his or her consent. Instead, be aware that just because a client is open with you about his or her identity does not necessarily mean that he or she is out to everyone. Object to this information being unnecessarily included in case management and service planning documentation.

BE AWARE OF THE LEGAL PROTECTIONS AVAILABLE TO YOUR LGBTQ CLIENTS.

The federally mandated State Plan for Foster Care and Adoption Assistance requires that there be a case plan for each child placed in the child welfare system.¹ While it is important to ensure that the service plan addresses the unique needs of your LGBTQ clients, there should be careful consideration as to whether the plan should include confidential information regarding your client’s sexual orientation or gender identity that could later be used against him or her by those harboring anti-LGBTQ bias. Under the Fourteenth Amendment to the U.S. Constitution, all young people in state custody have the affirmative right to protection from harm. This right—the substantive due process liberty interest in safety—includes the right to appropriate services, medical care and safe placements. LGBTQ young people harmed or discriminated against while in state custody have brought successful civil rights lawsuits against state officials, some resulting in sizeable monetary damage awards (e.g. *R.G. v. Koller*, 415 F. Supp.2d 1129 (D. Haw. 2006) and *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006)).

Some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply to those diagnosed with gender identity disorder, and that denying transgender youth the right to dress in ways that are consistent with their gender identities in group homes is discrimination based on disability (e.g., *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003)). Be aware of state

¹ The plan must be designed such that “the child’s health and safety shall be the paramount concern[.]” 42 U.S.C. § 671(a)(15)(A). The plan must include “a discussion of the safety and appropriateness of the placement” and “address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.” §§ 675(1)(A),(B). Additionally, a procedure must be in place for review of the case plan on a regular basis, to ensure that the plan remains “consistent with the best interest and special needs of the child[.]” § 675(5)(A).

nondiscrimination laws, particularly those that are LGBTQ-inclusive, and seek their enforcement on behalf of your clients in out-of-home care.

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

LGBTQ youth are often vulnerable and at increased risk for sexual abuse in juvenile justice and congregate care settings. In 2012 the U.S. Department of Justice released national standards in accordance with the Prison Rape Elimination Act of 2003 (PREA), aimed at protecting inmates and detained juveniles from sexual abuse. For more information about how the PREA standards protect LGBTQ people, please read the National Center for Transgender Equality fact sheet found here: www.transequality.org/Resources/PREA_July2012.pdf.

CONNECT WITH ADDITIONAL RESOURCES.

The Equity Project is an initiative to ensure that LGBT youth in juvenile delinquency courts are treated with dignity, respect and fairness. The Equity Project examines issues that impact LGBT youth during the entire delinquency process, ranging from arrest through post-disposition. For more information, visit their website at www.equityproject.org. The Equity Project offers an excellent resource in a report examining the experiences of LGBT youth in juvenile courts across the country. The report, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), is based on information collected from surveys and interviews with juvenile justice professionals, focus groups and interviews of youth who possess relevant firsthand experience and an extensive review of relevant social science and legal research findings. Download it free of charge at www.equityproject.org/pdfs/hidden_injustice.pdf.

The National Juvenile Defender Center (NJDC) provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination. For more information, visit their website at www.njdc.info.

The American Bar Association Center on Children and the Law: Opening Doors for LGBTQ Youth in Foster Care Project offers an excellent resource in their publication *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* by *Mimi Laver and Andrea Khoury* (2008). For more information, see www.americanbar.org/groups/child_law/projects_initiatives/openingdoors.html or www.thekidsarelistening.org.

For sample LGBTQ policies adopted by out-of-home care agencies, contact Lambda Legal at 212-809-8585 or toll-free at 1-866-LGBTEEN (1-866-542-8336).

Lambda Legal

120 Wall Street
19th Floor
New York, NY 10005
866-LGBTeen
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www.lambdalegal.org

Child Welfare League of America

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

Working with Transgender Youth

Like all young people in care, transgender youth are entitled to bias-free attention to their unique needs and to be safe in their placements and services. They should be supported in their gender identity and never required to conform to traditional conceptions of gender in order to receive appropriate care. Child welfare professionals who work with transgender young people should be educated about transgender issues and prepared to work sensitively with these clients. Knowledge about lesbian, gay and bisexual issues may be helpful in working with transgender young people, but gender identity issues may be very different from issues related to sexual orientation.

KNOW WHAT IT MEANS TO BE TRANSGENDER AND USE THE TERM APPROPRIATELY.

Transgender is an umbrella term used to describe people whose gender identity, one's inner sense of being male or female, differs from the sex assigned to them at birth. **Gender-nonconforming** people are people whose gender expression, the outward communication of gender through behavior or appearance, differs from expectations associated with the sex assigned to them at birth. **Transgender girls** are people who were assigned the sex of male at birth but identify as female. **Transgender boys** are people who were assigned the sex of female at birth but identify as male.

Everyone has both a sexual orientation and a gender identity. Gender identity is different from sexual orientation. Transgender people may identify as heterosexual, lesbian, gay, bisexual or questioning.

EDUCATE YOURSELF ON GENDER IDENTITY DISORDER.

The incongruity between people's internal sense of self as either male or female and their anatomical or birth sex can lead to depression and severe emotional distress. When these feelings rise to clinically significant levels, a person may be suffering from gender identity disorder (GID), a diagnosable medical condition found in the *Diagnostic and Statistical*

Manual of Mental Disorders (DSM). Treatment of GID is focused on providing support, not changing a person's gender identity. It may include services like individual and family counseling and such medical care as hormone therapy and surgery to align the physical body with the internal sense of self as male or female. Once transgender people are able to express their gender identity, they are able to go on to lead happy, fulfilled lives. As a result, some people oppose the classification of transgender identity as a disorder, while others recognize the advantages of having explicit standards of health care for transgender individuals. All concur, however, that transgender youth need to be supported, affirmed and safe and free to express their identities.

BE AWARE OF HEALTH CARE PROTOCOLS FOR TRANSGENDER INDIVIDUALS.

The World Professional Association for Transgender Health (www.wpath.org) has developed internationally recognized protocols for diagnosing and treating youth and adults with GID. These protocols recommend that transgender young people gain real-life experience through dressing in the clothes and using names and pronouns associated with their gender identity. Young people age 16 years and older are seen as candidates for an individualized assessment for medical treatment to enable them to begin their physiological transition.

FOSTERING TRANSITIONS

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ALLOW TRANSGENDER YOUTH TO EXPRESS THEIR GENDER IDENTITY.

Allow transgender youth to express their gender identity through their chosen attire, hairstyles, names, mannerisms and other physical presentations without punishment or ridicule. Don't assume that transgender youth are "acting out" when they express their gender identity. The clothing and personal

HEALTH CARE PROVIDERS.

Advocate for transgender youth to receive competent and affirming mental health and medical services, including access to monitored use of hormones if deemed medically appropriate. When youth don't have access to the health care services they need, they may resort to buying hormones from the streets without a doctor's supervision. This can lead to serious medical

“ My main concern with the social service system is the lack of understanding of transgender issues. As a transgender woman, my experiences and needs are different from gay and lesbian youth in care. ”

–Youth in Care

style that an individual chooses are important aspects of self-expression. Support transgender youth in these choices and challenge restrictive policies that may not allow such freedom.

TREAT INFORMATION ABOUT A YOUTH'S GENDER IDENTITY AS CONFIDENTIAL TO ENSURE PRIVACY.

Child welfare professionals have a legal responsibility to protect confidential information regarding youth in their care. This includes information about a youth's gender identity. At times, disclosure to foster parents, school faculty or other child welfare

injury. Transgender youth may also engage in dangerous or illegal behaviors to pay for these services.

In their official position statement affirming access to appropriate medical care for transgender people, the American Psychological Association states, "Significant and long-standing medical and psychiatric literature exists that demonstrates clear benefits of medical and surgical interventions to assist gender variant individuals seeking transition."¹

“ The child welfare system needs to respect the maturity of transgender young people and the decisions they make. ”

–Youth in Care

professionals may be necessary, such as when making decisions about a youth's housing, bathroom use, showering or health and mental health services. However, such disclosure should not be made without first obtaining the youth's permission.

USE YOUNG PEOPLE'S PREFERRED NAMES AND PRONOUNS.

Respect transgender young people's preferred names and gendered pronouns that best reflect their sense of self as female or male. By doing so, you validate their identity and sense of self-worth. If you're unsure which pronoun an individual youth prefers, ask sensitively rather than simply making assumptions.

PROTECT TRANSGENDER YOUTH FROM PHYSICAL AND EMOTIONAL ABUSE.

Transgender youth are often at increased risk for abuse and violence by adults or other youth. Be clear that transphobic language, bias and bullying will not be tolerated, and respond to such behavior with swift and appropriate consequences. Model accepting and affirming behavior for all youth in your care.

ENSURE THAT TRANSGENDER YOUTH HAVE ACCESS TO TRAINED AND AFFIRMING MEDICAL AND MENTAL

MAKE ROOM ASSIGNMENTS AND HOUSING DECISIONS BASED ON THE WELL-BEING OF INDIVIDUAL YOUTH.

In sex-segregated facilities, don't assign transgender youth to the girls' or boys' units strictly based on the sex assigned to them at birth. Instead, make individualized decisions based on the physical and mental well-being of the youth, their level of comfort and safety, the degree of privacy afforded, the types of housing available and the recommendations of qualified mental health professionals. The safety of transgender youth should be protected without resorting to isolating or segregating them from the general population. However, single occupancy rooms, if available, may be an acceptable alternative for transgender youth in sex-segregated facilities.

PROVIDE TRANSGENDER AND GENDER-NONCONFORMING YOUTH WITH PRIVACY, SAFETY AND RESPECT.

Be prepared to make accommodations for transgender youth

¹ Jack Drescher & Ellen Haller, APA Caucus of Lesbian, Gay & Bisexual Psychiatrists, *Position Statement on Access to Care for Transgender and Gender Variant Individuals* (2012), available at www.psychiatry.org/advocacy--news-room/position-statements/apa-position-statements.

regarding bathroom use and showering. In these situations, the comfort and physical safety of the youth must remain an utmost priority. Allow transgender youth to shower in privacy, at a time set apart from other youth, and to use the bathroom that corresponds with their gender identity. If this option makes youth feel unsafe, they should be given access to a private, single-user bathroom.

ENSURE THAT TRANSGENDER YOUTH ARE SAFE IN THEIR PLACEMENTS AND SCHOOLS.

Identify and monitor appropriate placements for transgender youth that ensure their safety and provide support. Educate others involved in the placement, including child welfare professionals, other youth and foster parents, to create an environment that is accepting and respectful of transgender

and part of a misunderstood minority, transgender young people can find a sense of family and belonging from mentors and community role models.

LOCATE AND DEVELOP RESOURCES TO HELP TRANSGENDER YOUNG PEOPLE WITH UNIQUE LEGAL ISSUES.

Transgender young people may need assistance and advocacy to obtain proper legal identity documents like birth certificates, state identification cards and driver licenses that reflect the gender with which they identify. They may also need help to obtain legal name changes. Child welfare systems have the responsibility to locate and help develop these resources for transgender young people in their care.

“ Adolescents may be eligible for puberty-suppressing hormones as soon as pubertal changes have begun... Adolescents may be eligible to begin feminizing/masculinizing hormone, preferably with parental consent. ”

—Standards of Care, World Professional Association for Transgender Health

youth. In situations where sleeping arrangements are dictated by gender, create an individualized housing plan that takes into account the youth's wishes as well as their physical and mental well-being.

Transgender youth often face serious safety challenges at school. It is important that transgender youth be placed in schools that will affirm their gender identities. Be prepared to advocate on behalf of transgender youth to ensure that their gender identities are respected. Work with school staff to address use of names and pronouns, clothing and grooming options, bathroom and locker room use and other accommodations.

AVOID ASSUMPTIONS ABOUT TRANSGENDER YOUNG PEOPLE'S SEXUAL ORIENTATION.

Sexual orientation is separate and different from gender identity. Transgender young people may identify as heterosexual, gay, lesbian, bisexual or something else. Learn to differentiate between sexual orientation and gender identity and to comfortably use relevant terminology. Understand that sexual orientation and gender identity are aspects of a person's core understanding of themselves.

PROVIDE TRANSGENDER-FRIENDLY ROLE MODELS AND MENTORS.

Transgender youth, like all youth, need connections to adult role models and mentors. For transgender young people in out-of-home care systems, these positive connections can be harder to find but are nonetheless crucial for their healthy development. Frequently cut off from their families of origin,

PROVIDE SUPPORT IN FINDING EMPLOYMENT.

Transgender youth face especially steep barriers to employment. Finding employment is even more complicated for those transgender youth whose identity documents do not match their chosen names and gender expression. Without adequate educational and job training opportunities, they're at a further disadvantage. Transgender young people aging out of child welfare systems can be left with few options other than to engage in illegal and harmful activities in order to survive. Meaningful opportunities should be offered to transgender young people for education, job training and legal employment.

FURTHER READING:

Lambda Legal, *Transgender Rights Tool Kit: A Legal Guide for Trans People and Their Advocates* (2011), available at www.lambdalegal.org/publications/trans-toolkit.

Lambda Legal & Nat'l Youth Advocacy Coal., *Bending the Mold: An Action Kit for Transgender Students* (2009), available at www.lambdalegal.org/publications/bending-the-mold.

Jody Marksamer, Dean Spade & Gabriel Arkles, Nat'l Ctr. for Lesbian Rights & Sylvia Rivera Law Project, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Nonconforming Youth* (2011), available at www.nclrights.org/site/DocServer/A_Place_Of_Respect.pdf?docID=8301.

RESOURCES FOR TRANSGENDER YOUTH:

LAMBDA LEGAL

www.lambdalegal.org/issues/transgender-rights
120 Wall Street, 19th Floor
New York, NY 10005
Phone: 212-809-8585
Email: cwla.lambda.network@lambdalegal.org

GAY & LESBIAN MEDICAL ASSOCIATION

www.glma.org
1326 18th Street NW, Suite 22
Washington, DC 20036
Phone: 202-600-8037
Email: info@glma.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY

www.transequality.org
1325 Massachusetts Avenue NW, Suite 700
Washington, DC 20005
Phone: 202-903-0112
Email: ncte@transequality.org

THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

www.wpath.org
1300 South Second Street, Suite 180
Minneapolis, MN 55104
Phone: 612-624-9397
Email: www.wpath.org

SYLVIA RIVERA LAW PROJECT

www.srlp.org
147 W. 24th Street, 5th Floor
New York, NY 10011
Phone: 212-337-8550
Toll-Free: 1-866-930-3283
Email: info@srlp.org

RENAISSANCE EDUCATION ASSOCIATION

www.ren.org
987 Old Eagle School Road
Suite 719
Wayne, PA 19087
Phone: 610-636-1990
Email: info@ren.org

“NASW recognizes that there is considerable diversity in gender expression and identity among our population and believes that people of diverse gender—including those sometimes called ‘transgender’—should be afforded the same respect and rights as any other person... A nonjudgmental attitude toward gender diversity enables social workers to provide maximum support and services to those whose gender departs from the expected norm. ”

—Social Work Speaks Abstract, National Association of Social Workers



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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Keeping LGBTQ Youth Safe in Juvenile Justice & Delinquency Placements

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

ACKNOWLEDGE THEIR EXISTENCE.

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

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

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

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

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

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

SEEK ALTERNATIVES TO DETENTION OF LGBTQ YOUTH.

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

SEEK OUT SAFE, AFFIRMING PLACEMENTS.

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

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

2 *See id.*

3 *Id.* at 97.

FOSTERING TRANSITIONS

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PROTECT THE RIGHT OF LGBTQ YOUTH TO SAFETY.

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

ENSURE FREEDOM FROM UNREASONABLY RESTRICTIVE CONDITIONS OF CONFINEMENT.

Unlike adult inmates, young people in the custody of the juvenile justice system have not been "convicted" of crimes. They are entitled to services intended to rehabilitate—not punish—they. The public policy and legislative intent behind the juvenile justice and delinquency systems are to provide services to help a youth adjudicated as a delinquent to become a productive member of society. While some restrictions on the freedom of young people within these institutions are necessary for safety purposes, these restrictions must be "reasonably related" to a legitimate government interest. If not, they are inappropriate punishment. LGBTQ young people in these systems shouldn't be subjected to conditions amounting to punishment or be stigmatized or humiliated as part of their treatment.

Searches may be necessary to maintain the safety of youth in juvenile justice settings, but for transgender youth they can invoke undue distress. In situations where it is necessary to conduct a search on a transgender youth, ensure that the search is conducted by a staff member with whom the youth feels comfortable, and that it is done in private. Under no circumstances should a search ever be used as an opportunity to determine a youth's genital status.

PROVIDE APPROPRIATE SERVICES.

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

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

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

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

comprehensive sexual health education. For more information, visit the web page for the Center for HIV Law and Policy at www.hivlawandpolicy.org/public/teensense.

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

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

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

DON'T ASSUME LGBTQ YOUTH ARE POTENTIAL SEX OFFENDERS.

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

PROVIDE A SOUND CLASSIFICATION SYSTEM.

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

NEVER UNNECESSARILY ISOLATE LGBTQ YOUTH FROM THE GENERAL POPULATION.

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

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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Working with Homeless LGBTQ Youth

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth become homeless at alarming rates. Many LGBTQ youth feel compelled to run away from their families or child welfare placements after their physical and emotional safety is jeopardized. Others are thrown out of their homes with nowhere to go but the streets. Still others have aged out of the child welfare system, unprepared to support themselves and without a permanent place to live. If out-of-home systems of care are not safe and appropriate for LGBTQ youth, these young people attempt to forge a life on the streets rather than seek services and supports from these systems.

UNDERSTAND HOW HOMELESS AND RUNAWAY YOUTH SHELTERS ARE FAILING LGBTQ YOUTH.

Between 20% and 40% of all homeless youth in the United States identify as LGBT.¹ Frequently rejected by their families or fleeing abusive long-term placements, these youth are too often misunderstood and mistreated by the staff and other residents at temporary shelters. Harassment, assault and even rape within these facilities are common experiences. The data is sobering: half of a sampling of lesbian and gay youth who had been in out-of-home care reported that they had spent periods of time living on the streets in preference to the hostile environments they had found in these settings.²

DEVELOP AN UNDERSTANDING OF THE RISKS FACED BY HOMELESS LGBTQ YOUTH.

Being homeless imperils a young person's physical and emotional security. According to a 2002 study by the University of Washington, LGBTQ homeless youth are physically or sexually victimized by an average of seven more people than non-LGBTQ homeless youth.³ With nowhere

to go and no means of support, some may be forced to engage in survival behaviors that place them at significantly higher risk for mental health problems, substance abuse and exposure to sexually transmitted infections. Some of these survival behaviors, such as sex work, are illegal, leading many LGBTQ homeless youth to encounters with the juvenile justice and delinquency systems. It's important that child welfare and shelter care services acknowledge these risks and prevent young people from feeling as though they have no other choice but to take them.

PROVIDE SAFE AND SUPPORTIVE CHILD WELFARE SERVICES TO YOUTH THROWN OUT OF OR FLEEING ABUSIVE FAMILIES.

Many LGBTQ homeless and runaway youth experience abuse and rejection by their families because of their sexual orientation or gender identity, and many seek assistance from police and child welfare systems. Unfortunately, these youth may be turned away due to a lack of sensitivity about the serious issues they are facing. Some are even forced by social workers and police officers to return home to unsafe environments. If placed in care, many find that they are not safe in their placements. A 2006 study found that 65% of 400 homeless LGBTQ youth reported having been in a child welfare placement in the past.⁴ The large number of homeless LGBTQ youth reflects the fact that the child welfare system is failing these young people.

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1 Nicholas Ray, Nat'l Gay & Lesbian Task Force Policy Inst. & Nat'l Coal. for the Homeless, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), available at www.thetaskforce.org/downloads/HomelessYouth.pdf.

2 Gerald P. Mallon, *We Don't Exactly Get the Welcome Wagon: The Experience of Gay and Lesbian Adolescents in Child Welfare Systems* (1998).

3 Bryan N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 Am. J. Pub. Health 773 (2002).

4 Heather M. Berberet, *Putting the Pieces Together for Queer Youth*, 85 Child Welfare 261 (2006).

ENSURE THE SAFETY OF LGBTQ YOUTH IN HOMELESS SHELTERS AND CHILD WELFARE FACILITIES.

Given the number of LGBTQ youth cycling between the child welfare and shelter systems of care, it's critically important that all shelters and child welfare facilities take immediate steps to ensure the safety of these young people. Every agency providing shelter care and services should adopt and enforce LGBTQ-inclusive nondiscrimination policies, provide training on LGBTQ issues for all staff and display visible signs of support for LGBTQ people. It's crucial to send a clear message throughout each facility that anti-LGBTQ harassment and discrimination will not be tolerated.

RESPOND TO THE SPECIAL NEEDS OF HOMELESS TRANSGENDER YOUTH.

Transgender homeless youth often are especially unsafe at shelters that require them to be assigned to beds according to their sex assigned at birth and not their gender identity. These insensitive shelter policies may cause a transgender youth who identifies as female to be placed in a male facility, where she is at increased risk of abuse and rape. Furthermore, sex-segregated bathrooms, locker rooms and dressing areas within these facilities are often inappropriate and unsafe for transgender youth. When making decisions with transgender youth regarding sleeping or bathroom and shower use, staff must take into account the physical and mental well-being of the youth as well as the youth's own wishes.

As is the case with lesbian, gay, bisexual and questioning youth, transgender youth who are unsafe in shelters are more likely to run away. On the streets they frequently find a thriving, oftentimes dangerous, black market for hormones and other medical procedures they seek to align their physical bodies with their gender identities. Those providing care and services to homeless transgender youth should link these youth with appropriate medical service providers in their communities to reduce the risk that they will take their healthcare into their own hands on the streets.

MAKE APPROPRIATE, INDIVIDUALIZED CLASSIFICATION AND HOUSING DECISIONS.

Don't make housing decisions within homeless youth shelters based on myths and stereotypes about LGBTQ people. For example, never assume that all LGBTQ youth are more likely to engage in sexual behaviors than their heterosexual peers, or that they're all potential sex offenders. Conversely, don't unnecessarily isolate or segregate LGBTQ young people, or prohibit them from having roommates, as a means to ensure their safety. While this may be motivated by good intentions, it will only deprive LGBTQ youth of opportunities to interact with their peers and will compound their feelings of isolation. However, when making housing decisions for transgender youth, sometimes a single room for sleeping will be the most effective means to ensure safety.

CREATE COMMUNITY CONNECTIONS FOR HOMELESS LGBTQ YOUTH.

Help homeless LGBTQ youth to access community services and supportive adult mentors, and stand up for them if they encounter negative biases and discrimination. Develop an up-to-date list of LGBTQ resources in the community and distribute it to everyone in the agency, including to youth who may wish to contact community resources privately.

DISPLAY LGBTQ-SUPPORTIVE SIGNS AND SYMBOLS.

By displaying LGBTQ-supportive images such as pink triangles, rainbows or safe zone stickers, shelter care facilities send the clear message to all youth and staff that LGBTQ youth are welcomed and affirmed. LGBTQ youth are quick to pick up on these cues from their environment; it often makes an enormous difference just seeing them displayed. Lambda Legal's LGBTQ Youth in Out-of-Home Care poster is available in English and Spanish free of charge online at www.lambdalegal.org.

CONNECT WITH ADDITIONAL RESOURCES.

National Recommended Best Practices for Serving LGBT Homeless Youth, co-authored by the National Alliance to End Homelessness, Lambda Legal, the National Network for Youth and the National Center for Lesbian Rights (2009), offers agencies guidance to improve care for homeless LGBT youth. It can be downloaded at www.lambdalegal.org/issues/youth-in-out-of-home-care or ordered from Lambda Legal at 1-866-LGBTTeen (1-866-542-8336) (toll-free) or 212-809-8585.

