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Emerging Best Practices for the Management and Treatment of Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex Youth in Juvenile Justice Settings

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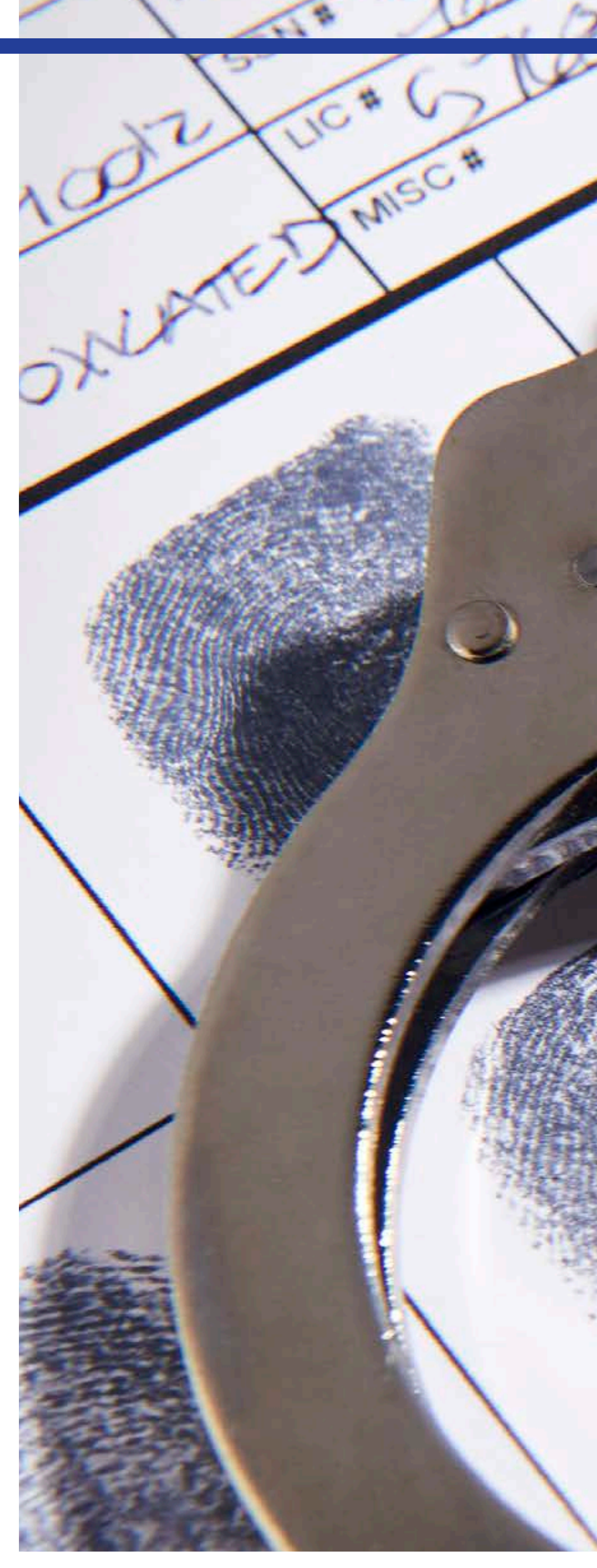


Prologue

In 2016 according to the U.S. Department of Justice, 856,130 youth were arrested and 45,567 juveniles were held in 1,772 residential juvenile facilities across the country.[1] Detained and confined youth share many characteristics: most are from poor communities and lack access to quality health care. Mental illness and sexually transmitted infections are prevalent. Compared to their non-confined counterparts, incarcerated youth also experience higher rates of substance abuse and homelessness, are educationally behind their peers, are disproportionately identified as needing special education services, and are more likely to have had traumatic experiences (including sexual and emotional abuse) and injuries including traumatic brain injury, among other health issues.[2, 3]

Increasingly, youth-serving justice professionals believe that community-based alternatives to incarceration are preferable.[3.5] Incarceration should be used only as a last resort. To the extent that youth are incarcerated, this resource provides best practices for making juvenile justice facilities as safe and affirming as possible for lesbian, gay, bisexual, transgender, queer, questioning, and intersex youth.

Traditionally, many juvenile justice professionals have had a strong commitment to the rehabilitation and treatment needs of youth in their care. In fact, most youth are held in facilities that screen for educational needs, substance abuse, and mental health needs.[4] Many strive to create a therapeutic environment for adolescents.[5] Actually achieving that goal is a challenge for many institutions, one that this paper strives to highlight and address.

Juvenile justice administrators and staff must create a professional, non-discriminatory environment where all youth in their charge are physically and emotionally safe and treated respectfully. To meet this professional goal, including the mandates of the Prison Rape Elimination Act of 2003, administra-

[1] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. *Statistical Briefing Book*. 2016. (Released December 6, 2017.) Available at https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2016&text=yes.

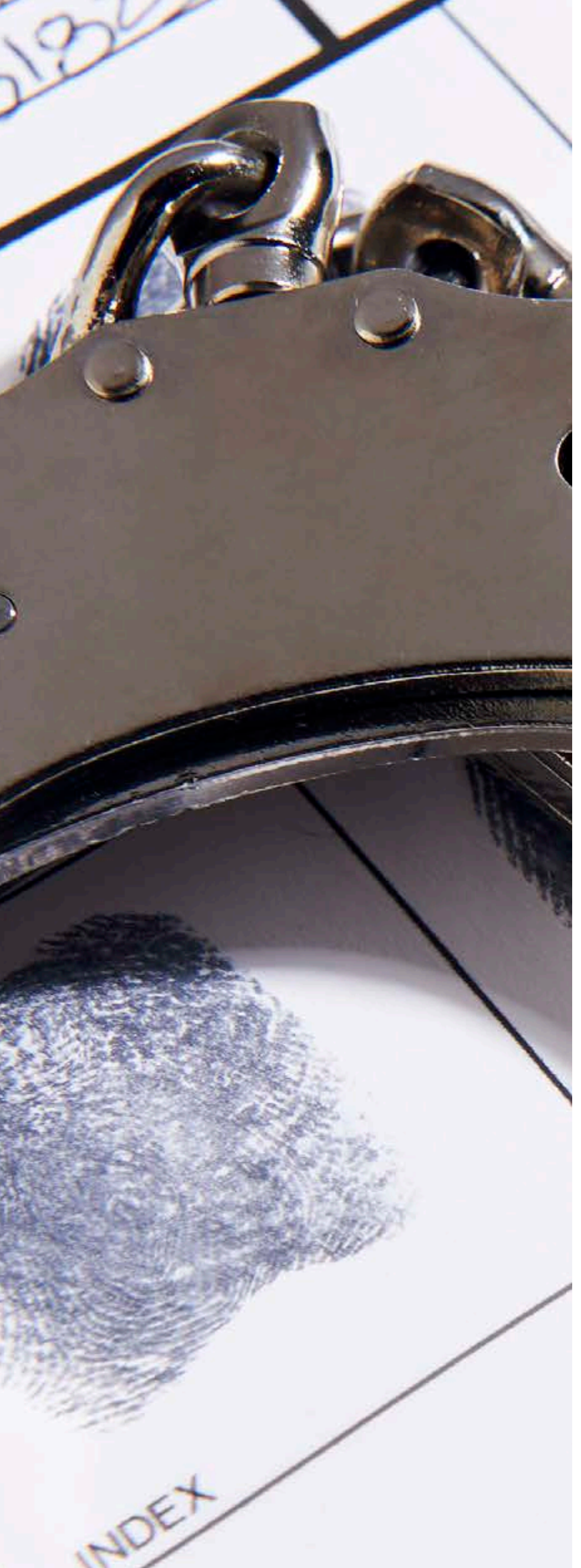
[2] Pupilo, J. *Behind Bars: Caring for Incarcerated Youths Rewarding Despite Challenges*, The Council of State Governments Justice Center, March 2016, available at http://csgjusticecenter.org/youth/media-clips/behind-bars-caring-for-incarcerated-youths-rewarding-despite-hardships/.

[3] Ibid.

[3.5] McCarthy P, Schiraldi V, Shark M. The future of youth justice: A community-based alternative to the youth prison model. *New Thinking in Community Corrections.* Harvard Kennedy School, National Institute of Justice. October 2016, No. 2. https://www.ncjrs.gov/pdffiles1/nij/250142.pdf

[4] Sickmund, M., & Puzzanchera, C. (Eds.). *Juvenile Offenders and Victims: 2014 National Report*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. Retrieved August 4, 2015, from http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf.

[5] Marksamer J, Tobin HJ (April 2014). *Standing with LGBT prisoners: An advocate's guide to ending abuse and combating imprisonment* p.8. Washington, DC: National Center for Transgender Equality. http://transequality.org/issues/resources/standing-lgbt-prisoners-advocate-s-guide-ending-abuse-and-combating-imprisonment



tors and staff need to understand how to create and maintain a safe and secure environment within the juvenile justice system for a particularly vulnerable population that is at disproportionate risk for both confinement and sexual abuse: lesbian, gay, bisexual, transgender, questioning, and intersex youth (collectively, LGBTQI youth).[6,7]

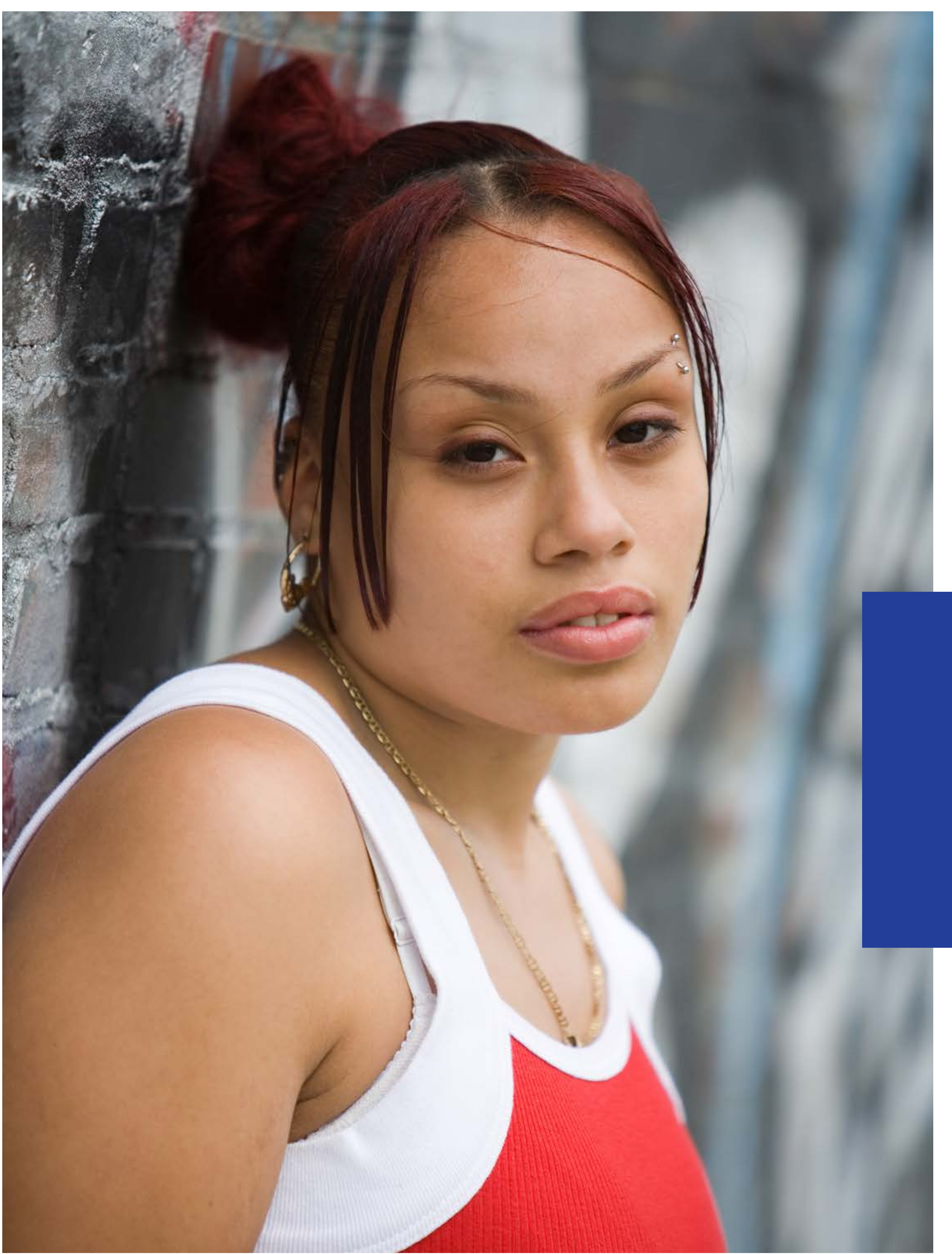
Youth, regardless of whether or not they are in custody and/or identify as LGBTQI, experience developmental and social challenges during adolescence. LGBTQI youth not only face the changes and challenges of adolescence, but also the stress of developing and living with a stigmatized identity including—too often—family and societal rejection. Juvenile justice facilities should offer mental health and other support services to all youth in their care to aid them in the process of maturation. These services should always be offered and tailored to the unique needs of each individual. This in turn will allow facility staff to create a safer, more secure facility for all youth in their care and custody, along with a supportive rehabilitative environment.