The National Gay and Lesbian Task Force and the National Coalition for the Homeless have partnered to co-author two publications regarding LGBT homeless populations. Their initial report is entitled *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* (2003). Their follow-up report, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), looks at LGBT youth as a whole and explores the reasons why so many of these youth are homeless and the risks they face in shelters and on the street. Both publications are available at www.thetaskforce.org.

The National Alliance to End Homelessness (www.endhomelessness.org) offers resources and information about homelessness among LGBT youth, including *Supporting Homeless Transgender and Gender Non-Conforming Youth* (2012).

The particular challenges faced by transgender and gender-nonconforming youth in congregate care settings are examined in *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth* (Jody Marksamer, Dean Spade & Gabriel Arkles, Nat'l Ctr. for Lesbian Rights & Sylvia Rivera Law Project, available at www.nclrights.org/site/DocServer/A_Place_Of_Respect.pdf?docID=8301).



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Faith-Based Providers Working with LGBTQ Youth

Faith-based organizations and individuals motivated by their religious commitment have long played an important role in providing unbiased charitable and social services. Indeed, many religious communities welcome and affirm lesbian, gay, bisexual, transgender and questioning (LGBTQ) people, and many individuals are motivated by their religious faith to help LGBTQ youth in foster care. But the anti-LGBTQ beliefs of some religious traditions may create ideological barriers that undermine the professional obligation to create a supportive system of care for LGBTQ youth.

EXAMINE PERSONAL BELIEFS THAT MIGHT CONFLICT WITH PROFESSIONAL OBLIGATIONS TO LGBTQ YOUTH.

The child welfare system is responsible for providing all youth in care a safe living environment free from harassment, humiliation and abuse. An LGBTQ young person should never be placed in a setting where he or she will be subject to religious condemnation or indoctrination. Child welfare practitioners and foster parents should acknowledge and examine any anti-LGBTQ biases they might have. If these personal religious beliefs might prevent offering nonjudgmental care to an LGBTQ young person, the practitioner or foster parent should seek outside support and make alternative care arrangements. They must put the needs of young people above their own personal beliefs.

RESPECT FEDERAL AND STATE CONSTITUTIONAL PROHIBITIONS AGAINST RELIGIOUS DISCRIMINATION.

Faith-based agencies that receive government funds to provide social services or that care for children in state custody must adhere to the bedrock constitutional mandate of separation of church and state. This means that they cannot discriminate on the basis of religious

beliefs or engage in religious proselytizing against those who are LGBTQ. Many faith-based organizations have long provided important social services while respecting civil rights and the separation of church and state.

RESPECT THE RIGHT OF LGBTQ YOUTH NOT TO BE SUBJECTED TO RELIGIOUS INDOCTRINATION.

The First Amendment to the U.S. Constitution guarantees the right to religious freedom, which includes the right to be free from government-sponsored religious indoctrination and the freedom not to subscribe to a particular religion or set of religious beliefs. As agents of the state, it's imperative that foster parents and other child welfare professionals not impose their personal religious beliefs on children in their care. LGBTQ young people often feel forced to hide their identities from their foster parents and caregivers and to join religious organizations that condemn homosexuality. Young people in foster care should never feel as though they must choose between being open and supported in their sexual orientation or gender identity and feeling welcome in a particular placement.

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ENSURE THAT POLICIES AND PROTOCOLS ARE IN PLACE TO SUPPORT AND AFFIRM LGBTQ YOUTH.

Child welfare policy makers at faith-based agencies should issue clear written policies and guidelines that mandate nondiscrimination and equal treatment for all young people in care, regardless of sexual orientation or gender identity. Professional standards should be developed based on the needs of children and youth. These standards should also be incorporated into the licensing requirements for foster and group homes and enforced by all public and private licensing agents. Religious beliefs should never be used as justification for denying supportive services for LGBTQ youth in care.

MANDATE TRAINING ON LGBTQ ISSUES FOR CHILD WELFARE STAFF AND FOSTER PARENTS.

All caregivers should be prepared to deal appropriately with sexual orientation and gender identity issues and to provide a healthy living environment for youth in care. Training and education on sexual orientation and gender identity are critically important to meeting that goal. In order to dispel ignorance and misunderstanding, and to encourage adherence to existing professional best practice standards, information and guidance should be provided throughout the system.

If your agency or organization needs assistance organizing a training session, Lambda Legal can help. In 2009, Lambda Legal partnered with the National Association of Social Workers (NASW) on a Train-the-Trainer initiative designed to build the capacity, awareness and skills of out-of-home care professionals serving LGBTQ youth in foster care, juvenile justice centers and homeless shelters. Master Trainers are available to facilitate trainings throughout the country. To find Master Trainers in your area or to order copies of the NASW-Lambda Legal curriculum entitled *Moving the Margins: Training Curriculum for Child Welfare Services with LGBTQ Youth in Out-of-Home Care*, by Diane Elze, Robin McHaelen, Nat'l Ass'n Soc. Workers & Lambda Legal (2009), contact Lambda Legal at 1-866-LGBTTeen (1-866-542-8336) (toll-free) or 212-809-8585, or download it for free at www.lambdalegal.org/publications/moving-the-margins.

CONSIDER THE RELIGIOUS BELIEFS OF A PROSPECTIVE CAREGIVER FOR AN LGBTQ YOUTH.

Prior to placing an LGBTQ youth, child welfare practitioners should consider whether the religious beliefs of a prospective caregiver or foster or adoptive family are not in the child's best interests. Foster families may need guidance to understand the line between their obligations as caregivers and their personal religious beliefs. Where there are strong religious beliefs against LGBT people, practitioners should assess whether conflicts may arise as a result, and whether the physical or emotional safety of an LGBTQ young person may be jeopardized in that home.

FACILITATE DIALOGUE AND UNDERSTANDING ABOUT LGBTQ ISSUES.

Child welfare policy makers should facilitate dialogue on LGBTQ issues between and among faith-based and secular child welfare service providers. By encouraging networking and other opportunities to share experiences and resources, faith-based agencies can better support one another to create more accepting and affirming systems of care. Churches and other faith-based organizations can serve as role models and mentors for agencies and individual caregivers struggling with bridging the gap between religious beliefs and professional standards of care.

“ After coming out to one of my foster families, I was told I was going to hell and forced to go to church with them. I became very closeted after that and didn't tell any other foster families I was a lesbian. I was in 22 different homes; many of them were very religious. ”

—Youth in Care



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Basic LGBTQ Policies, Training & Services for Child Welfare Agencies

There is a dire need for child welfare agencies nationwide to take remedial steps throughout their programs, policies, training and services to improve the quality of care provided to lesbian, gay, bisexual, transgender and questioning (LGBTQ) clients. Agencies providing child welfare services should acknowledge that LGBTQ youth are in their midst and should implement basic yet vital reforms. These specific reforms can help remedy LGBTQ invisibility, prevent abuse and improve care for these vulnerable young people.

ADOPT NONDISCRIMINATION POLICIES AND ENFORCE THEM.

Adopt explicit written policies prohibiting discrimination based on the actual or perceived sexual orientation, gender identity or HIV status of youth, foster and adoptive parents and other household members and child welfare staff. This should include a prohibition on all forms of harassment and discrimination, from name-calling and slurs to physical violence. Incorporate these policies in agency manuals, post them prominently, distribute them to all staff and youth in the system and require that contracting agencies adhere to them as well. Every agency should offer a formal grievance procedure for confidential complaints and provide prompt neutral third-party investigations.

PROVIDE MANDATORY TRAINING FOR STAFF AND FOSTER AND ADOPTIVE PARENTS.

Require mandatory training for staff and foster and adoptive parents on the following topics:

- State and agency nondiscrimination policies regarding sexual orientation, gender identity and HIV status;

- Sensitivity to sexual orientation and gender identity;
- Supporting youth coming out as LGBTQ; and
- Educating LGBTQ youth about their sexuality and sexual health, including prevention of HIV and other sexually transmitted diseases.

In 2009, Lambda Legal and the National Association of Social Workers (NASW) trained 40 master trainers nationwide to teach out-of-home care service providers to work competently with LGBTQ youth. To find master trainers in your area or to order copies of the NASW-Lambda Legal training curriculum entitled *Moving the Margins: Training Curriculum for Child Welfare Services with LGBTQ Youth in Out-of-Home Care*, contact Lambda Legal at 1-866-LGBTTeen (1-866-542-8336) (toll-free) or 212-809-8585.

IDENTIFY AND TRAIN FOSTER PARENTS TO CARE FOR LGBTQ YOUTH.

Your agency should make diligent efforts to identify and train qualified foster and adoptive

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parents, including lesbian, gay, bisexual and transgender adults interested in caring for LGBTQ youth.

PROVIDE SAFE GROUP HOME PLACEMENTS.

Your agency should consider whether in the short term, the pressing needs of LGBTQ youth in group home settings would best be addressed by designating specific group facilities as safe havens for LGBTQ youth. It should, however, be a priority to make every group facility a safe, supportive environment for LGBTQ youth through strict enforcement of nondiscrimination policies, staff training, sensitivity education for non-LGBTQ residents and services and resources for LGBTQ youth.

ENSURE THE AVAILABILITY OF APPROPRIATE COUNSELING SERVICES.

Your agency should ensure that professional one-on-one and group counseling services are available for LGBTQ youth. Your agency should also adopt a strict policy against the use of so-called conversion or reparative therapies intended to alter a person's sexual orientation or gender identity.

IDENTIFY AND DISTRIBUTE RESOURCE LISTS AND COMMUNITY CONTACTS FOR AGENCY STAFF, FOSTER PARENTS AND LGBTQ YOUTH.

Your agency should compile and widely distribute LGBTQ resource guides that include community contacts, peer support groups, reading lists and materials, hotlines, LGBTQ advocates in the child welfare system and other resources. All youth in foster care should have direct, ready and confidential access to developmentally appropriate resources about LGBTQ issues.

PROVIDE MEANINGFUL, CONFIDENTIAL SEXUAL HEALTH EDUCATION AND SERVICES.

Provide youth with developmentally appropriate information and resources about sexuality and sexual health, including LGBTQ issues and prevention of HIV and other STIs. Adopt explicit written policies providing youth with access to free and confidential HIV testing without requiring the consent or notification of their legal guardians. Agency policy should mandate, not merely permit, all employees to maintain confidentiality of a youth's HIV status with disclosure on only a limited, need-to-know basis to provide for a youth's well-being.

CREATE A POSITIVE PHYSICAL ENVIRONMENT IN YOUR AGENCY THAT WELCOMES AND AFFIRMS LGBTQ PEOPLE.

Display recognizable signs and symbols, such as pink triangles and rainbow flags, to let all your clients know that your agency is a sensitive, safe and welcoming place for LGBTQ people. You can post Lambda Legal's LGBTQ Youth in Out-of-Home Care poster, included in this tool kit and available in

English and Spanish at www.lambdalegal.org, as a sign that your LGBTQ clients are safe to be open at your agency.

For sample LGBTQ policies adopted by child welfare agencies, contact Lambda Legal at 212-809-8585 or toll-free at 1-866-LGBTTeen (1-866-542-8336).

ADDITIONAL RESOURCES

Child Welfare League of Am., Am. Bar Ass'n Ctr. on Children & the Law: *Opening Doors for LGBTQ Youth in Foster Care Project*, Diane E. Elze, Family Acceptance Project, Lambda Legal, Legal Servs. for Children, Gerald P. Mallon, Robin McHaelen, Nat'l Alliance to End Homelessness, Nat'l Ctr. for Lesbian Rights, Nat'l Ctr. for Transgender Equality, Nat'l Network for Youth & Sylvia Rivera Law Project, *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), available at www.lambdalegal.org/publications/recommended-practices-youth.

“ Agency directors need to take a visible stand, implement real change, ban discrimination, and hold staff accountable for discriminatory treatment. ”

– Youth in Care

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), available at www.lambdalegal.org/publications/moving-the-margins.

Gay, Lesbian & Straight Education Network & Nat'l Ctr. for Transgender Equal., *Model District Policy on Transgender and Gender Nonconforming Students* (2011), available at www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1977-1.pdf.

Jody Marksamer, Dean Spade & Gabriel Arkles, Nat'l Ctr. for Lesbian Rights & Sylvia Rivera Law Project, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Nonconforming Youth* (2011), available at www.nclrights.org/site/DocServer/A_Place_Of_Respect.pdf.

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

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Recommendations for Training & Education on LGBTQ Issues

Education and training on lesbian, gay, bisexual, transgender and questioning (LGBTQ) issues are vital to ensuring that child welfare systems provide safe and appropriate care to LGBTQ young people. Everyone working or living in the system, from administrators, agency staff, caseworkers and foster parents to young people in care, should understand that LGBTQ people are entitled to safety and respect. The following recommendations and resources are intended to offer guidance in creating competent training and education programs based upon existing professional standards.

TRAINING ON LGBTQ ISSUES SHOULD BE MANDATORY, COMPREHENSIVE AND ONGOING.

It should be made clear to all child welfare professionals and caregivers that negative behaviors and attitudes toward LGBTQ people cannot be tolerated. Training and education on LGBTQ issues should be integrated into the pre-service and in-service training provided to child welfare professionals and foster and adoptive parents and should be mandatory for everyone working in the system. This training should address the full range of issues relevant to sexual orientation and gender identity and be provided on an ongoing basis. Educational materials on LGBTQ issues, including books and films, should be available at every child welfare agency for staff, caretakers and young people.

VALUES CLARIFICATION EXERCISES INCREASE SENSITIVITY TO LGBTQ PEOPLE.

A first step in working effectively with LGBTQ youth is to acknowledge one's own misconceptions and negative stereotypes. Training participants should assess their own personal beliefs and biases regarding sexuality and gender. By addressing these deeply held beliefs in a supportive environment, training participants are able to explore the cultural, religious and personal sources of their values. The purpose of values clarification exercises is not to alienate or ostracize those participants with negative beliefs, but to confront the ways in which one's values and beliefs can create obstacles toward providing competent care to

LGBTQ clients. Training on LGBTQ issues should emphasize the distinction between one's personal opinions and the professional responsibility to provide safe, affirming and supportive care.

SKILL BUILDING SHOULD BE A CORE PART OF TRAINING ON LGBTQ ISSUES.

Essential professional skills should be cultivated through training on LGBTQ issues. For example, training should impart information and guidance on supporting a young person coming out as LGBTQ. It should offer advice for identifying the warning signs that a young person may be experiencing anti-LGBTQ mistreatment and strategies for intervening on behalf of victims. Training should be provided on the existence and enforcement of LGBTQ-inclusive nondiscrimination laws and policies. It should include the definitions and appropriate contexts for the terms used to describe and talk about LGBTQ people and issues. It should explain the difference between sexual orientation and gender identity. The use of respectful language should be emphasized. Training participants should also be encouraged to examine how subtle cues may impart to an LGBTQ youth that a person is sensitive or hostile. For example, training should include such practical tips as asking a young person if they are "seeing anyone" rather than whether they have a "boyfriend" or "girlfriend." Child welfare professionals and caregivers should be provided with recommendations for creating a welcoming and supportive environment for

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LGBTQ people, such as by displaying LGBTQ-friendly posters and signs.

ADDITIONAL TRAINING RESOURCES

Trainers, model curricula and other educational resources addressing LGBTQ issues are available around the country. Several training resources are listed below. Contact Lambda Legal for additional information and support.

- ***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***, Child Welfare League of Am., Am. Bar Ass'n Ctr. on Children & the Law: Opening Doors for LGBTQ Youth in Foster Care Project, Diane E. Elze, Family Acceptance Project, Lambda Legal, Legal Servs. for Children, Gerald P. Mallon, Robin McHaelen, Nat'l Alliance to End Homelessness, Nat'l Ctr. for Lesbian Rights, Nat'l Ctr. for Transgender Equality, Nat'l Network for Youth & Sylvia Rivera Law Project (2012), *available at* www.lambdalegal.org/publications/recommended-practices-youth.¹
- ***A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth***, Jody Marksamer, Dean Spade & Gabriel Arkles, Nat'l Ctr. for Lesbian Rights & Sylvia Rivera Law Project (2011), *available at* www.nclrights.org/site/DocServer/A_Place_Of_Respect.pdf?docID=8301.²
- ***Moving the Margins: Curriculum for Child Welfare Services with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Out-of-Home Care***, Diane Elze & Robin McHaelen, Nat'l Ass'n of Soc. Workers & Lambda Legal (2009), *available at* www.lambdalegal.org/publications/moving-the-margins.³

Master Trainers are available to facilitate trainings throughout the country. To find Master Trainers in your area or to order copies of the NASW-Lambda Legal curriculum, contact Lambda Legal at 1-866-LGBTeen (1-866-542-8336) (toll-free) or 212-809-8585.

1 In 2012, the Child Welfare League of America (CWLA) and a coalition of child welfare advocates and experts joined forces to issue this publication, which offers guidance to state and local child welfare agencies to ensure safe, appropriate care in the best interests of LGBTQ children in the child welfare system.

2 In 2011, the National Center for Lesbian Rights teamed up with the Sylvia Rivera Law Project to author a report providing comprehensive guidance about the treatment of transgender and gender-nonconforming youth in group care facilities, including detention centers, correctional facilities and group homes. The report also provides model policies and a framework for staff to ensure that all youth are given a safe and healthy living environment.

3 In 2009, Lambda Legal partnered with the National Association of Social Workers (NASW) on a Train-the-Trainer initiative designed to build the capacity, awareness and skills of out-of-home care professionals serving LGBTQ youth in foster care, juvenile justice centers and homeless shelters.

- ***National Recommended Best Practices for Serving LGBT Homeless Youth***, Nat'l Alliance to End Homelessness, Lambda Legal, Nat'l Network for Youth & Nat'l Ctr. for Lesbian Rights (2009), *available at* www.lambdalegal.org/publications/national-recommended-best-practices-for-lgbt-homeless-youth.⁴
- ***Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Care***, Child Welfare League of Am. & Lambda Legal (2006), *available at* www.lambdalegal.org/publications/out-of-the-margins.⁵
- ***Breaking the Silence: LGBT Foster Youth Tell Their Stories*** (Nat'l Ctr. for Lesbian Rights DVD & Resource CD 2006).⁶
- ***CWLA Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care***, Shannan Wilber, Caitlin Ryan & Jody Marksamer (2006).⁷
- **The Family Acceptance Project™** is the only community research, intervention, education and policy initiative that works to decrease major health and related risks for LGBT youth, such as suicide, substance abuse, HIV and homelessness—in the context of their families. For more information visit <http://familyproject.sfsu.edu>.

4 This policy brief provides an overview of homelessness among LGBT youth and gives direction to agencies and not-for-profit organizations to increase their competency in working with these youth. The recommendations include specific guidance on improving practice, organizational culture and residential services.

5 Between September 2003 and December 2004, CWLA and Lambda Legal organized Listening Forums in 13 cities around the country for LGBTQ youth in care and the adults who work with them, to share their experiences and identify strategies for bringing about lasting positive change in the child welfare system for LGBTQ people.

6 *Breaking the Silence* is a training DVD that features 10 short autobiographical stories from LGBTQ former foster youth who speak about their experiences in care and what they think child welfare advocates and service providers can do to better support LGBTQ youth in care. It includes a CD containing over 25 additional training tools and resources. It is available free of charge at www.nclrights.org.

7 The *Best Practice Guidelines* provide direction to agencies responsible for LGBTQ youth in out-of-home care, including the topics that should be covered in training and education for agency personnel and caregivers on LGBT issues. It can be purchased at www.cwla.org.

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What the Experts Say: Position & Policy Statements on LGBTQ Issues from Leading Professional Associations

The overwhelming consensus among the country's leading and most respected child welfare, social service, behavioral and medical health, and legal organizations is that lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth and adults deserve respect and support from professional service providers. The following policies and position statements are based upon decades of peer-reviewed and published research and subject matter expertise. The child welfare community, which includes representatives from all of these organizations, should reflect the shared professional opinion that mistreatment of LGBTQ individuals is unacceptable, and should adhere to best practice standards.

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

"There is no credible evidence that shows that a parent's sexual orientation or gender identity will adversely affect the development of the child. [LGBT] individuals historically have faced more rigorous scrutiny than heterosexual people regarding their rights to be or become parents. The American Academy of Child & Adolescent Psychiatry opposes any discrimination based on sexual orientation or gender identity against individuals in regard to their rights as custodial, foster, or adoptive parents."

Am. Acad. Child & Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised 2009), available at www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement.

AMERICAN ACADEMY OF FAMILY PHYSICIANS

"The AAFP opposes all discrimination in any form, including but not limited to, that on the basis of actual or perceived...sexual orientation [or] gender identity."

Am. Acad. of Family Physicians, *AAFP Policy Statements: Discrimination, Patient* (1996, 2010

COD), available at www.aafp.org/online/en/home/policy/policies/d/discrimination.html.

"Family physicians are in an ideal position to be aware that their adolescent patients may be dealing with issues of sexual identity or orientation that impact their psychosocial and physical health. Asking open questions about sexual identity and orientation can open a dialogue on family relationships, safe sexual practices, suicide risks and other issues confronting gay, lesbian, bisexual, transgendered and questioning adolescents in a sensitive and accepting atmosphere."

Am. Acad. of Family Physicians, *AAFP Policy Statements: Adolescent Healthcare, Sexuality and Contraception* (1987, 2011 COD), available at www.aafp.org/online/en/home/policy/policies/a/adol3.html.

AMERICAN ACADEMY OF PEDIATRICS

"The AAP reaffirms the physician's responsibility to provide comprehensive health care and guidance in a safe and supportive environment for all adolescents, including nonheterosexual adolescents and young people struggling with issues of sexual orientation."

Barbara M. Frankowski & Committee on Adolescence, Am. Acad. of Pediatrics,

FOSTERING TRANSITIONS

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Sexual Orientation and Adolescents, 113 Pediatrics 1827 (2004), available at <http://pediatrics.aappublications.org/content/113/6/1827.full>.

AMERICAN BAR ASSOCIATION

“Every child deserves a permanent home and all the love and care that good parents can provide. Prospective foster and adoptive parents should be evaluated on the basis of their individual character and ability to parent, not on their sexual orientation, and courts should grant adoptions when they are determined to be in the child’s best interest.”

Am. Bar Ass’n, *Recommendation* (adopted by the House of Delegates Feb. 13, 2006), available at www.abanet.org/leadership/2006/midyear/daily_journal/102.doc.

AMERICAN COUNSELING ASSOCIATION

“The American Counseling Association strongly encourages counselors to actively participate in the elimination of all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services in their practice, research, education and training.”

Am. Counseling Ass’n, *AGLBIC Resolution* (2005), available at www.counseling.org/PressRoom/NewsReleases.aspx?AGuid=244405dc-044e-46ae-aeac-60ca1c8bd6dc.

“The belief that same-sex attraction and behavior is abnormal and in need of treatment is in opposition to the position taken by national mental health organizations, including ACA... The Committee members agree that counselors who offer conversion therapy are providing ‘treatment that has no empirical or scientific foundation[.]’”

Joy S. Whitman, et al. *Ethical Issues Related to Conversion or Reparative Therapy* (2006), available at www.counseling.org/PressRoom/NewsReleases.aspx?AGuid=b68aba97-2f08-40c2-a400-0630765f72f4.

AMERICAN MEDICAL ASSOCIATION

“The AMA reaffirms its long-standing policy that there is no basis for the denial to any human being of equal rights, privileges, and responsibilities commensurate with his or her individual capabilities and ethical character because of an individual’s sex, sexual orientation, gender, gender identity, or transgender status[.]”

Am. Medical Ass’n, *AMA Policies on GLBT Issues, General Policy H-65.990, Civil Rights Restoration* (2005), available at www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page.

“AMA...opposes the use of ‘reparative’ or ‘conversion’ therapy that is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that the patient should change his/her homosexual orientation.”

Am. Med. Ass’n, *AMA Policies on GLBT Issues, Patient-Centered Policy H-160.991, Health Care Needs of the Homosexual Population* (2005), available at www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page.

“AMA support[s] public and private health insurance coverage for treatment of gender identity disorder as recommended by the patient’s physician.”

Am. Medical Ass’n, *AMA Policies on GLBT Issues, Patient-Centered Policy H-185.950, Removing Financial Barriers to Care for Transgender Patients* (2008), available at www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page.

AMERICAN PSYCHIATRIC ASSOCIATION

“APA affirms its 1973 position that homosexuality per se is not a diagnosable mental disorder. Recent publicized efforts to repathologize homosexuality by claiming that it can be cured are often guided not by rigorous scientific or psychiatric research, but sometimes by religious and political forces opposed to full civil rights for gay men and lesbians... In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, APA recommends that ethical practitioners refrain from attempts to change individuals’ sexual orientation, keeping in mind the medical dictum to First, do no harm.”

Am. Psychiatric Ass’n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies): SUPPLEMENT* (2000), available at www.psych.org/advocacy--newsroom/position-statements.

“[T]he American Psychiatric Association...[s]upports laws that protect the civil rights of transgender and gender variant individuals...[u]rges the repeal of laws and policies that discriminate against transgender and gender variant individuals...[o]pposes all public and private discrimination against transgender and gender variant individuals in such areas as health care, employment, housing, public accommodation, education, and licensing...[and] [d]eclares that no burden of proof of such judgment, capacity, or reliability shall be placed upon these individuals greater than that imposed on any other persons.”

Jack Drescher & Ellen Haller, APA Caucus of Lesbian, Gay & Bisexual Psychiatrists, Am. Psychiatric Ass’n, *Position Statement on Discrimination Against Transgender*

and *Gender Variant Individuals* (2012), available at www.psychiatry.org/advocacy--newsroom/position-statements/apa-position-statements.

AMERICAN PSYCHOANALYTIC ASSOCIATION

“The American Psychoanalytic Association affirms the right of all people to their sexual orientation, gender identity and gender expression without interference or coercive interventions attempting to change sexual orientation, gender identity or gender expression... Psychoanalytic technique does not encompass purposeful attempts to ‘convert,’ ‘repair,’ change or shift an individual’s sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.”

Am. Psychoanalytic Ass’n, *Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at www.apsa.org/About_APsaA/Position_Statements/Attempts_to_Change_Sexual_Orientation.aspx.

AMERICAN PSYCHOLOGICAL ASSOCIATION

“APA has a long-established policy to deplore ‘all public and private discrimination against gay men and lesbians’ and urges ‘the repeal of all discriminatory legislation against lesbians and gay men’... [T]here is no scientific evidence that parenting effectiveness is related to parental sexual orientation: lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children... [T]he APA opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services.”

Am. Psychological Ass’n, *Sexual Orientation, Parents, & Children* (2004), available at <http://www.apa.org/about/policy/parenting.aspx> (internal citations omitted).

“[T]he American Psychological Association advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth[.]”

APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation* at 121 (2009), available at www.apa.org/pi/lgbt/resources/therapeutic-response.pdf.

CHILD WELFARE LEAGUE OF AMERICA

“Based on more than three decades of social science research and our 85 years of service to millions of families, CWLA believes that families with LGBTQ members deserve the same levels of support afforded other families. Any attempt to preclude or prevent gay, lesbian and bisexual individuals or couples from parenting, based solely on their sexual orientation, is not in the best interest of children.”

Child Welfare League of Am., *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults* (2007), available at www.cwla.org/programs/culture/glbtposition.htm.

“All applicants [for adoption] should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their...sexual orientation.”

“The family foster care agency should not reject foster parent applicants solely due to their...sexual orientation.”

Child Welfare League of Am., *Standards of Excellence in Adoption Issues* (2000), available at www.cwla.org/programs/culture/glbtpstandards.htm.

EVAN B. DONALDSON ADOPTION INSTITUTE

“Research shows that children fare as well with gay and lesbian parents as those raised by heterosexuals. [S]tudies on children dating back 25 years conclude that children raised by gay and lesbian non-adoptive parents fare as well as those reared by heterosexual parents.”

“All adults should be evaluated and licensed as foster parents based on their capacity to provide nurturing support for children in foster care, rather than on their sexual orientation. Foster families should be chosen based on their ability to meet individual children’s needs. State child welfare policy should explicitly prohibit the exclusion of foster parent applicants solely on the basis of sexual orientation.”

Evan B. Donaldson Adoption Inst., *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care* at 5, 6 (2008), available at www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf.

NATIONAL ADOPTION CENTER

“We believe that every child has the right to a loving, nurturing and permanent family. Therefore, it is the policy of the National Adoption Center that no person should be denied consideration in the adoption process solely based on...sexual orientation[.]”

Nat’l Adoption Ctr., *Our Policies for Providing a Free Adoption Service: Adoptive Parent Assessments* (2008), available at www.adopt.org/sembled/policies.html.

NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS

“[NASP] supports that all youth have equal opportunities to participate in and benefit from educational and mental health services within schools regardless of sexual orientation, gender identity, or gender expression. Harassment, lack of equal support, and other discriminatory practices toward lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth violate their rights to receive equal educational opportunities... education and advocacy must be used to reduce discrimination and harassment against LGBTQ youth[.]”

Nat'l Ass'n School Psychologists, *Lesbian, Gay, Bisexual, Transgender, and Questioning Youth (Position Statement)* (2011), available at www.nasponline.org/about_nasp/positionpapers/LGBTQ_Youth.pdf.

NATIONAL ASSOCIATION OF SOCIAL WORKERS

“NASW believes that same-gender sexual orientation should be afforded the same respect and rights as other-gender sexual orientation. NASW is committed to working toward the elimination of prejudice and discrimination based on sexual orientation, both inside and outside of the profession... NASW supports antidiscrimination legislation at the national, state, and local levels. NASW opposes laws that allow discrimination against lesbian, gay and bisexual people[.]”

Nat'l Ass'n Soc. Workers, *Social Work Speaks Abstracts: Lesbian, Gay and Bisexual Issues* (2012).

“NASW recognizes that there is considerable diversity in gender expression and identity among our population and believes that people of diverse gender—including those sometimes called ‘transgender’—should be afforded the same respect and rights as any other person. Discrimination and prejudice toward anyone are socially, emotionally, physically and economically damaging. A nonjudgmental attitude toward gender diversity enables social workers to provide maximum support and services to those whose gender departs from the expected norm. Social workers must encourage the development of supportive practice environments for those struggling with gender expression and identity issues, including both clients and colleagues.”

Nat'l Ass'n Soc. Workers, *Social Work Speaks Abstracts: Transgender and Gender Identity Issues* (2012).

NATIONAL FOSTER PARENT ASSOCIATION

“[T]he National Foster Parent Association acknowledges gay, lesbian, bisexual, transgender and questioning youth are present in the foster care system and encourages and supports establishment of standards, policies and training

programs for foster care providers and professionals based on non-discrimination principles and sensitivity to the sexual orientation of all foster children and youth.”

Nat'l Foster Parent Assoc., *NFPA Position Statements: 118.05 - Gay, Lesbian, Bisexual, Transgender & Questioning Youth* (2012), available at www.nfpaonline.org/Default.aspx?pageId=1020551.

NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN

“Children should not be denied a permanent family because of the sexual orientation of potential parents... NACAC believes children and youth in the foster care system who are... LGBTQ deserve loving and permanent families and should be afforded the same rights, services and protections as those who are heterosexual... Unfortunately, many LGBTQ youth are in care solely because of their family's reaction to their sexual orientation or gender identity... The prejudice, family rejection, and mistreatment experienced by LGBTQ youth—or those who are perceived to be LGBTQ—have a tremendous negative impact... NACAC strongly opposes the use of conversion or so-called reparation services that are designed to involuntarily change the sexual orientation of youth.”

North Am. Council on Adoptable Children, *LGBTQ Issues*, available at www.nacac.org/policy/lgbtq.html.

THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

“The overall goal of the [*Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*] is to provide clinical guidance for health professionals to assist transsexual, transgender, and gender nonconforming people with safe and effective pathways to achieving lasting personal comfort with their gendered selves, in order to maximize their overall health, psychological well-being, and self-fulfillment... Health is promoted through public policies and legal reforms that promote tolerance and equity for gender and sexual diversity and that eliminate prejudice, discrimination, and stigma. WPATH is committed to advocacy for these changes in public policies and legal reforms.”

World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, 7th Version* (2011), available at www.wpath.org/publications_standards.cfm.

Lambda Legal

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

Child Welfare League of America

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

Getting Down to Basics

Tools to Support LGBTQ Youth in Care

LGBTQ Youth Resources

A growing body of resources is available to assist the child welfare community to provide competent, supportive care to lesbian, gay, bisexual, transgender and questioning (LGBTQ) young people. The following resources offer support to LGBTQ youth and to the caregivers and professionals in their lives.

CWLA/LAMBDA LEGAL JOINT INITIATIVE: FOSTERING TRANSITIONS

In 2002, the Child Welfare League of America (CWLA) and Lambda Legal launched a historic partnership to change the way LGBTQ youth and adults are treated in the nation's child welfare systems. As leading national advocacy and education organizations, CWLA and Lambda Legal offer assistance on a variety of educational, legal and policy matters to better serve LGBTQ people in the child welfare and juvenile justice systems.

CHILD WELFARE LEAGUE OF AMERICA (CWLA)

www.cwla.org

CWLA is a powerful coalition of hundreds of private and public agencies serving vulnerable children and families. Their expertise, leadership and innovation on policies, programs and practices help improve the lives of millions of children in all 50 states, and their impact is felt worldwide. Their mission is to lead the nation in building public will to ensure safety, permanence, and well-being of children, youth and their families by advancing public policy, defining and promoting practice excellence and delivering superior membership services.

1726 M Street NW, Suite 500
Washington, DC 20036
Phone: 202-688-4200

LAMBDA LEGAL

www.lambdalegal.org

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

120 Wall St., 19th Floor, New York, NY 10005
Phone: 866-LGBTeen / 212-809-8585
Email: cwla.lambda.network@lambdalegal.org

NATIONAL ORGANIZATIONS

These organizations offer resources for LGBTQ young people and the adults who care for them.

AFFIRMATION: GAY AND LESBIAN MORMONS

www.affirmation.org

Affirmation's mission is to provide a forum for gay Mormons to associate with their peers. It seeks to meet the needs of persons experiencing frustration or alienation from family, friends, and the Church. Affirmation includes extensive resources for transgender individuals and youth.

P.O. Box 1435, Palm Springs, CA 92263-1435
Phone: 661-367-2421

AMBIENTE JOVEN

www.ambientejoven.org

Ambiente Joven is a project of Advocates for Youth and is dedicated to the gay, lesbian, bisexual and transgender Latino/a youth

FOSTERING TRANSITIONS

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community in the U.S. and Latin America, with the goal of providing information about sexual and mental health as well as general cultural information.

BISEXUAL RESOURCE CENTER

www.biresource.net

BRC is a website dedicated to providing resources to the bisexual community as well as to those who identify as pansexual, fluid, heteroflexible, omniseual and queer. It includes youth resources.

P.O. Box 170796, Boston, MA 02117

Phone: 617-424-9595

Email: brc@biresource.net

CASEY FAMILY PROGRAMS, LIFE SKILLS ASSESSMENT, LGBTQ SUPPLEMENT

www.casey.org

Casey Family Programs' Life Skills Assessment is a free and easy-to-use tool to help young people prepare for adulthood. The Assessment includes an optional supplement developed specifically for LGBTQ youth. It provides instant feedback. Customized learning plans provide a clear outline of next steps, and the accompanying teaching resources are available for free or at a minimal cost.

Casey Family Programs

2001 Eighth Avenue, Suite 2700, Seattle, WA 98121

Phone: 206-282-7300

CENTERLINK

www.lgbtcenters.org

CenterLink exists to support the development of strong, sustainable LGBT community centers and to build a unified center movement.

P.O. Box 24490, Fort Lauderdale, FL 33307

Phone: 954-765-6024

Email: centerlink@lgbtcenters.org

CHILDREN OF LESBIANS & GAYS EVERYWHERE (COLAGE)

www.colage.org

COLAGE is a national movement of children, youth, and adults with one or more lesbian, gay, bisexual, transgender and/or queer (LGBTQ) parent/s. COLAGE builds community and works toward social justice through youth empowerment, leadership development, education and advocacy.

4509 Interlake Avenue N, #180, Seattle, WA 98103

Phone: 855-4-COLAGE

Email: colage@colage.org

THE EQUITY PROJECT

www.equityproject.org

The Equity Project is an initiative to ensure that lesbian, gay, bisexual and transgender (LGBT) youth in juvenile delinquency courts are treated with dignity, respect and fairness. The Equity Project examines issues that impact LGBT youth during the entire delinquency process, ranging from arrest through post-disposition.

Email: info@equityproject.org

FAMILY ACCEPTANCE PROJECT™

<http://familyproject.sfsu.edu>

The Family Acceptance Project™ is the only community research, intervention, education and policy initiative that works to decrease major health and related risks for LGBT youth, such as suicide, substance abuse, HIV and homelessness—in the context of their families. It uses a research-based, culturally grounded approach to help ethnically, socially and religiously diverse families decrease rejection and increase support for their LGBT children.

San Francisco State University

3004-16th Street, #201, San Francisco, CA 94103

Email: fap@sfsu.edu

FAMILY EQUALITY COUNCIL

www.familyequality.org

The Family Equality Council works to ensure equality for LGBT families by building community, changing hearts and minds and advancing social justice for all families.

P.O. Box 206, Boston, MA 02133

Phone: 617-502-8700

Email: info@familyequality.org

THE GAY, LESBIAN & STRAIGHT EDUCATION NETWORK

www.glsen.org

GLSEN, the Gay, Lesbian and Straight Education Network, strives to ensure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression.

90 Broad St., 2nd Floor, New York, NY 10004

Phone: 212-727-0135

Email: glsen@glsen.org

GENDER SPECTRUM

www.genderspectrum.org

Gender Spectrum provides education, resources and training to help you create a more gender sensitive and supportive environment for all people, including gender variant and transgender youth. In a simple, straightforward manner, Gender Spectrum helps students, families, schools, and organizations understand and address the concepts of gender identity.

Their accessible, practical approach is based on research and experience, enabling their clients to gain a deeper understanding of gender variance.

1122 E. Pike Street #796, Seattle, WA 98122
Phone: 510-567-3977
Email: info@genderspectrum.org

GLBT NATIONAL HELP CENTER

www.glbtnationalhelpcenter.org
The GLBT National Help Center is dedicated to meeting the needs of this community and those questioning their sexual orientation or gender identity. It offers free and confidential peer-counseling, information and local resources for cities and towns throughout the United States. It offers counseling to callers of all ages about coming out issues, relationship concerns, HIV/AIDS anxiety, safer-sex information and more.

2261 Market St., PMB #296, San Francisco, CA 94114
Phone: 888-843-4564
Toll-Free Youth Talkline: 800-246-PRIDE
Email: info@glbntnationalhelpcenter.org

MATTHEW'S PLACE

www.matthewsplace.org
An online community and resource center for LGBTQ and allied youth, the Youth Lounge provides resources about LGBTQ youth friendly shelters, outreach centers and empowerment programs across the country. It includes moderated chats, discussion boards and informational columns from notable individuals in the LGBTQ and allied communities.

NATIONAL CENTER FOR LESBIAN RIGHTS

www.nclrights.org/youth
NCLR's Youth Project advances the rights of LGBTQ youth through education, public policy and precedent-setting casework. By bringing the issues faced by LGBTQ youth front and center, it is changing the legal landscape for all youth, and ensuring health and safety for the next generation of all young people.

870 Market Street, Suite 370, San Francisco, CA 94102
Phone: 415-392-6257
Email: info@nclrights.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY

www.transequality.org
The National Center for Transgender Equality (NCTE) is a 501(c)3 social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment.

1325 Massachusetts Avenue NW, Suite 700
Washington, DC 20005
Phone: 202-903-0112

NATIONAL JUVENILE DEFENDER CENTER

www.njdc.info
The National Juvenile Defender Center provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
Phone: 202-452-0010
Email: inquiries@njdc.info

NATIONAL NETWORK FOR YOUTH

www.nn4youth.org
The National Network for Youth has been serving the youth of America for more than 30 years by championing the needs of runaway, homeless and other disconnected youth through advocacy, innovation and services.

741 8th Street, SE, Washington, DC 20003
Phone: 202-783-7949

OPENING DOORS PROJECT

www.americanbar.org/groups/child_law/what_we_do/projects/openingdoors.html
The Opening Doors Project is one of many at the ABA Center on Children and the Law. Opening Doors aims to provide the legal and child welfare community tools, resources and support for improving outcomes for LGBTQ young people in foster care.

740 15th Street, NW, Washington, DC 20005-1019
Phone: 202-662-1000

PARENTS, FAMILIES & FRIENDS OF LESBIANS AND GAYS (PFLAG)

www.pflag.org
PFLAG promotes the health and well being of lesbian, gay, bisexual and transgender persons and their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights.

1828 L Street, NW, Suite 660, Washington, DC 20036
Phone: 202-467-8180
Email: info@pflag.org

RENAISSANCE TRANSGENDER ASSOCIATION

www.ren.org

Renaissance Education Association is a non-profit, non-political, educational and social support organization founded and designed to educate and support persons regarding transgender issues, sexual orientation, sexual identity or gender identity without prejudice.

987 Old Eagle School Road, Suite 719, Wayne, PA 19087

Phone: 610-636-1990

Email: info@ren.org

SAFE SCHOOLS COALITION

www.safeschoolscoalition.org

The Safe Schools Coalition is an international public-private partnership in support of LGBT youth that is working to help schools, at home and all over the world, become safe places where every family can belong, where every educator can teach and where every child can learn, regardless of gender identity or sexual orientation.

c/o Rosehedge

1401 East Jefferson Street, Suite 401, Seattle, WA 98122

Phone: 206-451-SAFE

Crisis Phone: 877-SAFE-SAFE

SYLVIA RIVERA LAW PROJECT

<http://srlp.org>

The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race and without facing harassment, discrimination or violence. SRLP seeks to increase the political voice and visibility of low-income people and people of color who are transgender, intersex or gender non-conforming. SRLP works to improve access to respectful and affirming social, health and legal services for these communities.

147 W. 24th Street, 5th Floor, New York, NY 10011

Phone: 212-337-8550 / 866-930-3283 (toll-free)

Email: info@srlp.org

THE TREVOR PROJECT

www.thetrevorproject.org

The Trevor Project is determined to end suicide among LGBTQ youth by providing life-saving and life-affirming resources including a nationwide, 24/7 crisis intervention lifeline, digital community and advocacy/educational programs that create a safe, supportive and positive environment for everyone.

8704 Santa Monica Blvd., Suite 200

West Hollywood, CA 90069

Phone: 310-271-8845

Hotline: 866-4-U-TREVOR

THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH

www.wpath.org

WPATH is a professional organization devoted to the understanding and treatment of gender identity disorders. As an international multidisciplinary professional association, WPATH has a mission to promote evidence based care, education, research, advocacy, public policy and respect in transgender health.

1300 South Second Street, Suite 180, Minneapolis, MN 55454

Phone: 612-624-9397

Email: wpath@wpath.org

YOUTH GUARDIAN SERVICES, INC.

www.youth-guard.org

Youth Guardian Services is a youth-run organization that provides support services on the Internet to LGBTQ and supportive youth.

101 East State Street, #299, Ithaca, NY 14850

Phone: 877-270-5152

YOUTHRESOURCE

www.amplifyyourvoice.org/youthresource

YouthResource, a website created by and for LGBTQ young people 13 to 24 years old, takes a holistic approach to sexual health and issues of concern to LGBTQ young people.

c/o Advocates For Youth

2000 M Street NW, Suite 750, Washington, DC 20036

Phone: 202-419-3420

Lambda Legal

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

Child Welfare League of America

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

Getting Down to Basics

Tools to Support LGBTQ Youth in Care

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Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Teaching LGBTQ Competence in Schools of Social Work

The quality of care provided to lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth and their families within child welfare systems in large part hinges on how well prepared social workers and other child welfare professionals are to address LGBTQ issues. Schools of social work are the training grounds for future child welfare practitioners. It is the obligation of these schools to ensure that the social workers they train are equipped to work competently and compassionately with LGBTQ young people. Schools of social work have a unique responsibility to fill the gaps in knowledge and understanding on LGBTQ issues and thereby increase the capacity of child welfare systems to support LGBTQ people.

ENSURE THAT EVERY STUDENT IS PREPARED TO WORK COMPETENTLY AND PROFESSIONALLY WITH LGBTQ CLIENTS.

The National Association of Social Workers (NASW) and the Council on Social Work Education (CSWE), leading organizations that set the standards of practice and education for social workers, both recognize the importance of expanding the concepts of cultural competency within schools of social work to include training and education on sexual orientation and gender identity. Every social worker must be prepared to serve clients from diverse populations, and schools of social work are responsible for ensuring that all graduates can effectively work with LGBTQ clients.

- “Social workers shall advocate for and participate in educational and training programs that help advance cultural competence within the profession.”

Nat'l Ass'n of Soc. Workers, *Standards for Cultural Competence in Social Work Practice*, Standard 8: Professional Education (2001)

- “Social workers understand how diversity characterizes and shapes the human experience and is critical to the formation

of identity. The dimensions of diversity are understood as the intersectionality of multiple factors including...gender identity and expression...and sexual orientation... Social workers recognize the extent to which a culture's structures and values may oppress, marginalize [or] alienate, or create or enhance privilege and power [and] gain sufficient self-awareness to eliminate the influence of personal biases and values in working with diverse groups.”

Council on Soc. Work Educ., *Educational Policy and Accreditation Standards*, Educational Policy 2.1.4—Engage Diversity and Difference in Practice (2008, revised 2010)

ENSURE THAT CURRICULUM CONTENT INCLUDES LGBTQ ISSUES.

Every school of social work should ensure that all relevant courses address LGBTQ issues. They should offer specific educational opportunities to build knowledge and practical skills and professional experience working with LGBTQ people and communities. LGBTQ issues should be integrated into the texts, class examples and scenarios utilized for class projects and discussions. Curriculum content should be updated and supplemented to ensure

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the inclusion of positive and accurate information regarding LGBTQ issues and existing practice standards.

- “Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to...sexual orientation[.]”

Nat'l Ass'n of Soc. Workers, *Code of Ethics of the National Association of Social Workers*, 1.05 Cultural Competence and Social Diversity (1996, revised 2008)

- “[The social work] program’s commitment to diversity—including...gender, gender identity and expression...and sexual orientation—is reflected in its learning environment.”

Council on Soc. Work Educ., *Educational Policy and Accreditation Standards*, Accreditation Standard 3.1—Diversity (2008, revised 2010)

PROVIDE OPPORTUNITIES FOR STUDENTS TO PUT INTO PRACTICE WHAT THEY LEARN ABOUT LGBTQ ISSUES.

Practical application of academic concepts is especially important in the training of social workers. Group discussions, role-playing and fieldwork experiences are all essential methods of preparing students to work effectively with individuals and families. Ensure that there are opportunities for students to gain such real-life experiences working with LGBTQ people as well as with families of origin that may be rejecting or hostile toward their child’s sexual orientation or gender identity.