We have created this informational guide to offer important background about LGBTQI youth in confinement, along with promising practices for their proper and effective management and treatment. We trust it will be a useful resource to better equip all juvenile justice administrators and staff with needed and more precise tools to better address the particular needs and vulnerabilities of this population. This, in turn, will allow correctional staff to execute their jobs more effectively and create a safer, more secure facility for all youth in their care and custody, along with a supportive rehabilitative environment.

---

[6] Adolescence is a period of identity development, including sexual and gender identity development, for all youth. Some youth will begin to identify as LGBTQI, while other youth will have identified as LGBTQI since before adolescence. Other youth will question and explore their sexual and gender identities, including engaging in same-sex sexual and romantic behavior, but will not identify as LGBTQI. These youth may or may not identify as LGBTQI as they get older. Nevertheless, all youth who identify as LGBTQI or are perceived to be LGBTQI, regardless of their actual identity, are at risk for prejudice and discrimination. We use the term "LGBTQI" as an umbrella term that encompasses the varying identities and experiences of sexual and gender minorities. While many youth embrace the term "queer" and use it to describe their identity, in many parts of the country, and among older age cohorts, it continues to be used pejoratively and is considered offensive. Correctional professionals working with youth should only use the word "queer" to mirror a youth's identity and only in a positive way.

[7] See Appendix A for a Glossary of terms.



I. Why Should the Juvenile Justice System Address LGBTQI Youth?

LGBTQI youth experience significant social prejudice and unfair and discriminatory treatment in virtually every aspect of their lives. In recent years we have seen increased visibility and civil rights for sexual and gender minorities, including favorable decisions and policies from major institutions such as the U.S. Supreme Court, the U.S. Department of Defense, and the Department of Veterans Affairs. Despite these advances, LGBTQI people—including youth—continue to be negatively affected by individual and systemic prejudice, misunderstanding and discrimination. In recent years anti-LGBT policies have been advanced at the state[8] and federal level.[9]

As research consistently demonstrates, LGBTQI youth are all too often subject to harassment and rejection from their families, schools, and communities, which pushes them into the juvenile justice system at disproportionate rates. Non-heterosexual youth suffer disproportionate educational and criminal-justice punishments that are not explained by greater engagement in illegal or transgressive behaviors.

A national survey conducted in 2012 found that 39.4% of girls and 3.2% of boys in juvenile correctional facilities identified as lesbian, gay or bisexual.[10] Unpublished research indicates that LGBT youth of color are disproportionately incarcerated in the juvenile justice system.[11] This disproportionate racial/ethnic impact is true of the broader, mostly heterosexual juvenile justice population.[12]

Juvenile justice administrators and staff must create a professional, non-discriminatory environment where all youth in their charge are physically and emotionally safe and treated respectfully.

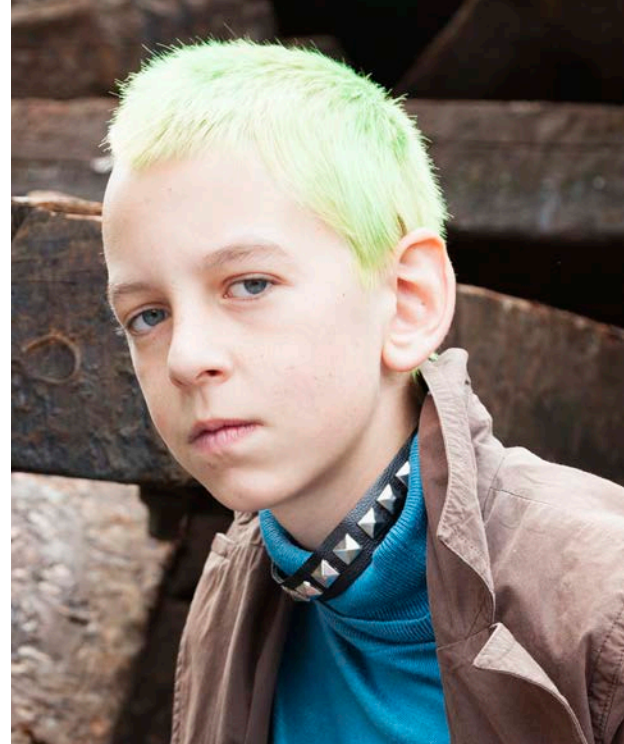
[8] Wang T, Geffen S, Cahill S (2016, June). *The current wave of anti-LGBT legislation: Historical context and implications for LGBT health*. Boston: The Fenway Institute. http://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Religious-Exemption-Brief-June-2016.pdf