ENCOURAGE STUDENTS TO DEVELOP THEIR KNOWLEDGE OF AVAILABLE LGBTQ RESOURCES AND TO BECOME INVOLVED IN RELEVANT LEGISLATION AND POLICY ADVOCACY.

Encourage social work students to develop their knowledge of supportive LGBTQ resources, including within their communities. This will help prepare them to promote community connections among LGBTQ people in order to combat the social isolation many experience. In keeping with the nondiscrimination values of the NASW and CSWE, encourage students to become active in opposing misguided legislation or policy that negatively affects LGBTQ people in their state or community.

- “Social workers should act to prevent and eliminate domination of, exploitation of and discrimination against any person, group or class on the basis of...sexual orientation[.]”

Nat'l Ass'n of Soc. Workers, *Code of Ethics of the National Association of Social Workers*, 6.04 Social and Political Action (1996, revised 2008)

- “Social workers...understand the forms and mechanisms of oppression and discrimination...and engage in practices that advance social and economic justice.”

Council on Soc. Work Educ., *Educational Policy and Accreditation Standards*, Accreditation Standard 2.1.5—Diversity (2008, revised 2010)

SUPPORT LGBTQ STUDENTS IN THEIR FIELD PLACEMENTS.

Ensure that field placement manuals include resources that may be of particular interest to LGBTQ students, including a list of LGBTQ-friendly field placement agencies. Provide support for LGBTQ students regarding disclosure of their sexual orientation and gender identities within their placements and advice for navigating professional and personal boundaries.

ENCOURAGE ACADEMIC RESEARCH ON LGBTQ ISSUES.

Schools of social work should encourage and academically and financially support scholarship and research around LGBTQ issues and communities. Ensure that your school has the latest LGBTQ publications and materials. A number of publications can be ordered from the CWLA website: www.cwla.org/pubs.

ADVOCATE FOR DEPARTMENTAL AND UNIVERSITY NONDISCRIMINATION POLICIES THAT ARE INCLUSIVE OF SEXUAL ORIENTATION AND GENDER IDENTITY.

If the nondiscrimination policies at your school are not inclusive of sexual orientation and gender identity, advocate for their inclusion. Ensure that policies are implemented and enforced so that students and faculty have a safe and supportive learning environment that is inclusive of LGBTQ issues and individuals. Faculty Hiring and Student Services Committees should work together to create plans to recruit and retain LGBTQ students, faculty and staff. School of social work faculty and staff should be visible advocates and allies to LGBTQ communities and confront covert and overt homophobic, transphobic and heterosexist comments and actions.

NATIONAL SURVEY: SEXUAL ORIENTATION AND GENDER EXPRESSION IN SOCIAL WORK EDUCATION

In 2009, Lambda Legal and the CSWE conducted a survey study of social work programs to assess how well they are preparing students to provide competent and respectful services to LGBTQ individuals and LGBTQ youth in out-of-home care. See www.lambdalegal.org for the study findings and best practice recommendations for schools of social work.

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Combating Misguided Efforts to Ban Lesbian & Gay Adults As Foster & Adoptive Parents

Under long-settled child welfare policy and practice, foster and adoptive parents are evaluated as individuals on a case-by-case basis. Child welfare professionals—not politicians—are best equipped to make sound judgments about which adults are qualified to serve as foster and adoptive parents for particular children. Furthermore, all leading national associations of child welfare professionals concur that lesbian and gay adults are as fit as any others to be considered for service as foster or adoptive parents. Yet despite this clear professional consensus, some states carry politically motivated legislative and administrative policies that prohibit otherwise qualified lesbian and gay adults from service. These misguided efforts are contrary to the best interests of the many children in need of nurturing foster and adoptive parents and unfair to the lesbian and gay adults who are well-equipped to care for them.

EFFORTS TO BAN LESBIAN AND GAY ADULTS FROM FOSTERING AND ADOPTING CHILDREN ARE COUNTER TO OVERWHELMING SOCIAL SCIENCE EVIDENCE AND PROFESSIONAL CONSENSUS.

Decades of social science data show that children raised by lesbian and gay adults fare just as well as other children. Every leading professional child welfare organization in this country strongly supports the practice of licensing lesbian and gay people as foster and adoptive parents according to the exact same criteria applied to all other applicants. Efforts to prohibit lesbian and gay people from serving as foster and adoptive parents are contrary to the mainstream professional consensus on the subject, represented by these statements of the following leading professional organizations:

The American Academy of Pediatrics

“The American Academy of Pediatrics recognizes that a considerable body of professional literature provides evidence that children born with parents who are homosexual can have the same advantages and the same expectations for health, adjustment, and development as can children whose parents are heterosexual.”¹

1 Am. Acad. of Pediatrics, *Policy Statement on Coparenting and Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 339, 339 (2002, reaff'd 2010).

The National Association of Social Workers

“Legislation seeking to restrict foster care and adoption by gay, lesbian, bisexual or transgender people should be vigorously opposed.”²

The Child Welfare League of America

“Based on more than three decades of social science research and our 85 years of service to millions of families, CWLA believes that families with LGBTQ members deserve the same levels of support afforded other families. Any attempt to preclude or prevent gay, lesbian and bisexual individuals or couples from parenting, based solely on their sexual orientation, is not in the best interest of children.”³

“The family foster care agency should not reject foster parent applicants solely due to their... sexual orientation.”⁴

“All applicants [for adoption] should be assessed on the basis of their abilities to successfully

2 Nat'l Ass'n of Soc. Workers, *Foster Care and Adoption, Social Work Speaks: National Association of Social Workers Policy Statements, 2003-2006* (6th ed. 2003), at 150.

3 Child Welfare League of Am., *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults* (2005), available at www.cwla.org/programs/culture/glbtcposition.htm.

4 Child Welfare League of Am., *CWLA's Standards of Excellence for Family Foster Care Services* (1995), available at www.cwla.org/programs/culture/glbtcstandards.htm.

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parent a child needing family membership and not on their... sexual orientation.”⁵

The North American Council on Adoptable Children (NACAC)

“Children should not be denied a permanent family because of the sexual orientation of potential parents... All prospective foster and adoptive parents, regardless of sexual orientation, should be given fair and equal consideration. NACAC opposes rules and legislation that restrict the consideration of current or prospective foster and adoptive parents based on their sexual orientation.”⁶

continue to exist in many states in our country and around the world.”⁹

The report also notes the increasing numbers of non-heterosexual parents in the United States and the positive outcome this has on the well-being of adoptable children.

“Lesbian and gay parents, like their heterosexual counterparts, are providing love, nurturance, stability and life-long permanence for... children. Moreover, they are doing so with a high level of parenting sensitivity and competence, comparable to that found among heterosexual adopters. And the evidence is

“ Any attempt to preclude or prevent gay, lesbian and bisexual individuals or couples from parenting, based solely on their sexual orientation, is not in the best interest of children. ”

– Position Statement of CWLA

Evan B. Donaldson Adoption Institute

A 2006 policy brief entitled *Expanding Resources for Children: Is Adoption by Gays and Lesbians Part of the Answer for Boys and Girls Who Need Homes?* finds no child-centered reason to prevent lesbian and gay adults from becoming adoptive parents, and recommends that lesbian and gay parents be utilized more extensively to provide permanent, loving homes for children living in foster care systems across the country.⁷

According to the 2008 report *Expanding Resources for Waiting Children II: Eliminating Legal & Practice Barriers to Gay & Lesbian Adoption from Foster Care*, “[l]aws that prohibit adoption by non-heterosexual individuals and couples should be rescinded to maximize the number of interested, qualified adoptive families for waiting children.”⁸

In 2011, the Institute published the results of a four-year research project in *Expanding Resources for Children III: Research-Based Practices in Adoption for Gays and Lesbians*. The policy recommendations indicated in this publication affirm those of previous publications, asserting:

“Given that so many children live in institutionalized or temporary settings—and are in need of safe, permanent families—greater efforts should be directed toward removing the legal, political and cultural barriers to LGBT adoption that

that their sons and daughters are adjusting just as well as those being raised by heterosexual parents.”¹⁰

IT IS CONTRARY TO THE BEST INTERESTS OF CHILDREN IN NEED OF LOVING FAMILIES TO DIMINISH THE POOL OF QUALIFIED FOSTER AND ADOPTIVE PARENTS.

State child welfare agencies have an affirmative duty to ensure the safety and well-being of the children in their custody. In 2010 there were over 400,000 children in this country’s foster care systems, of whom more than 100,000 were awaiting adoption by a loving family.¹¹ With only 153,000 licensed foster homes nationwide as of 2004, there remains a critical shortage of available homes to care for all these children.¹² More—not less—effort is needed in every state to find permanent loving families for these waiting children. Measures to bar lesbian and gay foster and adoptive parents, and thus senselessly diminish the pool of potential foster care resources still further, are not in the best interests of children. Such measures would not only ban countless qualified prospective foster parents, further decreasing the already short supply, but would also wrench children already placed with loving, capable foster parents from the stable homes in which they are thriving.

5 Child Welfare League of Am., *CWLA’s Standards of Excellence for Adoption Services* (2000), available at www.cwla.org/programs/culture/cwsstandardsadoption.htm.

6 North Am. Council on Adoptable Children, *Position Statement on Gay and Lesbian Adoptions and Foster Care* (2005), available at www.nacac.org/policy/lgbtq.html.

7 Evan B. Donaldson Adoption Inst. (2006), at 6, available at www.adoptioninstitute.org/publications/2006_Expanding_Resources_for_Children%20_March_.pdf.

8 Evan B. Donaldson Adoption Inst. (2008), at 8, available at www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf.

9 Evan B. Donaldson Adoption Inst. (2011), at 47, available at www.adoptioninstitute.org/publications/2011_10_Expanding_Resources_BestPractices.pdf.

10 *Id.* at 58.

11 U.S. Dept of Health and Hum. Svcs., Admin. for Children & Families, *The Adoption & Foster Care Analysis and Reporting System Report* (2011), available at www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm.

12 Foster Care Alumni of Am., *Facts About Children in Foster Care*, [www.fostercarealumni.org/userfiles/file/FCM07_Fact_Sheet_\(national\).pdf](http://www.fostercarealumni.org/userfiles/file/FCM07_Fact_Sheet_(national).pdf), n.3.

BLANKET BANS AGAINST SERVICE AS FOSTER OR ADOPTIVE PARENTS VIOLATE THE RIGHTS OF LESBIAN AND GAY ADULTS.

The United States Supreme Court has held that restrictions based solely on animus or moral disapproval towards lesbian and gay people—at bottom the only explanation behind such a restriction—lack even a rational relationship to a legitimate state purpose and are unconstitutional.¹³ State governments are prohibited from adopting laws and policies specifically designed to disadvantage gay and lesbian people.

A BAN ON LESBIAN AND GAY FOSTER PARENTS WOULD WASTE TAXPAYER DOLLARS.

Imposing a ban on lesbian and gay foster parents would not only deprive children of nurturing foster families but would also needlessly impose added costs on already financially strapped child welfare systems. Given the critical shortage of foster families, if lesbian and gay adults are barred from the pool of available homes, many children will be relegated to more restrictive group home settings, which are substantially more expensive than foster family care and where the quality of care, even in the best facilities, rarely approximates that of a loving

the Every Child Deserves a Family Act was reintroduced in Congress and the Senate in 2011. If passed, this legislation would prohibit discrimination nationwide against adoptive and foster parents based on sexual orientation or marital status.¹⁵

In keeping with existing professional standards and research, a number of states and cities have adopted policies making explicit that sexual orientation is not a bar to licensing qualified foster and adoptive parents. Courts also have struck down these arcane bans where they once existed. For example:

Arkansas: In 2011, the Arkansas Supreme Court upheld a lower court ruling that struck down

Act 1, a state law banning unmarried couples living together from adopting or fostering children. The court declared that Act 1 violated rights to privacy and equal protection guaranteed under the Arkansas State Constitution. The court stated, “Act 1 directly and substantially burdens the privacy rights of ‘opposite-sex and same-sex individuals’ who engage in private, consensual conduct in the bedroom by foreclosing their eligibility to foster or adopt children, should they choose to cohabit with their sexual partner.”¹⁶

“ County child welfare departments, group home facilities, and foster family agencies have a legal responsibility to provide care, placement, and services to foster children, family members, foster parents, and service providers without discriminating on the basis of actual or perceived ... sexual orientation, gender identity ... or HIV status. ”

– California Foster Care Non-Discrimination Act

family. Such arbitrary bans on foster parenting by lesbian and gay adults undoubtedly would invite costly legal challenges as well.

THESE ARCAINE BANS HAVE LARGELY BEEN ELIMINATED WHERE THEY ONCE EXISTED, AND STATE CHILD WELFARE SYSTEMS INSTEAD ARE INCREASING THEIR CAPACITIES TO SERVE LESBIAN AND GAY PEOPLE.

There are currently no states that maintain a statutory ban explicitly preventing lesbians and gay men from becoming adoptive or foster parents. However, a few states have laws and directives which could be used to prevent lesbians or gay men from adopting or fostering a child.¹⁴ At the federal level,

¹³ *Romer v. Evans*, 517 U.S. 620 (1996); see also *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁴ A Mississippi statute prohibits “[a]doption by couples of the same gender[.]” Miss. Code Ann. § 93-17-3 (5) (2012). In Utah, only single individuals and legally married couples may foster (U.A.C. R501-12-4 (1) (2012)) and adopt (U.A.C. R512-41-4 (1)(c) (2012)); cohabiting unmarried couples, regardless of their sexual orientation, may not. The Nebraska Department of Social Services does not license “persons who identify

Florida: In 2010, Florida ended its 33-year ban on adoptions by gay men and lesbians when an appellate court declared that the law violated the right to privacy guaranteed under the Florida State Constitution. The State of Florida decided not to appeal the ruling.¹⁷

Missouri: In 2006, a judge in Missouri overturned a Department of Social Services decision denying the foster parent application of a highly qualified applicant solely because she was a lesbian involved in a same-sex relationship. The court held that the Department improperly relied on a state law criminalizing sexual intimacy between same-sex couples that

themselves as homosexuals” as foster parents. Memorandum from Director of Nebraska Dep’t of Social Servs. (Jan. 23, 1995). In 2012, the Virginia State Code was amended to allow “private child-placing agencies” to refuse to “participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency’s written religious or moral convictions or policies.” Va. Code Ann. § 63.2-1709.3 (2012).
¹⁵ See H.R. 1681, 112th Cong. (2011); S. 1770, 112th Cong. (2011).
¹⁶ *Arkansas Dep’t of Human Servs. v. Cole*, 2011 Ark. 145, *18 (2011).
¹⁷ *Fla. Dept. of Children & Families v. X.X.G.*, 2010 Fla. App. LEXIS 14014 (Fla. 3d DCA 2010).

had been deemed unconstitutional by the U.S. Supreme Court in *Lawrence v. Texas* in 2003.¹⁸

Texas: In 2003 and 2005, ill-advised bills were proposed in the Texas legislature to prohibit lesbian and gay adults from fostering and adopting children in that state. Heeding the strong opposition of Texas-based and national child welfare and social work organizations, the legislature has repeatedly refused to pass such a bill into law.

California: In 2003, California's Foster Care Non-Discrimination Act went into effect, providing that "County child welfare departments, group home facilities and foster family agencies have a legal responsibility to provide care, placement and services to foster children, family members, foster parents and service providers without discriminating on the basis of actual or perceived...sexual orientation, gender identity...or HIV status."¹⁹

In 2010 the California Department of Social Services issued an all-county information notice to provide child welfare and out-of-home care agencies with information on resources to improve services to "LGBTQ youth, their caregivers and LGBT prospective foster and adoptive parents" and to further illustrate the purpose of Assembly Bill 458, which "prohibits discrimination in the California foster care system on the basis of...sexual orientation [or] gender identity[.]"²⁰

New Hampshire: In 1999, the New Hampshire state legislature overwhelmingly voted to repeal a 1987 law prohibiting lesbian and gay adults from fostering and adopting children.²¹

BANNING LESBIAN AND GAY ADULTS FROM SERVING AS FOSTER AND ADOPTIVE PARENTS IS SIMPLY BAD PUBLIC POLICY.

There is no valid reason to diminish the already critically inadequate pool of prospective foster homes by rejecting otherwise qualified, loving adults based only on sexual orientation. The professional consensus is resoundingly opposed to such bans, and decades of social science research shows no evidence of risk of harm—physical, sexual or emotional—based upon the sexual orientation of a child's foster, adoptive or birth parents. In fact, more foster and adoptive parent recruitment, not less, is necessary to meet the needs of the most vulnerable members of our society.

¹⁸ *Johnston v. Missouri Dep't of Soc. Servs.*, Case No. 0516CV09517 (2006), available at www.aclu.org/lgbt/parenting/24194lgj20060217.html.

¹⁹ Cal. Welf. & Inst. Code § 16013(a) (2012).

²⁰ State of Cal. Health and Human Servs. Agency, Dep't of Soc. Servs., All County Information Notice I-81-10, *Serving Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth, LGBTQ Caregivers and LGBT Prospective Foster and Adoptive Parents* (2010), available at www.dss.cahw.net.gov/lettersnotices/entres/getinfo/acin/2010/i-81_10.pdf.

²¹ See H.B. 90, 1999 Leg., 156th Sess. (N.H. 1999).

Contact Lambda Legal for additional support and resources if you are opposing a proposed ban on lesbian and gay foster and adoptive parents or are seeking to increase the capacity of your state child welfare system's ability to find lesbian and gay adults to serve as foster and adoptive parents.

CONNECT WITH ADDITIONAL RESOURCES

The Human Rights Campaign Foundation's "All Children All Families" initiative helps to find permanent families for children by promoting policies that welcome LGBT foster and adoptive parents. The program works to help enhance LGBT competence among child welfare professionals and increase opportunities for LGBT people to become foster or adoptive parents to waiting children. For more information, see www.hrc.org/issues/parenting/adoptions/12111.htm.



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LGBTQ Youth Risk Data

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth are coming out and publicly acknowledging that they are LGBTQ at younger ages than ever before. For many LGBTQ youth, sexual orientation or gender identity is why they are in out-of-home care in the first place. Their families may have rejected them outright, or they were forced to escape physically or psychologically abusive families who wanted to “cure” or punish them. Further exacerbating their situation is the harassment and violence that LGBTQ youth often face in school settings. As a result, LGBTQ youth are over-represented in out-of-home systems of care. They are at increased risk of homelessness, dropping out of school, physical or emotional abuse, depression, substance abuse, rape and suicide.

20-40% of all homeless youth identify as LGBT.

See Nicholas Ray, Nat'l Gay & Lesbian Task Force Policy Inst. & Nat'l Coal. for the Homeless, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006).

65% of 400 homeless LGBTQ youth reported having been in a child welfare placement at some point in the past.

See Heather M. Berberet, *Putting the Pieces Together for Queer Youth*, 85 Child Welfare 261 (2006).

Half of a sampling of gay and lesbian young people in out-of-home care reported having been homeless at some point in the past.

See Gerald P. Mallon, *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in Child Welfare Systems* (1998).

When compared to heterosexual homeless youth, LGBT homeless youth:

- Are physically or sexually victimized by an average of seven more people;
- Leave home an average of 12 times as compared to seven times for non-LGBT youth;
- Have had nearly twice as many sexual partners;
- Have used 11 of 12 dangerous substances more frequently.

See Bryan N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 Am. J. Pub. Health 773 (2002).

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
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63.5% of LGBTQ students reported feeling unsafe at school because of their sexual orientation, while 43.9% felt unsafe because of their gender expression.

- 81.9% said they had been verbally harassed because of their sexual orientation in the past year and 63.9% said they had been verbally harassed because of their gender expression.
- 38.3% had been physically harassed (*e.g.*, pushed or shoved) in the past year because of their sexual orientation and 27.1% had been physically harassed because of their gender expression.
- 18.3% had been assaulted (*e.g.*, punched, kicked or injured with a weapon) because of their sexual orientation and 12.4% had been assaulted because of their gender expression.
- Less than 40% of students who experienced harassment or assault reported it to school staff. Of those who did report, 36.7% said that no action was taken by the staff.
- Nearly 30% of LGBTQ students surveyed reported missing at least one full day of school in the past month because they felt unsafe or uncomfortable.

See Joseph G. Kosciw, Emily A. Greytak, Elizabeth M. Diaz, Mark J. Bartkiewicz, Madelyn J. Boesen & Neal A. Palmer, Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey* (2012).

19% of all transgender people have been homeless at some point in their lives. 55% of those who tried to access a shelter were harassed by staff or residents and 29% were turned away altogether. Of those who were able to access a shelter, 22% were sexually assaulted by residents or staff.

See Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman & Mara Keisling, Nat'l Ctr. for Transgender Equality & Nat'l Gay & Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011).

Lesbian, gay and bisexual youth are 190% more likely to use drugs and alcohol than their non-LGB counterparts.

See Michael P. Marshal, Mark S. Friedman, Ron Stall, Kevin M. King, Jonathan Miles, Melanie A. Gold, Oscar G. Bukstein & Jennifer Q. Morse, *Sexual Orientation and Adolescent Substance Use: A Meta-Analysis and Methodological Review*, 103 *Addiction* 546 (2008).

39% of LGBT homeless youth in one study said they had been kicked out of their homes because of their sexual orientation or gender identity; 45% reported involvement with the juvenile justice system.

See Heather M. Berberet, *Putting the Pieces Together for Queer Youth*, 85 *Child Welfare* 261 (2006).

62% of LGBT homeless youth attempt suicide, in contrast to 29% of their homeless non-LGBT peers.

See Nat'l Alliance to End Homelessness, Lambda Legal, Nat'l Network for Youth & Nat'l Ctr. for Lesbian Rights, *National Recommended Best Practices for Serving LGBT Homeless Youth* (2009).

58% of LGB homeless youth in one study reported being the victims of sexual assault, versus 33% of their non-LGB homeless peers.

See Les B. Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 *J. Sex Research* 329 (2004).

LGB young adults with high levels of family rejection are significantly more likely to report having attempted suicide, high levels of depression, illegal drug use and unprotected sex compared to LGB adults with little or no family rejection.

See Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346 (2009).



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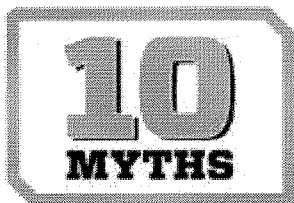
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Intelligence Report, Winter 2010, Issue Number: 140

10 Anti-Gay Myths Debunked

By Evelyn Schlatter and Robert Steinback

Ever since born-again singer and orange juice pitchwoman Anita Bryant helped kick off the contemporary anti-gay movement more than 30 years ago, hard-line elements of the religious right have been searching for ways to demonize gay people — or, at a minimum, to find arguments that will prevent their normalization in society. For the former Florida beauty queen and her Save Our Children group, it was the alleged plans of gays and lesbians to "recruit" in schools that provided the fodder for their crusade.



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But in addition to hawking that myth, the legions of anti-gay activists who followed have added a panoply of others, ranging from the extremely doubtful claim that homosexuality is a choice, to unalloyed lies like the claims that gays molest children far more than heterosexuals or that hate crime laws will lead to the legalization of bestiality and necrophilia. These fairy tales are important to the anti-gay right because they form the basis of its claim that homosexuality is a social evil that must be suppressed — an opinion rejected by virtually all relevant medical and scientific authorities. They also almost certainly contribute to hate crime violence directed at gays and lesbians, who are more targeted for such attacks than any other minority in America. What follows are 10 key myths propagated by the anti-gay movement, along with the truth behind the propaganda.

MYTH # 1

Gay people molest children at far higher rates than heterosexuals.