[9] Cahill S, Geffen S, Wang T (2018, January 16). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston: The Fenway Institute. http://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Trump-Pence-Administration-One-Year-Report.pdf

[10] Wilson BDM, Jordan SP, Meyer IH, Flores AR, Stemple L, Herman JL. Disproportionality and disparities among sexual minority youth in custody. J Youth Adolesc 2017 Jul;46(7):1547-1561.

[11] Irvine A. "Dispelling myths: Understanding the incarceration of lesbian, gay, bisexual, and gender nonconforming youth." Unpublished. Oakland, CA, 2014. Cited in Center for American Progress, Movement Advancement Project, and Youth First, *Unjust: LGBTQ youth incarcerated in the juvenile justice system*. June 2017. https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf

[12] Rover J. *Racial disparities in youth commitments and arrests*. Washington, DC: The Sentencing Project. April 2016. https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/



Compared to their heterosexual and gender-conforming peers, LGBTQI youth[13] experience greater physical and emotional abuse and are at a disproportionate risk of sexual abuse in juvenile justice systems. A 2013 Bureau of Justice Statistics study found that sexual minority youth are nearly twice as likely to experience sexual victimization in juvenile facilities, and seven times as likely to be victimized by another youth.[14]

The overrepresentation of LGBTQI youth in the juvenile justice system means it is critically important that juvenile justice professionals are educated about the LGBTQI youth in their facilities and their particular vulnerabilities and needs. Research shows that professionals often greatly underestimate the number of LGBT youth in their care and control. Indeed, up to 20% of youth in the juvenile justice system are LGBT, although LGBT youth comprise just 7-8% of the general population.[15] Understanding the factors that bring LGBTQI youth into the system, including extensive trauma and higher rates of homelessness, is essential for juvenile justice professionals to develop and implement effective treatment plans for these youth. A better understanding of the specific needs and vulnerabilities of these youth also better equips staff to address potential security and safety issues before they arise, creating better run and more secure facilities generally.

Additionally, statutory and case law, including the Prison Rape Elimination Act of 2003 (PREA), requires juvenile justice facilities to evaluate and modify their management policies to meet the needs of LGBTQI youth.[16] Juvenile facilities should develop specific guidance for working with LGBTQI youth, including adopting non-discrimination policies. This is necessary to meet the lawful obligations of facilities to provide safe and equitable treatment of all youth, to meet the rehabilitative goals of the juvenile justice system, and to remedy the current inequalities LGBTQI youth face. Increasingly, legal organizations such as the American Civil Liberties Union, Lambda Legal, and GLBTQ Legal Advocates & Defenders are bringing lawsuits to establish better conditions for LGBTQI youth in confinement.

A major shift in public attitudes toward sexual and gender minorities in the country is underway. The growing focus on and understanding of the challenges that LGBTQI youth face in society requires that professionals working in juvenile confinement settings identify these youth and offer services to meet their particular needs, and use this information to inform treatment and placement decisions throughout the term of their stay. This approach will not only enhance safety and security for all confined youth and staff by giving all correctional staff better insight into the needs and challenges LGBTQI youth face, but may also significantly reduce liability for agencies that are engaged in these efforts.

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[13] Although we generally refer to LGBTQI youth together as a group, it is important to recognize that youth who identify as lesbian, gay, bisexual, transgender, and/or intersex each have unique risks and needs in the areas of security, health, etc. Additionally, research to date generally focuses on specific populations in the LGBTQI family. When specific studies focused on distinct populations are referenced in the text, the acronym used will reflect only the specific populations that are the subject of the study (ex. LGBT, LGB).

[14] Beck, A.J., Cantor, D., Hartge, J., & Smith, T. "Sexual victimization in juvenile facilities reported by youth, 2012." Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics 2013 (hereinafter *BJS Sexual Victimization of Detained Youth*). Youth who identified as lesbian, gay, bisexual or other reported the highest rate of sexual victimization in the survey. http://www.bjs.gov/content/pub/pdf/svjfry12.pdf

Note to Readers:

The principal goal of this paper is to support juvenile justice administrators and staff in operating high-quality facilities by providing needed background and policy guidance on how to create a respectful and therapeutic environment for the LGBTQI youth in their care, and a safer and more secure facility for all youth in their charge.

This paper establishes that all youth in the juvenile justice system need culturally competent care in addressing family trauma and societal discrimination that may have played key roles in bringing them into the juvenile justice system in the first place. Facility administrators and staff can successfully provide equitable treatment for all youth in their custody and meet their legal obligations only if they understand the experiences and needs of LGBTQI youth and their particular vulnerability in juvenile justice settings, and effectively address them.

We are not proposing special treatment or privileges for LGBTQI youth. Every youth has a particular sexual orientation, gender identity, and gender expression, all of which fall along Proper care and treatment of youth involved in the juvenile justice system and creating a safe and secure environment for them means that facility administrators and staff must understand the unique issues and vulnerabilities each youth in their charge faces, and respond with appropriate programs, placements, and treatment. This paper is intended to provide guidance and insight into fulfilling professional obligations to LGBTQI youth.

The practices set forth here are largely based on policies already implemented in various juvenile confinement systems that are emerging as best practices based on professional consensus. Typically, a "best practice" is one that has been shown to be most effective in comparison to other practices, that is, after an empirical evaluation has been conducted. This context is unique in that PREA has only recently been implemented, and inconsistently across states, such that there is currently a limited body of research in the area. It is our firm belief that many of the practices described herein will, over time and after appropriate evaluation, qualify as best practices.