THE ARGUMENT

Depicting gay men as a threat to children may be the single most potent weapon for stoking public fears about homosexuality — and for winning elections and referenda, as Anita Bryant found out during her successful 1977 campaign to overturn a Dade County, Fla., ordinance barring discrimination against gay people. Discredited psychologist Paul Cameron, the most ubiquitous purveyor of anti-gay junk science, has been a major promoter of this myth. Despite having been debunked repeatedly and very publicly, Cameron's work is still widely relied upon by anti-gay organizations, although many no longer quote him by name. Others have cited a group called the American College of Pediatricians to claim, as Tony Perkins of the Family Research Council did in November 2010, that "the research is overwhelming that homosexuality poses a [molestation] danger to children."

THE FACTS

According to the American Psychological Association, "homosexual men are not more likely to sexually abuse children than heterosexual men are." Gregory Herek, a professor at the University of California, Davis, who is one of the nation's leading researchers on prejudice against sexual minorities, reviewed a series of studies and found no evidence that gay men molest children at higher rates than heterosexual men.

Anti-gay activists who make that claim allege that all men who molest male children should be seen as homosexual. But research by A. Nicholas Groth, a pioneer in the field of sexual abuse of children, shows that is not so. Groth found that there are two types of child molesters: fixated and

regressive. The fixated child molester — the stereotypical pedophile — cannot be considered homosexual or heterosexual because "he often finds adults of either sex repulsive" and often molests children of both sexes. Regressive child molesters are generally attracted to other adults, but may "regress" to focusing on children when confronted with stressful situations. Groth found that the majority of regressed offenders were heterosexual in their adult relationships.

The Child Molestation Research and Prevention Institute notes that 90% of child molesters target children in their network of family and friends. Most child molesters, therefore, are not gay people lingering outside schools waiting to snatch children from the playground, as much religious-right rhetoric suggests.

Some anti-gay ideologues cite the American College of Pediatricians' opposition to same-sex parenting as if the organization were a legitimate professional body. In fact, the so-called college is a tiny breakaway faction of the similarly named, 60,000-member American Academy of Pediatrics that requires, as a condition of membership, that joiners "hold true to the group's core beliefs ... [including] that the traditional family unit, headed by an opposite-sex couple, poses far fewer risk factors in the adoption and raising of children." The group's 2010 publication *Facts About Youth* was described by the American Academy of Pediatrics and the American Psychological Association as non-factual. Francis Collins, director of the National Institutes of Health, was one of several legitimate researchers who said *Facts* misrepresented their findings. "It is disturbing to me to see special interest groups distort my scientific observations to make a point against homosexuality," he wrote. "The information they present is misleading and incorrect."

MYTH # 2

Same-sex parents harm children.

THE ARGUMENT

Most hard-line anti-gay organizations are heavily invested, from both a religious and a political standpoint, in promoting the traditional nuclear family as the sole framework for the healthy upbringing of children. They maintain a reflexive belief that same-sex parenting must be harmful to children — although the exact nature of that supposed harm varies widely.

THE FACTS

No legitimate research has demonstrated that same-sex couples are any more or any less harmful to children than heterosexual couples.

The American Academy of Pediatrics in a 2002 policy statement declared: "A growing body of scientific literature demonstrates that children who grow up with one or two gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual." That policy statement was reaffirmed in 2009.

The American Psychological Association found that "same-sex couples are remarkably similar to heterosexual couples, and that parenting effectiveness and the adjustment, development and psychological well-being of children is unrelated to parental sexual orientation."

Similarly, the Child Welfare League of America's official position with regard to same-sex parents is that "lesbian, gay, and bisexual parents are as well-suited to raise children as their heterosexual counterparts."

MYTH # 3

People become homosexual because they were sexually abused as children or there was a deficiency in sex-role modeling by their parents.

THE ARGUMENT

Many anti-gay rights proponents claim that homosexuality is a mental disorder caused by some psychological trauma or aberration in childhood. This argument is used to counter the common observation that no one, gay or straight, consciously chooses his or her sexual orientation. Joseph Nicolosi, a founder of the National Association for Research and Therapy of Homosexuality, said in 2009 that "if you traumatize a child in a particular way, you will create a homosexual condition." He

also has repeatedly said, "Fathers, if you don't hug your sons, some other man will." A side effect of this argument is the demonization of parents of gay men and lesbians, who are led to wonder if they failed to protect a child against sexual abuse or failed as role models in some important way. In October 2010, Kansas State University family studies professor Walter Schumm said he was about to release a related study arguing that gay couples are more likely than heterosexuals to raise gay or lesbian children.

THE FACTS

No scientifically sound study has linked sexual orientation or identity with parental role-modeling or childhood sexual abuse.

The American Psychiatric Association noted in a 2000 fact sheet on gay, lesbian and bisexual issues that "no specific psychosocial or family dynamic cause for homosexuality has been identified, including histories of childhood sexual abuse." The fact sheet goes on to say that sexual abuse does not appear to be any more prevalent among children who grow up and identify as gay, lesbian or bisexual than in children who grow up and identify as heterosexual.

Similarly, the National Organization on Male Sexual Victimization notes on its website that "experts in the human sexuality field do not believe that premature sexual experiences play a significant role in late adolescent or adult sexual orientation" and added that it's unlikely that someone can make another person gay or heterosexual.

With regard to Schumm's study, critics have already said that he appears to have merely aggregated anecdotal data, a biased sample that invalidates his findings.

MYTH # 4

Gay people don't live nearly as long as heterosexuals.

THE ARGUMENT

Anti-gay organizations want to promote heterosexuality as the healthier "choice." Furthermore, the purportedly shorter life spans and poorer physical and mental health of gays and lesbians are often offered as reasons why they shouldn't be allowed to adopt or foster children.

THE FACTS

This falsehood can be traced directly to the discredited research of Paul Cameron and his Family Research Institute, specifically a 1994 paper he co-wrote entitled, "The Lifespan of Homosexuals." Using obituaries collected from gay newspapers, he and his two co-authors concluded that gay men died, on average, at 43, compared to an average life expectancy at the time of around 73 for all U.S. men. On the basis of the same obituaries, Cameron also claimed that gay men are 18 times more likely to die in car accidents than heterosexuals, 22 times more likely to die of heart attacks than whites, and 11 times more likely than blacks to die of the same cause. He also concluded that lesbians are 487 times more likely to die of murder, suicide, or accidents than straight women.

Remarkably, these claims have become staples of the anti-gay right and have frequently made their way into far more mainstream venues. For example, William Bennett, education secretary under President Reagan, used Cameron's statistics in a 1997 interview he gave to ABC News' "This Week."

However, like virtually all of his "research," Cameron's methodology is egregiously flawed — most obviously because the sample he selected (the data from the obits) was not remotely statistically representative of the gay population as a whole. Even Nicholas Eberstadt, a demographer at the conservative American Enterprise Institute, has called Cameron's methods "just ridiculous."

MYTH # 5

Gay men controlled the Nazi Party and helped to orchestrate the Holocaust.

THE ARGUMENT

This claim comes directly from a 1995 book titled *The Pink Swastika: Homosexuality in the Nazi Party*, by Scott Lively and Kevin Abrams. Lively is the virulently anti-gay founder of Abiding Truth

Ministries and Abrams is an organizer of a group called the International Committee for Holocaust Truth, which came together in 1994 and included Lively as a member.

The primary argument Lively and Abrams make is that gay people were not victimized by the Holocaust. Rather, Hitler deliberately sought gay men for his inner circle because their "unusual brutality" would help him run the party and mastermind the Holocaust. In fact, "the Nazi party was entirely controlled by militaristic male homosexuals throughout its short history," the book claims. "While we cannot say that homosexuals caused the Holocaust, we must not ignore their central role in Nazism," Lively and Abrams add. "To the myth of the 'pink triangle' — the notion that all homosexuals in Nazi Germany were persecuted — we must respond with the reality of the 'pink swastika.'"

These claims have been picked up by a number of anti-gay groups and individuals, including Bryan Fischer of the American Family Association, as proof that gay men and lesbians are violent and sick. The book has also attracted an audience among anti-gay church leaders in Eastern Europe and among Russian-speaking anti-gay activists in America.

THE FACTS

The Pink Swastika has been roundly discredited by legitimate historians and other scholars. Christine Mueller, professor of history at Reed College, did a line-by-line refutation of an earlier (1994) Abrams article on the topic and of the broader claim that the Nazi Party was "entirely controlled" by gay men. Historian Jon David Wynecken at Grove City College also refuted the book, pointing out that Lively and Abrams did no primary research of their own, instead using out-of-context citations of some legitimate sources while ignoring information from those same sources that ran counter to their thesis.

The myth that the Nazis condoned homosexuality sprang up in the 1930s, started by socialist opponents of the Nazis as a slander against Nazi leaders. Credible historians believe that only one of the half-dozen leaders in Hitler's inner circle, Ernst Röhm, was gay. (Röhm was murdered on Hitler's orders in 1934.) The Nazis considered homosexuality one aspect of the "degeneracy" they were trying to eradicate.

When the National Socialist Party came to power in 1933, it quickly strengthened Germany's existing penalties against homosexuality. Heinrich Himmler, Hitler's security chief, announced that homosexuality was to be "eliminated" in Germany, along with miscegenation among the races. Historians estimate that between 50,000 and 100,000 men were arrested for homosexuality (or suspicion of it) under the Nazi regime. These men were routinely sent to concentration camps and many thousands died there.

In 1942, the Nazis instituted the death penalty for gay men. Offenders in the German military were routinely shot. Himmler put it like this: "We must exterminate these people root and branch. ... We can't permit such danger to the country; the homosexual must be completely eliminated."

MYTH # 6

Hate crime laws will lead to the jailing of pastors who criticize homosexuality and the legalization of practices like bestiality and necrophilia.

THE ARGUMENT

Anti-gay activists, who have long opposed adding LGBT people to those protected by hate crime legislation, have repeatedly claimed that such laws would lead to the jailing of religious figures who preach against homosexuality — part of a bid to gain the backing of the broader religious community for their position. Janet Porter of Faith2Action was one of many who asserted that the federal Matthew Shepard Hate Crimes Prevention Act — signed into law by President Obama in October 2009 — would "jail pastors" because it "criminalizes speech against the homosexual agenda."

In a related assertion, anti-gay activists claimed the law would lead to the legalization of psychosexual disorders (paraphilias) like bestiality and pedophilia. Bob Unruh, a conservative Christian journalist who left The Associated Press in 2006 for the right-wing, conspiracist news site

WorldNetDaily, said shortly before the federal law was passed that it would legalize "all 547 forms of sexual deviancy or 'paraphilias' listed by the American Psychiatric Association." This claim was repeated by many anti-gay organizations, including the Illinois Family Institute.

THE FACTS

The claim that hate crime laws could result in the imprisonment of those who "oppose the homosexual lifestyle" is false. The Constitution provides robust protections of free speech, and case law makes it clear that even a preacher who suggested that gays and lesbians should be killed would be protected.

Neither do hate crime laws — which provide for enhanced penalties when persons are victimized because of their "sexual orientation" (among other factors) — "protect pedophiles," as Janet Porter and many others have claimed. According to the American Psychological Association, sexual orientation refers to heterosexuality, homosexuality and bisexuality — not paraphilias such as pedophilia. Paraphilias, as defined by the American Psychiatric Association, are disorders characterized by sexual urges or behaviors directed at nonhuman objects or non-consenting persons like children, or that involve the suffering or humiliation of one's partner.

Even if pedophiles, for example, were protected under a hate crime law — and such a law has not been suggested or contemplated anywhere — that would not legalize or "protect" pedophilia. Pedophilia is illegal sexual activity, and a law that more severely punished people who attacked pedophiles would not change that.

MYTH # 7

Allowing gay people to serve openly would damage the armed forces.

THE ARGUMENT

Anti-gay groups have been adamantly opposed to allowing gay men and lesbians to serve openly in the armed forces, not only because of their purported fear that combat readiness will be undermined, but because the military has long been considered the purest meritocracy in America (the armed forces were successfully racially integrated long before American civilian society, for example). If gays serve honorably and effectively in this meritocracy, that suggests that there is no rational basis for discriminating against them in any way.

THE FACTS

Gays and lesbians have long served in the U.S. armed forces, though under the "Don't Ask, Don't Tell" (DADT) policy that governed the military between 1993 and September 2011, they could not serve openly. At the same time, gays and lesbians have served openly for years in the armed forces of 25 countries, including Britain, Israel, South Africa, Canada and Australia, according to a report released by the Palm Center, a policy think tank at the University of California at Santa Barbara. The Palm Center report concluded that lifting bans against openly gay service personnel in these countries "ha[s] had no negative impact on morale, recruitment, retention, readiness or overall combat effectiveness." Successful transitions to new policies were attributed to clear signals of leadership support and a focus on a uniform code of behavior without regard to sexual orientation.

A 2008 Military Times poll of active-duty military personnel, often cited by anti-gay activists, found that 10% of respondents said they would not re-enlist if the DADT policy were repealed. That would mean some 228,000 people may leave the military in the wake of the 2011 ending of that policy. But a 2009 review of that poll by the Palm Center suggested a wide disparity between what soldiers said they would do and their actual actions. It noted, for example, that far more than 10% of West Point officers in the 1970s said they would leave the service if women were admitted to the academy. "But when the integration became a reality," the report said, "there was no mass exodus; the opinions turned out to be just opinions." Similarly, a 1985 survey of 6,500 male Canadian service members and a 1996 survey of 13,500 British service members each revealed that nearly two-thirds expressed strong reservations about serving with gays. Yet when those countries lifted bans on gays serving openly, virtually no one left the service for that reason. "None of the dire predictions of doom came true," the Palm Center report said.

MYTH # 8

Gay people are more prone to be mentally ill and to abuse drugs and alcohol.

THE ARGUMENT

Anti-gay groups want not only to depict sexual orientation as something that can be changed but also to show that heterosexuality is the most desirable "choice" — even if religious arguments are set aside. The most frequently used secular argument made by anti-gay groups in that regard is that homosexuality is inherently unhealthy, both mentally and physically. As a result, most anti-gay rights groups reject the 1973 decision by the American Psychiatric Association (APA) to remove homosexuality from its list of mental illnesses. Some of these groups, including the particularly hard-line Traditional Values Coalition, claim that "homosexual activists" managed to infiltrate the APA in order to sway its decision.

THE FACTS

All major professional mental health organizations are on record as stating that homosexuality is not a mental disorder.

It is true that LGBT people suffer higher rates of anxiety, depression, and depression-related illnesses and behaviors like alcohol and drug abuse than the general population. But studies done during the past 15 years have determined that it is the stress of being a member of a minority group in an often-hostile society — and not LGBT identity itself — that accounts for the higher levels of mental illness and drug use.

Richard J. Wolitski, an expert on minority status and public health issues at the Centers for Disease Control and Prevention, put it like this in 2008: "Economic disadvantage, stigma, and discrimination ... increase stress and diminish the ability of individuals [in minority groups] to cope with stress, which in turn contribute to poor physical and mental health."

MYTH # 9

No one is born gay.

THE ARGUMENT

Anti-gay activists keenly oppose the granting of "special" civil rights protections to gay people similar to those afforded black Americans and other minorities. But if people are born gay — in the same way people have no choice as to whether they are black or white — discrimination against gay men and lesbians would be vastly more difficult to justify. Thus, anti-gay forces insist that sexual orientation is a behavior that can be changed, not an immutable characteristic.

THE FACTS

Modern science cannot state conclusively what causes sexual orientation, but a great many studies suggest that it is the result of biological and environmental forces, not a personal "choice." One of the more recent is a 2008 Swedish study of twins (the world's largest twin study) that appeared in *The Archives of Sexual Behavior* and concluded that "[h]omosexual behaviour is largely shaped by genetics and random environmental factors." Dr. Qazi Rahman, study co-author and a leading scientist on human sexual orientation, said: "This study puts cold water on any concerns that we are looking for a single 'gay gene' or a single environmental variable which could be used to 'select out' homosexuality — the factors which influence sexual orientation are complex. And we are not simply talking about homosexuality here — heterosexual behaviour is also influenced by a mixture of genetic and environmental factors."

The American Psychological Association (APA) acknowledges that despite much research into the possible genetic, hormonal, social and cultural influences on sexual orientation, no evidence has emerged that would allow scientists to pinpoint the precise causes of sexual orientation. Still, the APA concludes that "most people experience little or no sense of choice about their sexual orientation."

In October 2010, Kansas State University family studies professor Walter Schumm said he was about to release a study showing that gay parents produced far more gay children than

heterosexual parents. He told a reporter that he was "trying to prove [homosexuality is] not 100% genetic." But critics suggested that his data did not prove that, and, in any event, virtually no scientists have suggested that homosexuality is caused only by genes.

MYTH # 10

Gay people can choose to leave homosexuality.

THE ARGUMENT

If people are not born gay, as anti-gay activists claim, then it should be possible for individuals to abandon homosexuality. This view is buttressed among religiously motivated anti-gay activists by the idea that homosexual practice is a sin and humans have the free will needed to reject sinful urges.

A number of "ex-gay" religious ministries have sprung up in recent years with the aim of teaching gay people to become heterosexuals, and these have become prime purveyors of the claim that gays and lesbians, with the aid of mental therapy and Christian teachings, can "come out of homosexuality." Exodus International, the largest of these ministries, plainly states, "You don't have to be gay!" Another, the National Association for Research and Therapy of Homosexuality, describes itself as "a professional, scientific organization that offers hope to those who struggle with unwanted homosexuality."

THE FACTS

"Reparative" or sexual reorientation therapy — the pseudo-scientific foundation of the ex-gay movement — has been rejected by all the established and reputable American medical, psychological, psychiatric, and professional counseling organizations. In 2009, for instance, the American Psychological Association adopted a resolution, accompanied by a 138-page report, that repudiated ex-gay therapy. The report concluded that compelling evidence suggested that cases of individuals going from gay to straight were "rare" and that "many individuals continued to experience same-sex sexual attractions" after reparative therapy. The APA resolution added that "there is insufficient evidence to support the use of psychological interventions to change sexual orientation" and asked "mental health professionals to avoid misrepresenting the efficacy of sexual orientation change efforts by promoting or promising change in sexual orientation." The resolution also affirmed that same-sex sexual and romantic feelings are normal.

Some of the most striking, if anecdotal, evidence of the ineffectiveness of sexual reorientation therapy has been the numerous failures of some of its most ardent advocates. For example, the founder of Exodus International, Michael Bussee, left the organization in 1979 with a fellow male ex-gay counselor because the two had fallen in love. Alan Chambers, current president of Exodus, said in 2007 that with years of therapy, he's mostly conquered his attraction to men, but then admitted, "By no means would we ever say that change can be sudden or complete."



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Answers to Your Questions

FOR A BETTER UNDERSTANDING OF SEXUAL ORIENTATION & HOMOSEXUALITY

Since 1975, the American Psychological Association has called on psychologists to take the lead in removing the stigma of mental illness that has long been associated with lesbian, gay, and bisexual orientations. The discipline of psychology is concerned with the well-being of people and groups and therefore with threats to that well-being. The prejudice and discrimination that people who identify as lesbian, gay, or bisexual regularly experience have been shown to have negative psychological effects. This pamphlet is designed to provide accurate information for those who want to better understand sexual orientation and the impact of prejudice and discrimination on those who identify as lesbian, gay, or bisexual.

What is sexual orientation?

Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions. Research over several decades has demonstrated that sexual orientation ranges along a continuum, from exclusive attraction to the other sex to exclusive attraction to the same sex. However, sexual orientation is usually discussed in terms of three categories: heterosexual (having emotional, romantic, or sexual attractions to members of the other sex), gay/lesbian (having emotional, romantic, or sexual attractions to members of one's own sex), and bisexual (having emotional, romantic, or sexual attractions to both men and women). This range of behaviors and attractions has been described in various cultures and nations throughout the world. Many cultures use identity labels to describe people who express these attractions. In the United States the most frequent labels are *lesbians* (women attracted to women), *gay men* (men attracted to men), and *bisexual people* (men or women attracted to both sexes). However, some people may use different labels or none at all.

Sexual orientation is distinct from other components of sex and gender, including biological sex (the anatomical, physiological,

and genetic characteristics associated with being male or female), gender identity (the psychological sense of being male or female),* and social gender role (the cultural norms that define feminine and masculine behavior).

Sexual orientation is commonly discussed as if it were solely a characteristic of an individual, like biological sex, gender identity, or age. This perspective is incomplete because sexual orientation is defined in terms of relationships with others. People express their sexual orientation through behaviors with others, including such simple actions as holding hands or kissing. Thus, sexual orientation is closely tied to the intimate personal relationships that meet deeply felt needs for love, attachment, and intimacy. In addition to sexual behaviors, these bonds include nonsexual physical affection between partners, shared goals and values, mutual support, and ongoing commitment. Therefore, sexual orientation is not merely a personal characteristic within an individual. Rather, one's sexual orientation defines the group of people in which one is likely to find the satisfying and fulfilling romantic relationships that are an essential component of personal identity for many people.

How do people know if they are lesbian, gay, or bisexual?

According to current scientific and professional understanding, the core attractions that form the basis for adult sexual orientation typically emerge between middle childhood and early adolescence. These patterns of emotional, romantic, and sexual attraction may arise without any prior sexual experience. People can be celibate and still know their sexual orientation—be it lesbian, gay, bisexual, or heterosexual.

Different lesbian, gay, and bisexual people have very different experiences regarding their sexual orientation. Some people know that they are lesbian, gay, or bisexual for a long

* This brochure focuses on sexual orientation. Another APA brochure, *Answers to Your Questions About Transgender Individuals and Gender Identity*, addresses gender identity.

time before they actually pursue relationships with other people. Some people engage in sexual activity (with same-sex and/or other-sex partners) before assigning a clear label to their sexual orientation. Prejudice and discrimination make it difficult for many people to come to terms with their sexual orientation identities, so claiming a lesbian, gay, or bisexual identity may be a slow process.

What causes a person to have a particular sexual orientation?

There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay, or lesbian orientation. Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors. Many think that nature and nurture both play complex roles; most people experience little or no sense of choice about their sexual orientation.

What role do prejudice and discrimination play in the lives of lesbian, gay, and bisexual people?

Lesbian, gay, and bisexual people in the United States encounter extensive prejudice, discrimination, and violence because of their sexual orientation. Intense prejudice against lesbians, gay men, and bisexual people was widespread throughout much of the 20th century. Public opinion studies over the 1970s, 1980s, and 1990s routinely showed that, among large segments of the public, lesbian, gay, and bisexual people were the target of strongly held negative attitudes. More recently, public opinion has increasingly opposed sexual orientation discrimination, but expressions of hostility toward lesbians and gay men remain common in contemporary American society. Prejudice against bisexuals appears to exist at comparable levels. In fact, bisexual individuals may face discrimination from some lesbian and gay people as well as from heterosexual people.

Sexual orientation discrimination takes many forms. Severe antigay prejudice is reflected in the high rate of harassment and violence directed toward lesbian, gay, and bisexual individuals in American society. Numerous surveys indicate that verbal harassment and abuse are nearly universal experiences

among lesbian, gay, and bisexual people. Also, discrimination against lesbian, gay, and bisexual people in employment and housing appears to remain widespread.

The HIV/AIDS pandemic is another area in which prejudice and discrimination against lesbian, gay, and bisexual people have had negative effects. Early in the pandemic, the assumption that HIV/AIDS was a “gay disease” contributed to the delay in addressing the massive social upheaval that AIDS would generate. Gay and bisexual men have been disproportionately affected by this disease. The association of HIV/AIDS with gay and bisexual men and the inaccurate belief that some people held that all gay and bisexual men were infected served to further stigmatize lesbian, gay, and bisexual people.

What is the psychological impact of prejudice and discrimination?

Prejudice and discrimination have social and personal impact. On the social level, prejudice and discrimination against lesbian, gay, and bisexual people are reflected in the everyday stereotypes of members of these groups. These stereotypes persist even though they are not supported by evidence, and they are often used to excuse unequal treatment of lesbian, gay, and bisexual people. For example, limitations on job opportunities, parenting, and relationship recognition are often justified by stereotypic assumptions about lesbian, gay, and bisexual people.

On an individual level, such prejudice and discrimination may also have negative consequences, especially if lesbian, gay, and bisexual people attempt to conceal or deny their sexual orientation. Although many lesbians and gay men learn to cope with the social stigma against homosexuality, this pattern of prejudice can have serious negative effects on health and well-being. Individuals and groups may have the impact of stigma reduced or worsened by other characteristics, such as race, ethnicity, religion, or disability. Some lesbian, gay, and bisexual people may face less of a stigma. For others, race, sex, religion, disability, or other characteristics may exacerbate the negative impact of prejudice and discrimination.

The widespread prejudice, discrimination, and violence to which lesbians and gay men are often subjected are significant mental health concerns. Sexual prejudice, sexual orientation discrimination, and antigay violence are major

sources of stress for lesbian, gay, and bisexual people. Although social support is crucial in coping with stress, antigay attitudes and discrimination may make it difficult for lesbian, gay, and bisexual people to find such support.

Is homosexuality a mental disorder?

No, lesbian, gay, and bisexual orientations are not disorders. Research has found no inherent association between any of these sexual orientations and psychopathology. Both heterosexual behavior and homosexual behavior are normal aspects of human sexuality. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay, and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience. Lesbian, gay, and bisexual relationships are normal forms of human bonding. Therefore, these mainstream organizations long ago abandoned classifications of homosexuality as a mental disorder.

What about therapy intended to change sexual orientation from gay to straight?

All major national mental health organizations have officially expressed concerns about therapies promoted to modify sexual orientation. To date, there has been no scientifically adequate research to show that therapy aimed at changing sexual orientation (sometimes called reparative or conversion therapy) is safe or effective. Furthermore, it seems likely that the promotion of change therapies reinforces stereotypes and contributes to a negative climate for lesbian, gay, and bisexual persons. This appears to be especially likely for lesbian, gay, and bisexual individuals who grow up in more conservative religious settings.

Helpful responses of a therapist treating an individual who is troubled about her or his same-sex attractions include helping that person actively cope with social prejudices against homosexuality, successfully resolve issues associated with and resulting from internal conflicts, and actively lead a happy and satisfying life. Mental health professional organizations call on their members to respect a person's (client's) right to self-determination; be sensitive to the client's race, culture, ethnicity, age, gender, gender identity, sexual orientation, religion, socioeconomic status, language, and disability status when working with that client; and eliminate biases based on these factors.

What is "coming out" and why is it important?

The phrase "coming out" is used to refer to several aspects of lesbian, gay, and bisexual persons' experiences: self-awareness of same-sex attractions; the telling of one or a few people about these attractions; widespread disclosure of same-sex attractions; and identification with the lesbian, gay, and bisexual community. Many people hesitate to come out because of the risks of meeting prejudice and discrimination. Some choose to keep their identity a secret; some choose to come out in limited circumstances; some decide to come out in very public ways.

Coming out is often an important psychological step for lesbian, gay, and bisexual people. Research has shown that feeling positively about one's sexual orientation and integrating it into one's life fosters greater well-being and mental health. This integration often involves disclosing one's identity to others; it may also entail participating in the gay community. Being able to discuss one's sexual orientation with others also increases the availability of social support, which is crucial to mental health and psychological well-being. Like heterosexuals, lesbians, gay men, and bisexual people benefit from being able to share their lives with and receive support from family, friends, and acquaintances. Thus, it is not surprising that lesbians and gay men who feel they must conceal their sexual orientation report more frequent mental health concerns than do lesbians and gay men who are more open; they may even have more physical health problems.

What about sexual orientation and coming out during adolescence?

Adolescence is a period when people separate from their parents and families and begin to develop autonomy. Adolescence can be a period of experimentation, and many youths may question their sexual feelings. Becoming aware of sexual feelings is a normal developmental task of adolescence. Sometimes adolescents have same-sex feelings or experiences that cause confusion about their sexual orientation. This confusion appears to decline over time, with different outcomes for different individuals.

Some adolescents desire and engage in same-sex behavior but do not identify as lesbian, gay, or bisexual, sometimes because of the stigma associated with a nonheterosexual orientation. Some adolescents experience continuing feelings of same-sex attraction but do not engage in any sexual activity or may engage in heterosexual behavior for varying lengths of time. Because of the

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stigma associated with same-sex attractions, many youths experience same-sex attraction for many years before becoming sexually active with partners of the same sex or disclosing their attractions to others.

For some young people, this process of exploring same-sex attractions leads to a lesbian, gay, or bisexual identity. For some, acknowledging this identity can bring an end to confusion. When these young people receive the support of parents and others, they are often able to live satisfying and healthy lives and move through the usual process of adolescent development. The younger a person is when she or he acknowledges a nonheterosexual identity, the fewer internal and external resources she or he is likely to have. Therefore, youths who come out early are particularly in need of support from parents and others.

Young people who identify as lesbian, gay, or bisexual may be more likely to face certain problems, including being bullied and having negative experiences in school. These experiences are associated with negative outcomes, such as suicidal thoughts, and high-risk activities, such as unprotected sex and alcohol and drug use. On the other hand, many lesbian, gay, and bisexual youths appear to experience no greater level of health or mental health risks. Where problems occur, they are closely associated with experiences of bias and discrimination in their environments. Support from important people in the teen's life can provide a very helpful counterpart to bias and discrimination.

Support in the family, at school, and in the broader society helps to reduce risk and encourage healthy development. Youth need caring and support, appropriately high expectations, and the encouragement to participate actively with peers. Lesbian, gay, and bisexual youth who do well despite stress—like all adolescents who do well despite stress—tend to be those who are socially competent, who have good problem-solving skills, who have a sense of autonomy and purpose, and who look forward to the future.

In a related vein, some young people are presumed to be lesbian, gay, or bisexual because they don't abide by traditional gender roles (i.e., the cultural beliefs about what is appropriate "masculine" and "feminine" appearance and behavior). Whether these youths identify as heterosexual or as lesbian,

gay, or bisexual, they encounter prejudice and discrimination based on the presumption that they are lesbian, gay, or bisexual. The best support for these young people is school and social climates that do not tolerate discriminatory language and behavior.

At what age should lesbian, gay, or bisexual youths come out?

There is no simple or absolute answer to this question. The risks and benefits of coming out are different for youths in different circumstances. Some young people live in families where support for their sexual orientation is clear and stable; these youths may encounter less risk in coming out, even at a young age. Young people who live in less supportive families may face more risks in coming out. All young people who come out may experience bias, discrimination, or even violence in their schools, social groups, work places, and faith communities. Supportive families, friends, and schools are important buffers against the negative impacts of these experiences.

What is the nature of same-sex relationships?

Research indicates that many lesbians and gay men want and have committed relationships. For example, survey data indicate that between 40% and 60% of gay men and between 45% and 80% of lesbians are currently involved in a romantic relationship. Further, data from the 2000 U.S. Census indicate that of the 5.5 million couples who were living together but not married, about 1 in 9 (594,391) had partners of the same sex. Although the census data are almost certainly an underestimate of the actual number of cohabiting same-sex couples, they indicate that there are 301,026 male same-sex households and 293,365 female same-sex households in the United States.

Stereotypes about lesbian, gay, and bisexual people have persisted, even though studies have found them to be misleading. For instance, one stereotype is that the relationships of lesbians and gay men are dysfunctional and unhappy. However, studies have found same-sex and heterosexual couples to be equivalent to each other on measures of relationship satisfaction and commitment.

A second stereotype is that the relationships of lesbians, gay men and bisexual people are unstable. However, despite social hostility toward same-sex relationships, research shows

that many lesbians and gay men form durable relationships. For example, survey data indicate that between 18% and 28% of gay couples and between 8% and 21% of lesbian couples have lived together 10 or more years. It is also reasonable to suggest that the stability of same-sex couples might be enhanced if partners from same-sex couples enjoyed the same levels of support and recognition for their relationships as heterosexual couples do, i.e., legal rights and responsibilities associated with marriage.

A third common misconception is that the goals and values of lesbian and gay couples are different from those of heterosexual couples. In fact, research has found that the factors that influence relationship satisfaction, commitment, and stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples.

Far less research is available on the relationship experiences of people who identify as bisexual. If these individuals are in a same-sex relationship, they are likely to face the same prejudice and discrimination that members of lesbian and gay couples face. If they are in a heterosexual relationship, their experiences may be quite similar to those of people who identify as heterosexual unless they choose to come out as bisexual; in that case, they will likely face some of the same prejudice and discrimination that lesbian and gay individuals encounter.

Can lesbians and gay men be good parents?

Many lesbians and gay men are parents; others wish to be parents. In the 2000 U.S. Census, 33% of female same-sex couple households and 22% of male same-sex couple households reported at least one child under the age of 18 living in the home. Although comparable data are not available, many single lesbians and gay men are also parents, and many same-sex couples are part-time parents to children whose primary residence is elsewhere.

As the social visibility and legal status of lesbian and gay parents have increased, some people have raised concerns about the well-being of children in these families. Most of these questions are based on negative stereotypes about lesbians and gay men. The majority of research on this topic asks whether children raised by lesbian and gay parents are at a disadvantage when compared to children raised by heterosexual parents. The most common questions and answers to them are these:

1 Do children of lesbian and gay parents have more problems with sexual identity than do children of heterosexual parents?

For instance, do these children develop problems in gender identity and/or in gender role behavior? The answer from research is clear: sexual and gender identities (including gender identity, gender-role behavior, and sexual orientation) develop in much the same way among children of lesbian mothers as they do among children of heterosexual parents. Few studies are available regarding children of gay fathers.

2 Do children raised by lesbian or gay parents have problems in personal development in areas other than sexual identity?

For example, are the children of lesbian or gay parents more vulnerable to mental breakdown, do they have more behavior problems, or are they less psychologically healthy than other children? Again, studies of personality, self-concept, and behavior problems show few differences between children of lesbian mothers and children of heterosexual parents. Few studies are available regarding children of gay fathers.

3 Are children of lesbian and gay parents likely to have problems with social relationships?

For example, will they be teased or otherwise mistreated by their peers? Once more, evidence indicates that children of lesbian and gay parents have normal social relationships with their peers and adults. The picture that emerges from this research shows that children of gay and lesbian parents enjoy a social life that is typical of their age group in terms of involvement with peers, parents, family members, and friends.

4 Are these children more likely to be sexually abused by a parent or by a parent's friends or acquaintances?

There is no scientific support for fears about children of lesbian or gay parents being sexually abused by their parents or their parents' gay, lesbian, or bisexual friends or acquaintances.

In summary, social science has shown that the concerns often raised about children of lesbian and gay parents—concerns that are generally grounded in prejudice against and stereotypes about gay people—are unfounded. Overall, the research indicates that the children of lesbian and gay parents do not differ markedly from the children of heterosexual parents in their development, adjustment, or overall well-being.

What can people do to diminish prejudice and discrimination against lesbian, gay, and bisexual people?

Lesbian, gay, and bisexual people who want to help reduce prejudice and discrimination can be open about their sexual orientation, even as they take necessary precautions to be as safe as possible. They can examine their own belief systems for the presence of antigay stereotypes. They can make use of the lesbian, gay, and bisexual community—as well as supportive heterosexual people—for support.

Heterosexual people who wish to help reduce prejudice and discrimination can examine their own response to antigay stereotypes and prejudice. They can make a point of coming to know lesbian, gay, and bisexual people, and they can work with lesbian, gay, and bisexual individuals and communities to combat prejudice and discrimination. Heterosexual individuals are often in a good position to ask other heterosexual people to consider the prejudicial or discriminatory nature of their beliefs and actions. Heterosexual allies can encourage nondiscrimination policies that include sexual orientation. They can work to make coming out safe. When lesbians, gay men, and bisexual people feel free to make public their sexual orientation, heterosexuals are given an opportunity to have personal contact with openly gay people and to perceive them as individuals.

Studies of prejudice, including prejudice against gay people, consistently show that prejudice declines when members of the majority group interact with members of a minority group. In keeping with this general pattern, one of the most powerful influences on heterosexuals' acceptance of gay people is having personal contact with an openly gay person. Antigay attitudes are far less common among members of the population who have a close friend or family member who is lesbian or gay, especially if the gay person has directly come out to the heterosexual person.

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The American Psychological Association
750 First Street, NE
Washington, DC 20002

WHERE CAN I FIND MORE INFORMATION ABOUT HOMOSEXUALITY?

○ ○ **American Psychological Association**

Lesbian, Gay, Bisexual, and Transgender Concerns Office
750 First Street, NE, Washington, DC 20002
E-mail: lgbc@apa.org
<http://www.apa.org/pi/igbc/>

○ ○ **Mental Health America** (formerly the National Mental Health Association)

2000 N. Beauregard Street, 6th Floor
Alexandria, VA 22311
Main Switchboard: (703) 684-7722
Toll-free: (800) 969-6MHA (6642)
TTY: (800) 433-5959
Fax: (703) 684-5968
<http://www.nmha.org/go/home>

What Does Gay Mean? How to Talk With Kids About Sexual Orientation and Prejudice

An anti-bullying program designed to improve understanding and respect for youth who are gay/lesbian/bisexual/transgender (GLBT). Centered on an educational booklet called *What Does Gay Mean? How to Talk with Kids About Sexual Orientation and Prejudice*, the program encourages parents and others to communicate and share values of respect with their children.

○ ○ **American Academy of Pediatrics (AAP)**

Division of Child and Adolescent Health
141 Northwest Point Blvd.
Elk Grove Village, IL 60007
Office: (847) 228-5005
Fax: (847) 228-5097
<http://www.aap.org>

Gay, Lesbian, and Bisexual Teens: Facts for Teens and Their Parents



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January 2011



Addressing the Urgent Needs of DC Area LGBTQ Youth

Sexual Minority Youth Assistance League **SMYAL**

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In the fall of 2010, the nation was shocked and saddened by a string of news reports about teenagers taking their own lives after enduring anti-gay bullying and harassment from their peers. Seeing these young lives end so tragically brought home the challenges that so many lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth face every day and showed us all how far we have to go to make our communities safe—and how high the stakes are. And yet, in the face of this heartbreaking loss, many of the responses we've seen give reason for renewed hope: parents, teachers, government leaders, community members and youth advocates have all raised their voices across the country to support LGBTQ youth and end the heterosexism and homophobia that do so much harm.

This national call to action echoes the course of events that led to SMYAL's founding in 1984, when a group of local activists came together to call for change after a group of young men were incarcerated in St. Elizabeth's Psychiatric Hospital for failing to measure up to the cultural expectation of masculinity. In those early meetings of the SMYAL founders, a handful of committed community members set out an ambitious vision to create safe spaces for LGBTQ youth and make the DC metro area safer for the generations of youth that would follow.

Many LGBTQ youth continue to face rejection, isolation, and hopelessness... and we are reminded that so much more needs to be done.

More than a quarter-century later, SMYAL has changed the lives of countless youth through supportive programming at our youth center and by raising awareness of LGBTQ youth issues throughout the region. In that time, we've seen marked changes in our community and our youth: youth are coming out younger and younger, and, more than ever, many parents, community organizations, social workers, and religious groups are learning to welcome and accept them. Gay-Straight Alliances are more common in our local schools and openly gay celebrities and politicians are more common on our television sets. The world for LGBTQ youth in the DC metro area has undeniably changed. At the same time, many LGBTQ youth, including some of

our community's most vulnerable, continue to face rejection, isolation, and hopelessness as they struggle through their adolescence, and we are reminded that so much more needs to be done.

At SMYAL, we are committed to supporting our LGBTQ youth today while also laying the groundwork to make tomorrow safer for all youth. To ensure that we are focusing our programs and efforts on meeting the most pressing needs, over the past year, we have conducted a thorough LGBTQ youth needs assessment. To do so, we've facilitated focus group discussions with our local youth and analyzed cutting edge research from across the country. In this report, you will find the results of that assessment, and recommendations for how we can all work together to support our community's LGBTQ youth.

We know there is much work to do, and we know the stakes are high. Together, we can remove the barriers LGBTQ youth face, and make the DC metro area a place where all youth are valued and empowered.

Sincerely,

Andrew Barnett,
Executive Director

★ Executive Summary

Through serving local lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth for more than 25 years, the Sexual Minority Youth Assistance League (SMYAL) has seen the needs of the local youth population change and evolve over time, just as the entire DC area has. Today, the local landscape for LGBTQ youth seems to be one of both tremendous opportunity and dire need. The LGBT community has made significant progress in securing additional legal recognitions and protections and increasing visibility and awareness of LGBT issues. At the same time, the economic downturn has reduced the availability of jobs while driving up demand for social services, leaving many families and youth without ready access to key needs such as food and housing. LGBTQ youth now live in a world where there are numerous LGBTQ student clubs in local schools and also numerous homeless LGBTQ youth living on the streets.

This climate has an enormous impact on the lives of LGBTQ youth growing up in the DC area today, and also in the services and supports they need to grow into happy, healthy, and economically stable adults. In order to understand the urgent and long-term needs of LGBTQ youth and the complexity of their

experiences, SMYAL undertook a comprehensive needs assessment in 2010. This assessment included a review of the available data on local LGBTQ youth, and also information from focus groups with members of the local youth population.

LGBTQ youth are more likely to experience bullying and violence; engage in unsafe sexual behavior; abuse alcohol, tobacco, and illegal drugs; experience homelessness; and attempt suicide.

Reviewed independently, the available research and information gathered in SMYAL's focus groups seems, at first glance, to paint two different pictures. Research studies reveal a plethora of risk factors and needs: LGBTQ youth are more likely to experience bullying and violence; engage in unsafe sexual



behavior; abuse alcohol, tobacco, and illegal drugs; experience homelessness; and attempt suicide. In contrast, conversations among LGBTQ youth in SMYAL's focus groups did not center on the disparities between LGBTQ and heterosexual youth in the local community, but instead focused on the overwhelming economic need facing so many DC area youth, including access to housing, jobs, and other commodities.

Analyzing both the available research and focus group reports together reveals a more complex intersection of needs: although youth may not perceive being LGBTQ as a primary barrier, research shows that LGBTQ youth are at greater risk for a host of negative health outcomes, such as depression and substance abuse. DC-area LGBTQ youth encounter the same challenges facing all youth in their communities, but their experiences as LGBTQ youth are not the same as those of their heterosexual peers. All DC public school students enter into a system with the highest dropout rate in the country, but LGBTQ youth are far more likely to report missing school because they feel unsafe. In many cases, exploring the experiences of LGBTQ youth reveals additional challenges because of their LGBTQ status and additional barriers in accessing key safety net supports such as housing and job training.

LGBTQ youth are at greater risk for a host of negative health outcomes, such as depression and substance abuse.

This report highlights those experiences and examines the ways in which socioeconomic inequality, institutionalized racism, and anti-LGBTQ discrimination intersect in the lives of local LGBTQ youth. The following summary of recommendations are based on those needs and outline ways in which community providers, advocates, LGBTQ and ally youth, and government officials must work together to address the challenges facing LGBTQ youth in the DC metro area and ensure that these young people have access to the services they need.

Summary of Recommendations

1 Build local capacity to serve LGBTQ youth who are homeless by expanding culturally competent emergency shelters, transitional housing programs and homelessness prevention services for LGBTQ youth.

2 Educate schools and community service providers about LGBTQ youth populations to ensure schools and community spaces are safe and affirming for LGBTQ youth.

3 LGBTQ youth have multiple identities, and programs must be built to speak to the intersection of these identities and reflect the multiculturalism of the local LGBTQ youth population.


4 HIV/AIDS prevention education, testing services, and care for youth living with HIV/AIDS must be expanded in the suburbs and the District and include culturally competent and relevant information for LGBTQ youth populations.

5 Dedicated supportive programming for LGBTQ youth must be expanded in the DC metro area, including increasing the variety of programs offered and programs targeting underserved sub-populations.

6 Community organizations must incorporate popular technology and communications such as text messages and social networking to outreach to LGBTQ youth populations and must ensure communication channels are operated with clear protocols to ensure safety.

7 Local capacity for services and programs for parents and guardians of LGBTQ youth must be increased, and programs serving LGBTQ youth should involve parents and guardians in their work.

8 The needs of local LGBTQ youth are ever-changing, and so community organizations and stakeholders must continually assess youth needs and empower youth as leaders in program development.

A young man in a grey button-down shirt and a bright pink tie is presenting a certificate to a young woman. The woman is standing behind a clear acrylic podium, wearing glasses and a grey sweater, and is smiling broadly. The background is a dark red curtain with a red light source above, creating a warm, focused atmosphere.

SMYAL works to educate the broader community about the challenges facing LGBTQ youth and raise awareness of the need for safe spaces for this population.



SMYAL's Mission and History The Sexual Minority Youth Assistance League (SMYAL) is the only Washington, DC, metro area service organization dedicated solely to supporting lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. Founded in 1984, SMYAL is a 501(c)(3) nonprofit organization. SMYAL's mission is to promote and support self-confident, healthy, productive lives for LGBTQ youth ages 13–21 as they journey from adolescence into adulthood.

To fulfill its mission, SMYAL concentrates its work in five areas:

1. Life Skills and Leadership Development;
2. Counseling and Support;
3. Health and Wellness Education;
4. Safe Social Activities; and
5. Community Outreach and Education.

Since its beginnings over 25 years ago, SMYAL has reached more than 10,000 youth through direct programming and provided training and outreach to over 5,000 youth workers and community members.

SMYAL Today Each year, SMYAL provides structured after-school programming to more than 350 LGBTQ youth through weekly programs and special events. Most SMYAL participants are 16 to 19 years old, more than 95 percent are African American, and many come from low-income families. Many of the youth SMYAL serves live in foster homes, group houses, and kinship placements, which makes identifying the jurisdiction of residence difficult; however, most of the youth SMYAL serves live in Wards 7 and 8 in the District of Columbia and Prince George's County in Maryland. Youth living in Virginia and other parts of Maryland and the District also regularly access SMYAL's programs.

In addition to offering direct service programming, SMYAL works to educate the broader community about the challenges facing LGBTQ youth and raise awareness of the need for safe spaces for this population. Through its community education program, SMYAL provides LGBTQ cultural competency training to more than 400 youth service providers each year, including social workers, police officers, court officials, community service providers, and teachers. SMYAL staff and youth leaders also work to promote positive social change for

local youth through advocacy and training workshops. Each year SMYAL provides youth awareness and ally training to more than 300 local youth in schools and through other community service providers.

SMYAL employs a staff of 11, operates with an annual budget just under \$1 million, and is funded through public grants, private foundations, corporate support, and individual donations. SMYAL receives federal funding for HIV prevention and services from the Centers for Disease Control and Prevention and through the Children's National Medical Center.

SMYAL's mission is to promote and support self-confident, healthy, productive lives for LGBTQ youth ages 13–21 as they journey from adolescence into adulthood.