This document reflects the collective wisdom of juvenile justice professionals, advocates, policy makers, former residents of youth confinement facilities, and researchers who provided input through a series of meetings and interviews in 2014, 2015 and 2016. Juvenile justice professionals from Idaho, Louisiana, Massachusetts, New York, Texas and elsewhere generously offered their advice and experience, as did others from across the country. We thank these colleagues for their guidance and input. A full list of contributors is included at the end of this document.

[15] Wilber, Shannan. *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* 11 (Annie E. Casey Foundation 2015)(hereinafter *Wilber LGBT Youth in Juvenile Justice*) available at http://www.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouth-injj-2015.pdf; Irvine, Angela. (2010). *"We've had three of them": Addressing the invisibility of lesbian, gay, bisexual and gender-nonconforming youths in the juvenile justice system*. Columbia Journal of Gender and Law 19:3 (2010): 675-701 (hereinafter *Irvine LGBT Invisibility in Juvenile Justice*), available at http://www.nccdglobal.org/sites/default/files/content/weve-had-three-of-them.pdf.

[16] *See* Section III. Legal Considerations, *below*.

II. Causes of LGBTQI Youth Overrepresentation and Vulnerability in the Juvenile Justice System

LGBTQI youth are overrepresented in confinement facilities. Up to 20% of youth in confinement identify as something other than heterosexual—a far higher percentage than the LGBT community represents in the general population.[17] For example, 7.7% of Massachusetts high school age youth who participated in the 2015 Massachusetts Youth Risk Behavior Survey (YRBS) identify as lesbian, gay or bisexual (LGB), and 2.0% identify as transgender.[18]

LGBTQI youth are especially vulnerable to interactions with the juvenile and criminal justice systems. Many LGBTQI youth are rejected by their families and become homeless. With limited or no options, many engage in survival crimes including prostitution (survival sex), stealing or participation in the drug trade to meet their survival needs. Many LGBTQI youth also experience rejection in their schools and communities, which also correlates to greater chances of criminal justice system involvement.

Once they are detained in the juvenile justice system, many LGBTQI youth experience egregious conditions of confinement. In a 2009 national report based on extensive surveys and interviews with juvenile justice professionals as well as numerous interviews with justice-involved LGBT youth, both professionals and youth "overwhelmingly agreed that secure facilities are particularly dangerous and hostile places" for LGBT youth and youth perceived to be LGBT, particularly in the area of sexual harassment and abuse.[19] The Bureau of Justice Statistics (BJS) reported that in 2012, 10.3% of LGB youth reported sexual victimization by another youth compared to 1.5% of heterosexual youth reporting the same action. LGB youth are about as likely as heterosexual youth to report sexual victimization by facility staff (7.5% of non-heterosexual youth report sexual victimization by staff versus 7.8% of heterosexual youth).[20] The overrepresentation of LGBTQI youth in the juvenile system, when combined with

[17] Majd K, Marksamer J, & Reyes C. *Hidden injustice: Lesbian, gay, bisexual and transgender youth in juvenile courts*. Washington, DC: Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights (hereinafter *Hidden Injustice*). http://www.models-forchange.net/publications/237 (2009).

[18] Massachusetts Department of Public Health. "2015 Report: Health and Risk Behaviors of Massachusetts Youth." Data from the 2015 Massachusetts Youth Risk Behavior Survey. Available at: http://www.mass.gov/eohhs/docs/dph/behavioral-risk/youth-health-risk-report-2015.pdf.

[19] Majd et al., *Hidden Injustice*, ibid. pp. 5, 101-116.

[20] BJS Sexual Victimization of Detained Youth, *above*, n. 11.

the extraordinary high risk for sexual victimization that LGBTQI youth face when in confinement, makes youth confinement facilities especially dangerous for these vulnerable youth.

Without proper training, staff, even if well-intentioned, are often unprepared to provide competent and equitable services to LGBTQI youth, and can make uninformed and ultimately inappropriate decisions regarding their housing and placement.[21] As a result, other youth regularly subject LGBTQI youth to physical, sexual, and emotional abuse on the basis of their actual or perceived sexual orientation and gender identity.[22] Staff may also not respond appropriately to physical, sexual, and emotional abuse either based upon unconscious bias, misunderstandings (e.g., "He's gay, so he probably enjoys sex with ______.") or personal moral or religious beliefs and values (e.g., "He's gay, that is wrong, so he deserves it.") While data on sexual abuse among transgender and gender nonconforming youth in juvenile justice systems is limited, high rates of sexual abuse experienced by adult transgender women in prisons and jails indicate that young transgender women are likely at elevated risk for sexual victimization in juvenile systems.[23]

A closer look at LGBTQI youth's experiences with their families, with homelessness, and in school settings underscores how societal stigma and discrimination funnel LGBTQI youth to justice system involvement and confinement.

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[21] Ibid.
[22] Ibid.
[23] Beck, A. "Sexual victimization in prisons and jails reported by inmates, 2011-12. Supplemental tables: Prevalence of sexual victimization among transgender adult inmates." Washington DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf (2014).

1. FAMILY REJECTION AND HOMELESSNESS

LGBTQI youth often face disapproval and outright rejection from their families. Family rejection may force LGBTQI youth into homelessness or the foster care system and is a significant risk factor that contributes to negative health outcomes as well as criminal justice involvement. Researchers from the Family Acceptance Project found that LGB young adults who experienced high levels of family rejection during adolescence were 8.4 times more likely to have attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sex compared to those who reported low or no family rejection during adolescence.[24]

Family rejection is also a significant factor contributing to ungovernability or incorrigibility offenses that LGBTQI youth are often charged with and that can lead directly to LGBTQI youth involvement with the justice system. It is common for LGBTQI youth in the system to be charged with such offenses not because they are truly ungovernable but because some parents (and family court judges) believe that their LGBTQI children's refusal to conform to traditional sexual orientations or gender identities or even seeking support from accepting youth groups is "acting out" and/or "being unruly."[25]

As noted, family rejection of lesbian, gay, and gender non-conforming children can push many of these youth into homelessness, which has been shown to be the greatest predictor of future involvement in the juvenile justice system among LGBT youth.[26] LGBT youth comprise as much as 20 to 40 percent of all homeless youth, particularly in big cities that are often magnets for runaway LGBT youth.[27] In a survey of 354 agencies that provide services to homeless youth, respondents reported that LGBT youth comprise approximately 40% of their clientele.[28] The survey, conducted in 2011 and 2012, also

According to the U.S. National Coalition for the Homeless, for example, 20 percent of homeless youth identify as LGBT, and 58.7 percent of them are exploited through prostitution.

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[24] Caitlin Ryan & Donna Futterman, Lesbian and Gay Youth: Care and Counseling 22-23 (Columbia University Press 1998); Caitlin Ryan et al., "Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Adults," 123 *Pediatrics* 346, 349-51 (2009) [hereinafter *Family Rejection as a Predictor*]; Anthony 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* 148, 163-64 (2002).

[25] Equity Project interview with a juvenile justice professional (July 26, 2007).

[26] Barbara Fedders. "Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth", 6 *Nev. L.J.* 774, 788 (2006); *Family Rejection as a Predictor*, ibid.

[27] Nicholas Ray. *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness.* 1, 11-14. New York: National Gay and Lesbian Task Force Policy Institute and National Coalition for the Homeless, 2006, http://www.thetaskforce.org/reports_and_research/homeless_youth; Rob Woronoff et. al., *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care.* 34-35, Washington, DC: Child Welfare League of America, 2006.

found that LGBT youth represent between 30% and 43% of youth served by drop-in centers, street outreach programs, and housing programs. Survey respondents also reported that nearly seven in ten (68%) of their LGBT homeless clients have experienced family rejection and more than half of clients (54%) had experienced abuse in their family.[29]

LGBT youth of color are disproportionately represented among homeless LGBT youth. A survey of homeless youth in New York City found that among LGB homeless youth, 44% indicated that they were black and 20% indicated they were Hispanic. Among transgender homeless youth, 62% reported being black and 20% reported being Hispanic.[30]

Despite these numbers, there are few services that are culturally competent to serve LGBTQI homeless youth. As a result, they often experience discrimination and assault when trying to access homeless youth services.[31] In order to obtain life necessities without the help of homeless youth resources and services or to supplement those services, they often must resort to "survival crimes" including shoplifting, prostitution, and drug sales, which put them at high risk for involvement with both the juvenile justice system and human trafficking. According to the U.S. National Coalition for the Homeless, for example, 20 percent of homeless youth identify as LGBT, and 58.7 percent of them are exploited through prostitution.[32]

LGB YOUNG ADULTS WHO EXPERIENCE HIGH LEVELS OF FAMILY REJECTION

(compared to those who reported low to no family rejection)

8.4

times more likely to have attempted suicide

5.9

times more likely to report high levels of depression

3.4

times more likely to use illegal drugs

3.4

times more likely to report engaging in unprotected sex

[28] Durso, Laura and Gates, Gary. *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or At Risk of Being Homeless.* 3 Los Angeles: Williams Institute, UCLA School of Law, 2012. Accessed at: http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf

[29] Ibid.

[30] Freeman, Lance and Hamilton, Derrick, "A Count of Homeless Youth in New York City" (New York: Empire State Coalition of Youth and Family Services, 2008). Cited in Durso et al. Serving our Youth, ibid.

[31] Ray, *above*, note [17], at 83-5; National Alliance to End Homelessness, et al., *National Recommended Best Practices for Serving LGBT Homeless Youth* Washington, DC, 2009.

[32] Cited in Martinez, Omar and Kelle, Guadalupe, "Sex Trafficking of LGBT Individuals: A Call for Service Provision, Research, and Action." *Int'l Law News,* Fall 2013, 42(4). Accessed at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4204396/, See also the U.S. Dept. of State report, The Vulnerability of LGBT Individuals to Human Trafficking, Washington DC, 2017. Available at http://www.state.gov/j/tip/rls/ti-prpt/2014/226646.htm.

2. SCHOOL HARASSMENT

LGBTQI youth also often face discrimination and harassment in schools, which is often unaddressed by adults and can lead to future problems with the juvenile justice system. The 2015 National School Climate Survey studying the experiences of LGBT youth in schools, conducted biennially, found that:

- 70.8% of LGBT students surveyed reported being verbally harassed in the past year based on their sexual orientation and 54.5% reported being verbally harassed based on their gender expression;
- 27.0% of students reported being physically harassed in the past year based on their sexual orientation and 20.3% reported being physically harassed based on their gender expression;
- 13.0% of students reported being physically assaulted in the past year based on their sexual orientation and 9.4% reported being physically assaulted based on their gender expression; and
- 48.6% of LGBT students experienced electronic harassment, also known as cyberbullying, in the past year.[33]

Based on data from the 2015 National Youth Risk Behavior Study published in August 2016 by the Centers for Disease Control and Prevention, when compared to heterosexual high school students, lesbian, gay and bisexual students are up to three times more likely to report being forced to have sexual intercourse, experience dating violence and be bullied on school property.[34] The study found that more than 40 percent of lesbian, gay and bisexual students have seriously considered suicide, while 29 percent reported having attempted suicide in the previous 12 months. In addition, the study found that lesbian, gay and bisexual students are up to five times more likely to report using illegal drugs, and 1 in 10 said they missed school in the last 30 days due to safety concerns.