SMYAL Programs SMYAL provides comprehensive services and educational outreach at an onsite youth center in Capitol Hill and throughout the Washington, DC, metropolitan area. The organization empowers LGBTQ youth to overcome the many challenges they face through high-impact programming, and by providing a safe and supportive space in which to grow and learn. Programming consists of the following:

- **Youth Leadership Development:** SMYAL promotes positive youth leadership development through these curriculum-based programs:
 - *Youth Advocates Program:* This intensive year-long program empowers youth to advocate for positive social change while building skills and increasing knowledge of LGBTQ issues.
 - *Women's Leadership Institute:* This multi-faceted program provides young women an investigation of women's issues and promotes community service through four weeklong summits, a weekend retreat, and monthly after-school meetings.
- **HIV Prevention and Services:** SMYAL promotes healthy behavior choices through these initiatives:



- *Brotherhood University (BU)*: SMYAL employs the proven-effective “Many Men, Many Voices” curriculum through weekend retreats for young gay and bisexual men of color.
- *HIV Counseling, Testing, and Referral (CTR)*: Certified professionals provide free and confidential HIV CTR at SMYAL’s Youth Center and at local venues through partnerships with other community-based organizations and businesses.
- *Care Advocacy*: Through a partnership with Children’s National Medical Center, SMYAL connects all HIV-positive youth to wraparound services and provides ongoing support.
- **Weekly After-School Programs**: SMYAL staff members and volunteers facilitate an array of structured out-of-school time (OST) programs every weekday at its Capitol Hill Youth Center, including weekly support groups facilitated by clinical staff; youth arts programming to promote self-expression; discussion groups with guest speakers from the community; and recreational nights with safe social activities.
- **Community Education and Provider Trainings**: SMYAL provides LGBTQ youth cultural competency training to

youth service providers and local youth throughout the community, including the following program:

- *Mental Health Initiative*: SMYAL provides ongoing technical assistance and clinical supervision for social workers with LGBTQ youth clients in individual counseling at local community-based core service agencies.

Assessing the Current Needs of LGBTQ Youth

In 2009, SMYAL celebrated its 25th anniversary of providing services to metro DC-area lesbian, gay, bisexual, transgender and questioning youth. While this milestone served as an important marker of the organization’s history and stability, the anniversary also highlighted the dramatic changes the LGBT community has experienced in the last quarter-century on both the national and local levels:

- LGBTQ youth are growing up in a more tolerant climate than previous generations. Public opinion is more accepting of LGBT individuals, and the growing number of school Gay-Straight Alliances signals LGBTQ youth are increasingly accepted by their peers. LGBTQ youth today are also more likely than previous generations to grow up seeing openly LGBT individuals in their communities, in elected office, and in the media.

- The legislative climate has also changed. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in 2009 expanded federal hate-crime law to include crimes motivated by sexual orientation and gender identity. Washington, DC prohibits job discrimination based on sexual orientation and gender identity. Rights for same-sex couples have also progressed, and the District is one of the few places in the United States where same-sex couples can legally marry.
- At the same time, violence and harassment against LGBT individuals persists. Sexual orientation hate crimes are the most prevalent of all reported hate crimes in Washington, DC; in 2008, more than 70 percent of reported hate crimes were motivated by sexual orientation bias. LGBTQ youth are at higher risk to be harassed, suffer depression, or attempt suicide than their non-LGBTQ classmates.
- Technology has transformed how individuals communicate, and youth are among the first to adopt these new technologies. Mobile phones, texting, the Internet, and social media have changed how individuals internalize, organize, and respond to information. For LGBTQ youth these technologies also present new ways to find information and connect with each other—as well as raise concerns about security and safety, including the issue of cyber-bullying.
- AIDS is no longer perceived to be an illness exclusive to gay men, but the disease continues to affect the poorest and most vulnerable communities in the United States and the world.

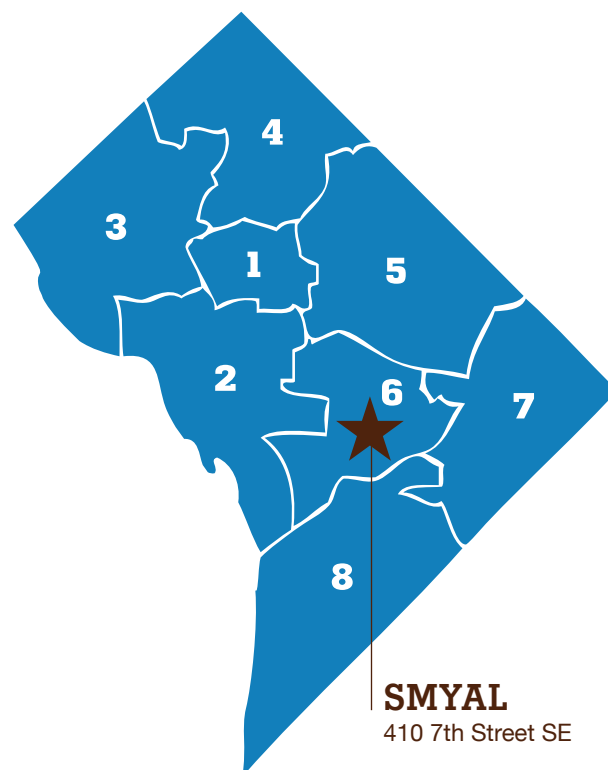
SMYAL has also changed, growing from a weekend support group into a vibrant Capitol Hill youth center and well-respected local community-based provider. In the first decade of the 21st century, SMYAL has seen shifts in its programs in response to the needs of the community it serves and the opportunities available. In 2001, SMYAL received its first federal grant for HIV prevention and services, and since then has implemented a sophisticated HIV prevention initiative incorporating a proven-effective intervention, free and confidential counseling and testing, and limited case management for HIV-positive youth. SMYAL has also seen a demographic shift in the organization's youth population, trending toward African American young men ages 16–19, and especially youth from Wards 7 and 8 in Washington, DC.

In order to assess the effect of these trends on the metro DC-area LGBTQ youth population and to determine how

In 2008, more than 70 percent of reported hate crimes [in DC] were motivated by sexual orientation bias.

to continue to improve and evolve its program offerings, SMYAL undertook an assessment of LGBTQ youths' current needs. As part of this project, the organization reviewed local health studies and student surveys, and the organization's Executive Director visited several other LGBTQ youth-serving organizations in the Northeast. SMYAL also held focus groups to learn more about the needs of LGBTQ youth.

This report details the findings of this process, which makes a compelling case for the continued need for targeted services addressing the challenges of local LGBTQ youth.



No comprehensive single source of data exists about LGBTQ youth in the District of Columbia. However, an analysis of census data, health information, student surveys, and focus group discussions points to central issues and concerns affecting local LGBTQ youth. It should also be noted that several significant areas remain under-researched, such as the experiences of the District’s transgender and homeless LGBTQ youth.

Population and Economics of the DC Metro Area According to data from the United States Census Bureau, some 600,000 people call the District of Columbia home, 19 percent of whom are under age 18. More than half (55 percent) are African American. The number of black residents has been steadily declining; in 1990 African Americans made up 66 percent of the population. The white population has grown and now comprises 36 percent of the city, as opposed to 30 percent in 1990. Asians represent 3 percent and other races make up 6 percent. Nine percent of residents are Hispanic. More than 5.3 million people live in the larger Washington Metropolitan Area, which includes parts of Maryland, Virginia, and West Virginia. One quarter (25 percent) are under 18. More than half (58 percent) of the region’s residents are white, 25 percent are African American, 8 percent are Asian and 9 percent another race. Twelve percent of the region’s residents are Hispanic.

The District has one of the greatest gaps between high and low incomes in the United States. The median household income is just is \$57,900, but it is less than \$35,000 in the largely African American Wards 7 and 8. Wealth is concentrated among white households in the western ends of the District, where median income is \$106,000. One in three children in the District lives

Population of District of Columbia	1990 Census	2000 Census	2006–2008 ACS
Total population	606,900	572,059	588,373
Population under 18 years old	19%	20%	19%
Race (all ages)			
White	30%	32%	36%
African American	66%	61%	55%
Asian	2%	3%	3%
Other race	3%	5%	6%
Hispanic origin (of any race)	5%	8%	9%

United States Census Bureau

in poverty, including more than two in five African American children. Income differences sharpen when comparing the District to the larger Washington metropolitan area, where the median household income is more than \$85,000.

The 2007 Youth Risk Behavior Survey of Washington, DC, public high school students found that 3 percent identified as lesbian or gay, 5 percent identified as bisexual and 3 percent were unsure of their sexual orientation.

LGB Population Using U.S. Census Bureau data, the Williams Institute at UCLA School of Law estimates more than 8 percent of residents of the District of Columbia are lesbian, gay, or bisexual (LGB)—the highest percentage of any state in the country. Nearly 33,000 LGB people live in the District, and there are approximately 4,000 same-sex couples. Twenty-six percent of same-sex couples are African American and 67 percent are white.

The 2007 Youth Risk Behavior Survey (YRBS) of Washington, DC public high school students, a biannual study conducted at the state level by the Office for the State Superintendent for Education and nationwide by the Centers for Disease Control and Prevention, found that among youth, 3 percent identify as lesbian or gay, 5 percent identify as bisexual, and 3 percent are unsure of their sexual orientation.

Neither the Census Bureau nor the DC YRBS collected data about the transgender population in the DC metro area. Researchers estimate that 1.5 percent of the total U.S. population is transgender, and though anecdotal evidence suggests that the number may be higher in the DC metro area, local data collection about this population is severely lacking.

HIV and AIDS Three percent of District residents have HIV or AIDS—the highest figure in the nation—according to a 2009 report from the Washington, DC,

Department of Health. While rates of infection have increased among nearly every population and age group, African Americans are struck hardest: More than 75 percent of District residents who have contracted the virus are African American. Wards 6 and 8 have the highest percentages of residents living with the illness, with 3.3 and 3.4 percent, respectively.

A 2010 study by the Washington, DC, Department of Health found that 14 percent of gay men in the District are HIV positive. Forty percent of the study's participants reported being unaware of their HIV status, even though most had seen a doctor within the previous 12 months. Older gay men (ages 30 and higher) reported being tested less, using condoms less frequently, and having more sexual partners than younger men (ages 18 to 29), who generally reported having safer sex behaviors. However, despite the lower prevalence of HIV observed in the younger men in the survey, 100 percent of the young men who tested positive for HIV in the survey were men of color.

HIV and AIDS are also major concerns in the suburbs surrounding the District. Nearly half (46 percent) of people with AIDS in the Washington metropolitan area live in the Maryland and Virginia suburbs, according to a report from the Washington AIDS Partnership. However, the report found that suburban HIV outreach is underfunded and lacks coordination, and in schools, HIV education varies widely and is rarely comprehensive. Condoms can eliminate or reduce the risk of spreading HIV during sex; however, just three schools in the District's suburbs provide live or video demonstrations for applying condoms, and two systems ban any condoms from being brought onto school grounds.

Experiences of Violence, Drug Use

and Suicide A substantial number of Lesbian, Gay, Bisexual, and Questioning (LGBQ) youth report being harassed or experiencing violence at school and at much higher rates than their non-LGBQ classmates, according to the YRBS study. (The survey does not ask about students' gender identity, and so data on transgender youth is not included.) Nearly half (47 percent) of LGBQ students report having property stolen or deliberately damaged, 37 percent report being bullied, and 23 percent report being threatened or injured with a weapon. Heterosexual-identified students report much lower rates of harassment and violence: 24 percent report having had belongings stolen or broken, 15 percent report being bullied, and 9 percent report being threatened. LGBQ young men in particular are at risk for violence: More than half (54 percent) of LGBQ males report having had property stolen, 51 percent report having been harassed,



3%

**of District residents have HIV or AIDS—
the highest figure in the nation.**

and 38 percent report being threatened or injured with a weapon. More than one-quarter (28 percent) of LGBQ students said they have stayed home from school because they felt unsafe, compared to 12 percent of non-LGBQ students. LGBQ youth were also more likely to report experiencing dating violence and forced sexual intercourse (30 percent and 21 percent, respectively) than non-LGBQ youth (15 percent and 7 percent, respectively).

A similar pattern follows for drug use. More than one in four LGBQ students said they have used inhalants (30 percent), ecstasy (27 percent), or illegal steroids (26 percent); 24 percent report using methamphetamines; and 21 percent report using cocaine. Among non-LGBQ students, 7 percent report using inhalants, 5 percent report using ecstasy, 3 percent report using illegal steroids, 3 percent report having used methamphetamines, and 3 percent report having used cocaine.

LGBQ students were also more likely to report contemplating and attempting suicide. More than two in five (43 percent) LGBQ students said they have felt sad or hopeless, 29 percent report seriously considering suicide, 24 percent report having planned how they would commit suicide, and 38 percent report attempting suicide. Among non-LGBQ students, one-quarter (25 percent) report having felt hopeless, 13 percent report seriously considering suicide, 10 percent report having planned how they would commit suicide, and 8 percent report attempting suicide.

The YRBS does not directly address why LGBQ students are at higher risk to experience violence, drug use, or suicide, but research conducted by the Family Acceptance

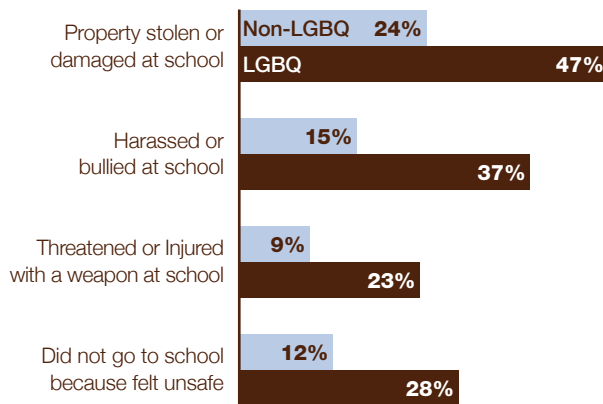
Project (FAP) at San Francisco State University points to the relationship between an LGBQ youth's sense of acceptance or rejection and his or her health. A study published in *Pediatrics* by FAP researchers in 2009 found that a family's rejection of a child's sexual orientation and/or gender expression was significantly associated with poorer health outcomes for the youth. In the study, researchers surveyed 224 LGBT young adults about nine key health indicators, including mental health, substance abuse, and sexual risk. Researchers found that the LGBT individuals who experienced 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 have engaged in unprotected sex.

Transgender Youth While no Washington, DC, figures exist about transgender students, a national survey of middle and high school students reported by the Gay, Lesbian, and Straight Education Network (GLSEN) in 2009 points to the specific needs and unique challenges faced by transgender youth. Transgender youth report many of the same risk factors experienced by their LGB peers:

- Almost all transgender students reported being verbally harassed because of their sexual orientation (89 percent) and their gender expression (87 percent).
- More than half of transgender students reported being physically harassed in school because of their sexual orientation (55 percent) and their gender expression (53 percent).

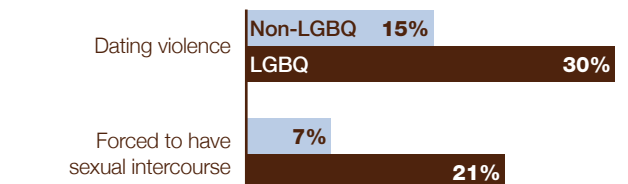
Experiences of Violence Among Youth

2007 Youth Risk Behavior Survey of Washington, DC public high school students



Experiences of Dating & Sexual Violence Among Youth

2007 Youth Risk Behavior Survey of Washington, DC public high school students



- More than one quarter of transgender students reported being physically assaulted in school because of their sexual orientation (28 percent) and their gender expression (26 percent).
- Almost half (46 percent) of transgender students reported skipping one day of school in the past month because they felt unsafe or uncomfortable.

Homelessness Local DC-area data on homeless LGBTQ youth is limited: the DC Youth Risk Behavior Survey only reaches youth attending school, and the unstable nature of many homeless youths’ lives prevents them from regularly attending school. However, a 2010 report released by the Center for American Progress (CAP) presents national data on homeless LGBTQ youth and demonstrates the incredible challenges this population faces. According to the CAP report, LGBTQ youth make up a disproportionate percentage of the national homeless youth population, in part due to the trend of LGBTQ youth “coming out” at earlier ages, when they depend on their families to meet their needs and are particularly vulnerable if they are rejected by their families. Homelessness has immediate consequences for LGBTQ youth, including placing them at risk for attempting suicide and engaging in survival sex—the trading of sex for food, shelter, or other materials. Long-term consequences include reducing the youth’s long-term economic trajectory. Additionally, the CAP report highlights the dearth of programs and protections for LGBTQ youth who are homeless, including limited federal assistance for housing programs for youth

and a lack of regulations ensuring providers are culturally competent to serve LGBTQ youth.

SMYAL Focus Groups of LGBTQ Youth

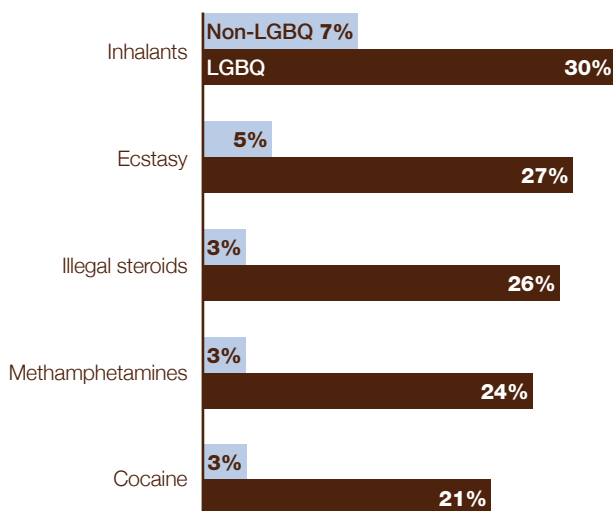
SMYAL conducted focus groups in 2005 and 2010 to learn more about the lives and experiences of Washington, DC-area LGBTQ youth. The results of the 2005 focus groups are reported in the publication *Confronting the Crisis: Issues Facing Lesbian, Gay, Bisexual, Transgender and Questioning Youth, Especially LGBTQ Youth of Color, in the District*. In *Confronting the Crisis*, SMYAL highlights the tremendous need among LGBTQ youth for the following:

- Safe and affirming schools and communities;
- Dedicated shelters and housing;
- Safe out-of-school time, especially for transgender youth;
- Job and life skills, especially for transgender youth;
- Increased funding for expert mental health counseling;
- Substance abuse and HIV prevention and treatment services; and
- Culturally competent services for LGBTQ Latino/a youth.

In 2010, SMYAL conducted another series of focus groups of LGBTQ youth to learn how they feel about services currently being offered, and how they would like to see those services enhanced. A total of 39 LGBTQ youth participated in five focus groups. Youth were recruited from SMYAL programs, through the social networks of SMYAL

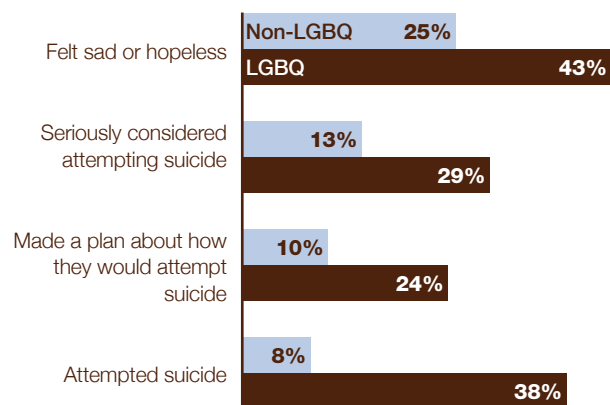
Drug Use Among Youth

2007 Youth Risk Behavior Survey of Washington, DC public high school students



Suicide-Related Behaviors Among Youth

2007 Youth Risk Behavior Survey of Washington, DC public high school students



youth, and through other community service providers. The findings of these focus groups are as follows:

Community Resources Group participants received services through a variety of outlets, including many local community-based organizations. Youth had participated in almost all of SMYAL's program offerings, including discussion groups, structured programs, and interventions, as well as social programs such as dances and movie nights. Youth also reported receiving services through a variety of other community-based organizations, including those providing emergency shelter and transitional housing, HIV prevention and service organizations, local community health centers, community centers, programs focusing on the Latino/a population, and programs that provide services to individuals engaged in commercial sex work. Youth had also participated in groups in their high schools and colleges such as Gay-Straight Alliances and LGBTQ student affinity groups.

Economic Needs and Housing Economic needs were paramount among the concerns of youth. Focus group participants repeatedly said they felt unsafe and experienced difficulty finding jobs, finding transportation to and from services, and gaining access to healthcare. Participants also repeatedly stressed the need for housing resources and the importance of securing housing above other services. The prevalence of homelessness in participants' peer networks was frequently referenced. Additionally, participants reported that many of these needs are critical for all youth and some participants felt were exacerbated for LGBTQ youth, due to anti-LGBTQ discrimination and the lack of safe spaces for LGBTQ youth.

Safe Spaces for Out-of-School Time Focus group participants reported the need for safe spaces and drop-in centers for LGBTQ youth out of school time, including the need for access to computers and the internet, space to do homework, and a space to socialize with their peers. "Coming out" issues were rarely brought up, but some youth participants did report the need for general life guidance and mentoring. Although youth participants described existing programs as generally fun and engaging, they reported a greater need for more variety in programs and messages, including opportunities outside the District.

Needs of Transgender Youth Transgender youth had a number of specific needs, including more knowledge about hormones and gender reassignment surgery, as well as

the need for transgender-friendly subsidized housing and shelters. Focus group respondents reported familiarity with the emergency shelters and transitional living programs for youth in the city, but indicated they were difficult and confusing for transgender youth to navigate. Through the focus groups, transgender youth also reported the need for a space to discuss issues specific to their community and experiences, such as strategies for finding healthy relationships and the prevalence of trading sex for money, goods, or services.

HIV and STD Prevention Focus group participants discussed the need for HIV and STD prevention education for all youth, not just LGBTQ youth. Moreover, the lesbian and bisexual women focus group participants felt neglected with respect to sex education, both in schools and in community-based organizations geared towards women and sexual minorities, reporting that the majority of sex education is focused on HIV prevention and condom use for gay and straight men. These participants also reported a lack of safe spaces for discussion about lesbian sexuality for young women.

Cultural Diversity and Competency Participants were conscious of diversity issues and indicated the need for programs that address racially and ethnically diverse groups of LGBTQ youth as well as a need for more programs for young women. Focus group participants indicated the need for programs and messages that address the needs of all LGBTQ youth, and reported a perception that existing programs focus too narrowly on young men. One African American youth who attended events at a Latino/a-focused organization said, "I was taught by my mom to be international and diverse ... I want to see what else is out there."

Impact of Technology Focus group participants demonstrated a familiarity with and reliance on newer forms of technology to communicate, and an interest in programming utilizing these tools. Specifically, participants indicated using E-mail, text messaging, the Internet, and social media to learn about programs and services. Participants stated that paper brochures, fliers, and word-of-mouth were not as effective outreach tools as social media and other forms of technology. Additionally, youth reported using the Internet for finding sexual partners, and the need for education around safety in doing so.

The recent research and 2010 SMYAL focus groups highlighted many challenges facing DC metro-area LGBTQ youth and several barriers impeding their ability to grow into healthy and productive adults. The data available on issues concerning local LGBTQ youth reveals a plethora of risk factors and needs: LGBTQ youth are more likely to experience bullying and violence; engage in unsafe sexual behavior; abuse alcohol, tobacco, and illegal drugs; experience homelessness; and attempt suicide. In addition, LGBTQ youth in SMYAL's focus groups voiced a more succinct understanding of local youth needs: the need for access to economic resources.

For focus group participants, economic needs were paramount above all others. Discussions focused on tangible commodities and services, such as housing and job training, and spoke little about other LGBTQ challenges such as “coming out.” Although many participants reported accessing programs at SMYAL and other youth service agencies, including those focused on addressing intangible issues such as self-esteem and youth development, they also identified a clear and unmet need for help in achieving ongoing economic stability.