As a result of harassment and discrimination in school by both peers and staff, LGBTQI youth can become disengaged from their studies or drop out of school entirely to avoid harassment.[35] LGBTQI youth who skip school to avoid harassment become vulnerable to arrest on truancy charges. In addition, LGBTQI youth who attempt to defend themselves against violence and harassment may be more likely to bring a weapon to school. Each of these responses to discrimination and harassment puts LGBTQI students at heightened risk for entanglement with the juvenile justice system.

Research indicates that LGB youth in both school and the justice system are punished for conduct their heterosexual peers are not punished for, and when punished for the same conduct, sexual minority youth are punished more harshly.[36] Harsher punishment for non-heterosexual youth occurs in schools and in the court system, even though these youth are less likely to engage in serious misdeeds—such as using a weapon, selling drugs, or burglary—than their heterosexual peers.[37] LGB youth also report being expelled from school at higher rates than heterosexual students. Non-heterosexual youth suffer disproportionate educational and criminal-justice punishments that are not explained by greater engagement in illegal or transgressive behaviors.

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[33] Kosciw, J. G., Greytak, E. A., Giga, N. M., Villenas, C. & Danischewski, D. J. (2016). The 2015 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools. New York: GLSEN.Available at https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf

[34] Kann, L et al. "Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015". CDC Mortality and Morbidity Weekly Report, Surveillance Summaries, 65(9);1–202 (8/12/2016). Available at https://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm?s_cid=ss6509a1_w#contribAff.

[35] Johanna Wald & Dan Losen. "Defining and Redirecting a School-to-Prison Pipeline". 99 New Directions for Youth Development (2003).

[36] Himmelstein K and Brickner H. "Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study". *Pediatrics*. Published online December 6, 2010 at http://pediatrics.aappublications.org/content/pediatrics/early/2010/12/06/peds.2009-2306.full.pdf. This national sample of 15,000 middle and high school students found that LGB youth were between 1.25 and 3 times more likely to be sanctioned than heterosexual peers.

[37] Ibid.

3. LGBTQI YOUTH AND RACE

Racial disparities in school discipline, and racism at large, also affect LGBTQI youth. White, Black, and Latino youth are all equally likely to be LGBTQI and gender-nonconforming.[38] But racial disparities in school systems expose non-white LGBTQI youth to particular harm given the overrepresentation of youth of color in the school-to-prison pipeline.[39] As noted earlier, homeless LGBT youth are also disproportionately children of color, heightening the chances of their involvement with the criminal justice system. Indeed, a survey of 1,400 detained youth determined that almost 20% self-identified as lesbian, gay, bisexual, transgender, gender nonconforming, or questioning.[40] But the vast majority (85%) of these detained LGBTQI youth identified as youth of color, underscoring the cumulative disadvantage faced by most LGBTQI youth detained in the juvenile system.[41] This means that 17% of the surveyed youth who were detained were LGBTQI youth of color. Intersecting identities shape the experiences and needs of LGBTQI youth.

> "It is critical for professionals charged with assessing and guiding young people in the juvenile justice system to understand a youth's lived experience. Although we may examine different types of prejudice independently, youth do not experience them independently. A transgender, undocumented Latina does not experience these aspects of her life separately. She is all of these things all of the time and her experience may be powerfully shaped by the intersection of different forms and expressions of bias."
>
> - *Angela Irvine and Christine Gilbert, April 2015 Webinar "LGBT & Gender-Nonconforming Youth in Juvenile Justice: Building an Equitable System with Data, Training, and Policy"*[42]

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[38] Irvine, *LGBT Invisibility in Juvenile Justice, above,* n. 15, p. 677.

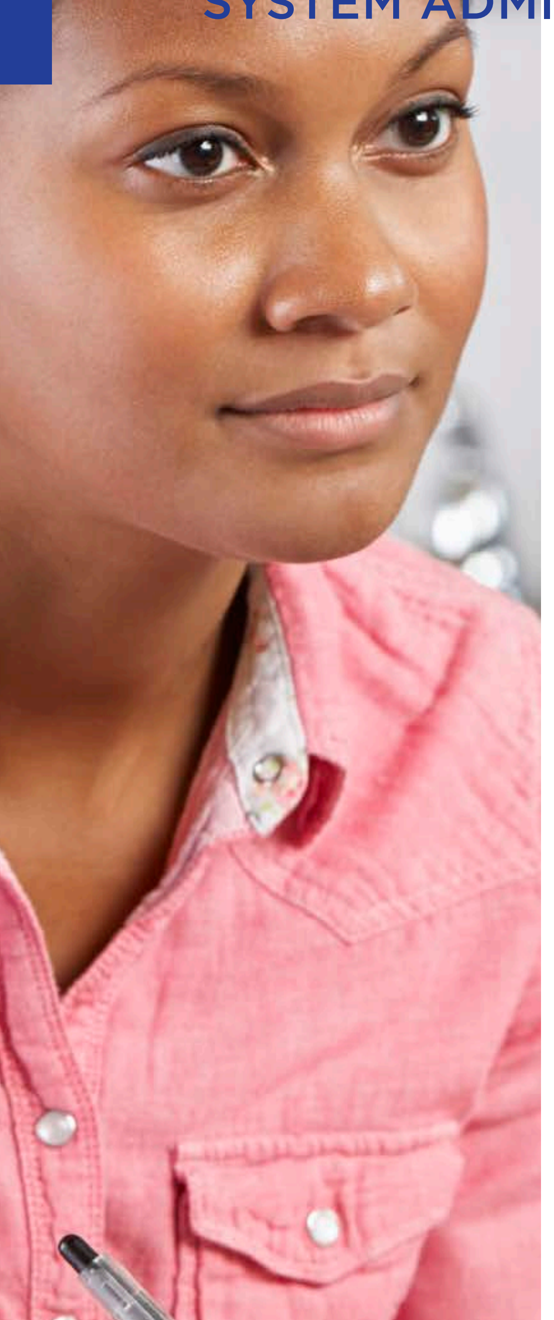
[39] Federal data collection efforts have routinely illustrated that the school-to-prison pipeline disproportionately impacts youth of color and students with disabilities. See, e.g., https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf.