Many of the participants experienced the challenges facing all youth in their communities throughout the DC metro area, including underperforming schools, poverty, and the remnants of institutionalized racism. Many of the participants also saw their primary economic needs as separate and distinct from their issues as LGBTQ youth. However, a deeper analysis of the research and focus group reports indicates that the economic challenges that LGBTQ youth participants experience are intensified by their LGBTQ status, making an already difficult path to adulthood seemingly impossible for so many of them.

Housing and Homelessness A central theme and economic need presented throughout the focus groups was access to housing and services for homeless youth. Participants described a wide range of causes of LGBTQ youth homelessness and the need for many levels of service to address the issue. Youth reported unstable living situations caused not only by disapproving and abusive families, but also by the lack of affordable housing in their communities, financially overwhelmed parents, or foster care and group home placements that are not LGBTQ affirming or welcoming. Regardless of the cause of homelessness, LGBTQ youth experienced additional challenges in finding stable housing due to their LGBTQ status.

In the DC metro area, only one facility provides dedicated transitional living beds for LGBTQ youth, and there are no dedicated emergency beds for this population. Most homeless LGBTQ youth who access services do so through facilities serving the general youth, or, in cases of youth over 18, adult populations. Furthermore, focus group participants reported that negotiating the systems to obtain a placement is often confusing, and beds in housing programs in DC are often full, giving all homeless youth few options.

Youth who are transgender are often housed according to their biological sex despite their gender expression, forcing them to either hide their gender identity or open themselves to abuse and violence from other youth living in their facility.

When LGBTQ youth do obtain placement in these facilities, they often experience harassment, discrimination, and even violence from other youth and also report a lack of cultural competency from some agency staff members. Additionally, youth who are transgender are often housed according to their biological sex despite their gender expression, forcing them to either hide their gender identity or open themselves to abuse and violence from other youth living in their facility.

Facing the possibility of abuse and torment, LGBTQ youth who are homeless may choose not to access these services, and instead continue to live in unstable and unsafe conditions, including “couch surfing,” sleeping in public spaces such as parks, or remaining in abusive home environments. Moreover, by not accessing youth housing programs, these LGBTQ youth are also not being connected to other services necessary to stabilize them and ensure their future success, such as individual counseling and job training.

Education and Job Training Focus group participants pointed to education and job training as other major economic needs. As with housing, although participants did not identify homophobia or transphobia

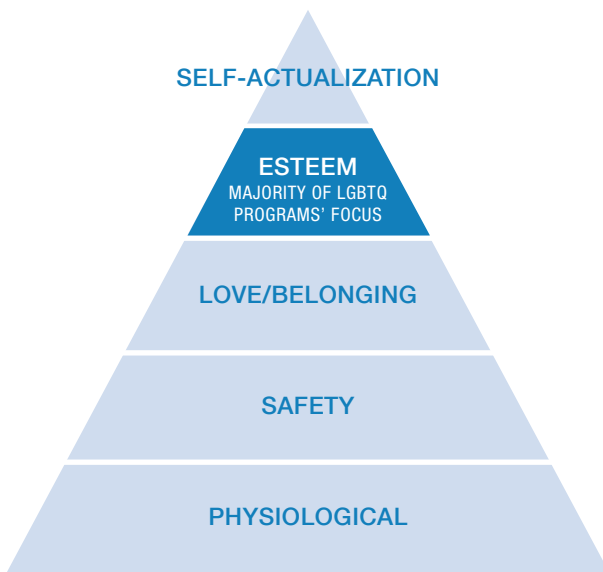
as the primary barrier to employment, research shows a connection between this economic need and the experiences of LGBTQ youth in the DC area.

LGBTQ youth looking for employment in the DC metro area are entering into a highly educated, highly skilled job market, where education and work experience are important factors for gainful employment. However, available data about the experience of LGBTQ youth in DC schools shows that they are at significantly greater risk for experiencing bullying, assault, and missing school because they feel unsafe there. Although dropout rates are significant for all DC public school students, the prevalence of verbal and physical abuse that LGBTQ youth report in schools shows that they face additional obstacles to completing their high school education successfully and earning their diplomas.

The growing number of LGBTQ student groups such as Gay-Straight Alliances in local schools and actions such as the Washington, DC, school chancellor's participation in the District's gay pride parade signal a growing understanding that LGBTQ youth are members of the school community, which is a positive development. However, research shows that the acknowledgement of LGBTQ youth in local schools has not eliminated the harassment and violence they often face in these institutions.

Many LGBTQ youth accessing SMYAL's services do not complete high school in a traditional public school, and instead have earned or are working toward a GED. When LGBTQ youth drop out of school, they also lose access to support services available in school such as programs

Hierarchy of Needs



that promote job readiness and training. And so, although LGBTQ youth join many other DC-area youth in needing job skills and employment, the challenges they face in attending schools shown to be unsafe and unwelcoming for LGBTQ youth creates an additional burden and reduces their employability in the long-term.

Available data about the experience of LGBTQ youth in DC schools shows that they are at significantly greater risk for experiencing bullying, assault, and missing school because they feel unsafe there.

Economic Stability and Youth Leadership Development

Both focus group discussions and available research demonstrate that LGBTQ youth in the DC area have urgent economic needs necessary for stabilizing their lives and improving their ability to grow into productive community members as adults. However, when looking at a traditional hierarchy of needs, many existing community programs for LGBTQ youth focus on meeting needs in the upper tiers: programs aim to foster a sense of belonging and contribute to high self-esteem. But to reach these goals, youth must first have the lower tiers of physical needs and personal safety met.

Without access to stable housing, education resources, and job training, LGBTQ youth are not likely to achieve the long-term outcomes and personal successes that many youth development programs strive towards. Conversely, LGBTQ youth report—both through focus groups and research studies—that they are more likely to experience harassment, abuse, and intolerance than heterosexual youth when attempting to access community services available for youth in the DC area, including key support mechanisms like emergency shelters and public schools. In order to meet this urgent need, youth service providers and LGBTQ youth advocates should focus on building the capacity of organizations that serve youth by ensuring that local schools and services are culturally competent to serve LGBTQ youth and that adequate protections are enforced to ensure their safety. In addition, LGBTQ youth advocates should focus

on utilizing local expertise to provide specialized services for LGBTQ youth, including housing and job training.

Intersection of Multiple Identities for

LGBTQ Youth Just as economic status intersects with LGBTQ identity in the local youth population, so do race, ethnicity, geography, and gender. Youth do not interact with the world from a strict LGBTQ identity, and their challenges are not uniquely LGBTQ. In order to meet the needs of local youth who are LGBTQ, service organizations must adopt a framework that addresses the impact of racism, sexism, and classism, as these are all realities that LGBTQ youth experience simultaneous to heterosexism and anti-LGBTQ bias.

Furthermore, LGBTQ youth in focus groups voiced a strong need for multiculturalism and programs that target the many groups that make up the local LGBTQ youth community. Young gay and bisexual African American men indicated they saw too narrow a focus in many existing programs, especially those focused on HIV prevention, and expressed an interest in programs that also bring in the experience of other cultures, such as Latino communities. Young women participants spoke about the lack of adequate services for women, including sexual health education for lesbians, even as they were inundated with HIV prevention messaging targeted at young men.

LGBTQ youth are members of all of the many diverse communities living in the DC metro area. In order to meet their needs and support positive youth development, programs for LGBTQ youth must be culturally competent to serve youth also along the lines of race, ethnicity, and gender, and must focus on the plethora of needs facing specific populations in developing programs.

For an LGBTQ youth-serving organization not to work at this intersection of identities is to risk leaving out those who are most in need. This rule also holds true for organizations that serve the general population.

53%

of transgender students reported being physically harassed in school because of their gender expression.



★ Recommendations

After analyzing the information gathered through focus groups and reviewing available research, SMYAL has identified several major areas of need. The following recommendations are based on those needs and outline steps community providers and advocates should take to address the challenges facing LGBTQ youth in the DC metro area and improve services for this population. SMYAL will use these recommendations to improve its own program services and to prioritize issue areas for advocacy and community education.

1 Build local capacity to serve LGBTQ youth who are homeless by expanding culturally competent emergency shelters, transitional housing programs and homelessness prevention services for LGBTQ youth.

There is an urgent need for increasing local capacity to serve homeless LGBTQ youth through both ongoing cultural competency training for regional housing providers and specialized programs tailored to the unique needs of this population. Issues of homelessness and access to affordable housing continue to affect LGBTQ youth disproportionately, and without having this primary need met, homeless youth who are LGBTQ are at greater risk for many negative health behaviors and outcomes. In the DC metro area, only one facility provides dedicated transitional living beds for LGBTQ youth, and there are no dedicated emergency beds for this population. Homeless LGBTQ youth in DC often utilize shelters and housing resources for the general youth population, where they report experiencing discrimination, harassment, and a lack of cultural competency. Moreover, youth housing programs are consistently full, and many LGBTQ youth are unable to find placements even in the shelters serving the broader youth population.

2 Educate schools and community service providers about LGBTQ youth populations to ensure schools and community spaces are safe and affirming for LGBTQ youth.

Whether at school or interacting with city social services, the majority of LGBTQ youths' experiences are with groups and institutions that are unprepared for or unequipped to serve them. Schools, where LGBTQ youth are dramatically more likely to experience violence than their classmates, are especially in

need of training and education so that LGBTQ students can have the same learning opportunities as others. Transgender youth are at high risk to suffer violence, and both schools and service institutions need adequate training to serve them competently. Additionally, community organizations that provide essential services to youth must also ensure that staff members are culturally competent and that their programs are safe and affirming spaces for LGBTQ youth, who are often among those in greatest need.

3 LGBTQ youth have multiple identities, and programs must be built to speak to the intersection of these identities and reflect the multiculturalism of the local LGBTQ youth population.

The needs of LGBTQ youth are shaped by the complex intersection of sexual, gender, racial and ethnic identities, as well as by the economics of living in Washington, DC where two in five African American children live in poverty. Many of the most urgent needs for LGBTQ youth are economic ones, such as housing and jobs, but few LGBTQ youth programs focus on economic concerns, and few Washington, DC resources for housing or jobs specifically reach out to LGBTQ youth. Effective LGBTQ youth services must address all of youths' identities, not just one. LGBTQ youth programs must build services that are culturally competent to work with diverse populations, foster youth spaces that celebrate multiculturalism, and ensure outreach to the populations that are most underserved regionally.

4 HIV/AIDS prevention education, testing services, and care for youth living with HIV/AIDS must be expanded in the suburbs and the District, and include culturally competent and relevant information for LGBTQ youth populations.

There is a critical need for HIV education and prevention in the suburbs surrounding Washington, DC and in the District. Nearly half of people with AIDS in the Washington metropolitan area live in the suburbs, but HIV education there varies widely and is rarely comprehensive. In the District, young gay and bisexual men continue to report infection rates that far exceed the general population, and the majority of youth who are diagnosed with HIV are youth of color. However, service providers should include all

affected populations in HIV/AIDS education, and avoid redundancy and program fatigue by incorporating diverse understandings and experiences of the disease into prevention education. There is a continued need for specialized education for young men who are gay and bisexual, and young lesbian and bisexual women also need HIV prevention and sexual health education.

5 Dedicated supportive programming for LGBTQ youth must be expanded in the DC metro area, including increasing the variety of programs offered and programs targeting underserved sub-populations.

LGBTQ youth in focus groups wanted more variety in programming—especially for opportunities outside the District. Organizations should develop initiatives that address both basic skills (such as help with homework and job training) as well as advanced skills (such as leadership development). Successful initiatives can grow into new ongoing programs. New initiatives should take aim at segments of youth who typically are left out of LGBTQ programs, such as young women, youth under 16, and Latinos/as.

6 Community organizations must incorporate new technology and communication such as text messages and social networking to outreach to LGBTQ youth populations, and must ensure communication channels are operated with clear protocols to ensure safety.

Service organizations should take advantage of new technology and focus on promoting services through new methods of word-of-mouth advertising such as social media and text messaging. Successful communications are two-way: promotional flyers are likely to be thrown away, but asking Facebook fans, “What are you wearing to the dance?” is a surer strategy to draw attention to an event. Potential communications practices include regularly hosting open houses, posting videos from events on a YouTube channel, and promoting HIV testing via text message (with a note encouraging youth to forward it to their friends). Organizations should include content on their website tailored for their youth population that makes use of two-way communication and includes frequently updated content. At the same time, organizations need to be cognizant of security and safety concerns, especially when it comes to youth safely meeting each other and preventing cyber-bullying. All online presences on social

networking sites should be monitored by the organization, and should have clearly posted rules prohibiting cyber-bullying and other electronic abuse.

7 Local capacity for services and programs for parents and guardians of LGBTQ youth must be increased, and programs serving LGBTQ youth should involve parents and guardians in their work.

The research of the Family Acceptance Project clearly shows that when parents engage in accepting and supportive behavior, their LGBTQ child is less likely to participate in risky behavior and has improved health outcomes. Many programs serving LGBTQ youth do not incorporate parents in their work, and few programs and supports exist in the DC metro area for these parents. FAP is developing tools and curricula for parents of LGBTQ youth, and as these become available, local community providers must utilize them to support both parents and their LGBTQ children. Additionally, LGBTQ youth-serving organizations should include and partner with supportive parents and parent serving organizations when possible, as parents have strong potential as volunteers, board members, and advocates for all LGBTQ youth.

8 The needs of local LGBTQ youth are ever-changing, and so community organizations and stakeholders must continually assess youth needs and empower youth as leaders in program development.

The needs of LGBTQ youth in the DC metro area continue to be impacted by the larger changes in our community. Service organizations must make a constant effort to assess the needs of youth and stay in step as they grow, change interests, and follow new trends. Empowering youth participants as leaders in program design and drawing on their experiences and knowledge enables youth organizations to be more responsive and proactive in meeting youth needs, promotes positive youth leadership development for participants, and increases youth investment in the organization. Through informal processes such as offering a standing suggestion box, holding more organized listening campaigns, and developing youth advisory boards, the key to gathering feedback is sharing and responding to it and creating an exchange where youth play a significant role in shaping the organization and its services.



Empowering our community's LGBTQ youth, developing a new generation of leaders.



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Answers to Your Questions About Transgender Individuals and Gender Identity

What does transgender mean?

Transgender is an umbrella term used to describe people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex. Many transgender people live part-time or full-time as members of the other gender. Broadly speaking, anyone whose identity, appearance, or behavior falls outside of conventional gender norms can be described as transgender. However, not everyone whose appearance or behavior is gender-atypical will identify as a transgender person.

What is the difference between sex and gender?

Sex refers to biological status as male or female. It includes physical attributes such as sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia. *Gender* is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be.

What are some categories or types of transgender people?

Transsexuals are transgender people who live or wish to live full time as members of the gender opposite to their birth sex. Biological females who wish to live and be recognized as men are called female-to-male (FTM) transsexuals or transsexual men. Biological males who wish to live and be recognized as women are called male-to-female (MTF) transsexuals or transsexual women. Transsexuals usually seek medical interventions, such as hormones and surgery, to make their bodies as congruent as possible with their preferred gender. The process of transitioning from one gender to the other is called sex reassignment or gender reassignment.

Cross-dressers or transvestites comprise the most numerous transgender group. Cross-dressers wear the clothing of the other sex. They vary in how completely they dress (from one article of clothing to fully cross-dressing) as well as in their motives for doing so. Some cross-dress to express cross-gender feelings or identities; others cross-dress for fun, for emotional comfort, or for sexual arousal. The great majority of cross-dressers are biological males, most of whom are sexually attracted to women.

Drag queens and drag kings are, respectively, biological males and females who present part-time as members of the other sex primarily to perform or entertain. Their performances may include singing, lip-syncing, or dancing. Drag performers may or may not identify as transgender. Many drag queens and kings identify as gay, lesbian, or bisexual.

Other categories of transgender people include *androgynous*, *bigendered*, and *gender queer* people. Exact definitions of these terms vary from person to person, but often include a sense of blending or alternating genders. Some people who use these terms to describe themselves see traditional concepts of gender as restrictive.

Have transgender people always existed?

Transgender persons have been documented in many Western and non-Western cultures and societies from antiquity until the present day. However, the meaning of gender variance may vary from culture to culture.

Why are some people transgender?

There is no one generally accepted explanation for why some people are transgender. The diversity of transgender expression argues against any simple or unitary explanation. Many experts believe that biological factors such as genetic influences and prenatal hormone levels, early experiences in a person's family of origin, and other social influences can all contribute to the development of transgender behaviors and identities.

How prevalent are transgender people?

It is difficult to accurately estimate the prevalence of transgender people in Western countries. As many as 2-3% of biological males engage in cross-dressing, at least occasionally. Current estimates of the prevalence of transsexualism are about 1 in 10,000 for biological males and 1 in 30,000 for biological females. The number of people in other transgender categories is unknown.

What is the relationship between transgender and sexual orientation?

People generally experience gender identity and sexual orientation as two different things. Sexual orientation refers to one's sexual attraction to men, women, both,

or neither, whereas gender identity refers to one's sense of oneself as male, female, or transgender. Usually people who are attracted to women prior to transition continue to be attracted to women after transition, and people who are attracted to men prior to transition continue to be attracted to men after transition. That means, for example, that a biologic male who is attracted to females will be attracted to females after transitioning, and she may regard herself as a lesbian.

How do transgender people experience their transgender feelings?

Transgender people experience their transgender feelings in a variety of ways. Some can trace their transgender identities or gender-atypical attitudes and behaviors back to their earliest memories. Others become aware of their transgender identities or begin to experience gender-atypical attitudes and behaviors much later in life. Some transgender people accept or embrace their transgender feelings, while others struggle with feelings of shame or confusion. Some transgender people, transsexuals in particular, experience intense dissatisfaction with their birth sex or with the gender role associated with that sex. These individuals often seek sex reassignment.

What should parents do if their child appears to be transgender or gender-atypical?

Parents may be concerned about a child who appears to be gender-atypical for a variety of reasons. Some children express a great deal of distress about their assigned gender roles or the sex of their bodies. Some children experience difficult social interactions with peers and adults because of their gender expression. Parents may become concerned when what they believed to be a "phase" does not seem to pass. Parents of gender-atypical children may need to work with schools and other institutions to address their children's particular needs and to ensure their children's safety. It is often helpful to consult with a mental health professional familiar with gender issues in children to decide how to best address these concerns. In most cases it is not helpful to simply force the child to act in a more gender-typical way. Peer support from other parents of gender variant children may also be helpful.

How do transsexuals transition from one gender to the other?

Transitioning from one gender to another is a complex process. People who transition often start by expressing their preferred gender in situations where they feel safe. They typically work up to living full-time as members of their preferred gender, by making many changes a little at a time.

Gender transition typically involves adopting the appearance of the desired sex through changes in clothing and grooming, adoption of a name typical of the desired sex, change of sex designation on identity docu-

ments, treatment with cross-sex hormones, surgical alteration of secondary sex characteristics to approximate those of the desired sex, and in biological males, removal of facial hair with electrolysis or laser treatments. Finding a qualified mental health professional to provide guidance and referrals to other helping professionals is often an important first step in gender transition. Connecting with other transgender people through peer support groups and transgender community organizations is also very helpful.

The Harry Benjamin International Gender Dysphoria Association (HBIGDA), a professional organization devoted to the treatment of transgender people, publishes *The Standards of Care for Gender Identity Disorders*, which offers recommendations for the provision of sex reassignment procedures and services.

Is being transgender a mental disorder?

A psychological condition is considered a mental disorder only if it causes distress or disability. Many transgender people do not experience their transgender feelings and traits to be distressing or disabling, which implies that being transgender does not constitute a mental disorder per se. For these people, the significant problem is finding the resources, such as hormone treatment, surgery, and the social support they need, in order to express their gender identity and minimize discrimination. However, some transgender people do find their transgender feelings to be distressing or disabling. This is particularly true of transsexuals, who experience their gender identity as incongruent with their birth sex or with the gender role associated with that sex. This distressing feeling of incongruity is called *gender dysphoria*.

According to the diagnostic standards of American psychiatry, as set forth in the *Diagnostic and Statistical Manual of Mental Disorders*, people who experience intense, persistent gender dysphoria can be given the diagnosis of *Gender Identity Disorder*. This diagnosis is highly controversial among some mental health professionals and transgender people. Some contend that the diagnosis inappropriately pathologizes gender variance and should be eliminated. Others argue that, because the health care system in the United States requires a diagnosis to justify medical or psychological treatment, it is essential to retain the diagnosis to ensure access to care.

What kinds of mental health problems do transgender people face?

Transgender people experience the same kinds of mental health problems that nontransgender people do. However, the stigma, discrimination, and internal conflict that many transgender people experience may place them at increased risk for certain mental health problems. Discrimination, lack of social support, and inadequate access to care can exacerbate mental health problems in transgender people, while support from

peers, family, and helping professionals may act as protective factors.

What kinds of discrimination do transgender people face?

Antidiscrimination laws in most U.S. cities and states do not protect transgender people from discrimination based on gender identity or gender expression.

Consequently, transgender people in most cities and states can be denied housing or employment, lose custody of their children, or have difficulty achieving legal recognition of their marriages, solely because they are transgender. Many transgender people are the targets of hate crimes. The widespread nature of discrimination based on gender identity and gender expression can cause transgender people to feel unsafe or ashamed, even when they are not directly victimized.

How can I be supportive of transgender family members, friends, or significant others?

- Educate yourself about transgender issues.
- Be aware of your attitudes concerning people with gender-atypical appearance or behavior.
- Use names and pronouns that are appropriate to the person's gender presentation and identity; if in doubt, ask their preference.
- Don't make assumptions about transgender people's sexual orientation, desire for surgical or hormonal treatment, or other aspects of their identity or transition plans. If you have a reason to need to know, ask.
- Don't confuse gender dysphoria with gender expression: Gender-dysphoric males may not always appear stereotypically feminine, and not all gender-variant men are gender-dysphoric; gender-dysphoric females

may not always appear stereotypically masculine, and not all gender-variant women are gender-dysphoric.

- Keep the lines of communication open with the transgender person in your life.
- Get support in processing your own reactions. It can take some time to adjust to seeing someone who is transitioning in a new way. Having someone close to you transition will be an adjustment and can be challenging, especially for partners, parents, and children.
- Seek support in dealing with your feelings. You are not alone. Mental health professionals and support groups for family, friends, and significant others of transgender people can be useful resources.

Where can I find more information about transgender issues?

American Psychological Association

750 First Street, NE
Washington DC, 20002
202-336-5500
lgbc@apa.org (e-mail)
www.apa.org/pi/lgbc/transgender

The Harry Benjamin International Gender Dysphoria Association, Inc.

World Professional Association of Transgender
1300 South Second Street, Suite 180
Minneapolis, MN 55454
612-624-9397
612-624-9541 (fax)
hbigda@hbigda.org (e-mail)
www.hbigda.org

FTMInternational (FTM means Female-to-Male)

740A 14th St. #216
San Francisco, CA 94114
877-267-1440
info@ftmi.org (e-mail)
www.ftmi.org

Gender Public Advocacy Coalition

1743 Connecticut Ave., NW
Fourth Floor
Washington, DC 20009
202-462-6610
gpac@gpac.org (e-mail)
www.gpac.org

National Center for Transgender Equality

1325 Massachusetts Ave., Suite 700
Washington, DC 20005
202-903-0112
202-393-2241 (fax)
www.nctequality.org

Parents, Families, and Friends of Lesbians and Gays (PFLAG) Transgender Network (TNET)

1726 M Street, NW
Suite 400
Washington, DC 20036
202-467-8180
info@pflag.org (e-mail)
www.pflag.org/TNET.tnet.0.html

Sylvia Rivera Law Project

322 8th Avenue
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New York, NY 10001
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Transgender Law Center

870 Market Street
Room 823
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