[40] Wilber, *LGBT Youth in Juvenile Justice, above*, n.15, p. 11.

[41] Ibid.

[42] For additional reading on this topic, see Burdge, H., Licona, A. C., Hyemingway, Z.T. (2014), *LGBTQ Youth of Color: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline.* Oakland, CA: GSA Network. https://gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf;" Brown, Bernadette E., Canfield, Aisha, and Irvine, Angela. (December 2014) *Practice Guide: Creating a Juvenile Justice LGBTQ Task Force.* Madison, WI: National Council on Crime and Delinquency. http://nccdglobal.org/sites/default/files/publication_pdf/practice-guide-lgbtq-task-force.pdf

4. IMPLICATIONS FOR JUVENILE CONFINEMENT SYSTEM ADMINISTRATORS AND STAFF



If the ultimate goal of administrators and staff in juvenile justice facilities is to operate a safe and secure facility for all youth in their care and custody, it is essential that they understand the background of discrimination and stigma that LGBTQI youth face. This will give them the information they need to make the most informed treatment and placement decisions for youth in their care. Without this knowledge, they will be unable to meet their legal responsibilities as outlined in Section III, Legal Considerations, or meet their professional responsibilities to these youth, as outlined in Section IV, Foundational Issues: Professionalism, Respect, and Creating a Safe, Respectful, Non-discriminatory Environment.

Detained LGBTQI youth face added obstacles to effective treatment when juvenile justice professionals are unaware of the issues they face or have not had the education needed to understand the issues. This, combined with the cumulative impact of social discrimination, family rejection, and other stigmatizing factors that these youth have to deal with, means LGBTQI youth must undergo the difficulties of adolescence while simultaneously negotiating challenges due to LGBTQI-related stigma and harassment. The trauma resulting from this constellation of forces can lead to delayed psychosocial and behavioral development as well as increased behavioral and health-related risk factors such as substance use, prostitution, unprotected sex, depression, and risk for suicide.[43]

In addition, administrators and staff may have a legal obligation to recognize that sufficiently harsh and abusive family behavior may constitute abuse and require intervention. New York City's Administration for Children's Services, for example, provides "Neither a child or youth's actual or perceived sexual orientation and/or gender identity, nor the parent's cultural and/or religious beliefs, excuses a parent's or caretaker's abusive or neglectful behavior."[44] Depending on the severity of the behavior, reporting the action to an appropriate court or other agency may be required.

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[43] Caitlin Ryan et al., *Family Rejection as a Predictor*, *above*, fn.[24].

[44] Perry R., et al., New York City Administration for Children's Services, *Safe and Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems*, at 4 (2014). Available at http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf.

III. Legal Considerations

Youth in state care have constitutional and statutory rights under federal and state law. The law requires equal treatment of all youth who are detained or confined, regardless of their sexual orientation, gender identity or gender expression. Juvenile justice authorities are strongly encouraged to evaluate their practices in light of their legal responsibilities to all youth in their care, including LGBTQI youth, and the potentially costly threat of litigation about the conditions of youth in state custody as well as under the Prison Rape Elimination Act.

1. PRISON RAPE ELIMINATION ACT (PREA)

The Prison Rape Elimination Act became law in 2003. PREA affirmed that confinement facilities have the responsibility to protect incarcerated individuals, including juveniles, in their custody from sexual abuse. In 2012 the Department of Justice released national standards aimed at eliminating sexual abuse in prisons, jails, youth confinement facilities, community confinement facilities, court holding facilities, halfway houses, and police lock-ups.[45] PREA has many relevant provisions for juvenile facilities.

Employee training. PREA requires juvenile facilities to train employees who may have contact with residents on:

(1) PREA's zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Residents' right to be free from sexual abuse and sexual harassment;

(4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in juvenile facilities;

(6) The common reactions of juvenile victims of sexual abuse and sexual harassment;

(7) How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents;

(8) How to avoid inappropriate relationships with residents;

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;

(11) Relevant laws regarding the applicable age of consent.[46]

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[45] National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. 115, Department of Justice (2012), available at www.federalregister.gov/a/2012-12427.

[46] 28 C.F.R. 115.331(a).

PREA also requires that an agency "shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs."[47]

Effective communication means an attitude of respect, correct use of terminology, and awareness of one's own biases, discomfort, and lack of cultural competence. In working with youth, staff should keep an open mind, refraining from making assumptions regarding biological sex, gender, or sexual orientation. Staff also should be supportive of a youth's expression of their gender identity.

Intake Screening

PREA also mandates certain processes at intake screening. Facilities must screen all individuals at arrival and periodically to assess their risk of experiencing or perpetrating abuse, including identifying those who may be at risk because of their transgender status, gender nonconformity, sexual orientation, or intersex condition (among other things). The individual's own perception of their vulnerability must also be considered.[48] PREA also provides that a youth's sexual orientation and gender identity are not by themselves valid indicators during screening of a propensity to abusive behavior toward others. (For more information about PREA's information gathering requirements during intake screening, *see* Section VII, 1. b. *Information to be collected*, below.)

Housing for Transgender Youth

PREA requires that decisions about where a transgender person or a person with an intersex condition should be housed cannot be made solely on the basis of a person's anatomy or gender assigned at birth. Rather, housing decisions should be made on a case-by-case basis. The US Department of Justice in March 2016 issued guidance that clarifies and emphasizes this point.[49] Housing decisions must be reviewed at least twice per year. All transgender people and people with intersex conditions must be given the opportunity to shower separately from other juveniles if they wish, regardless of where they are housed.[50] (See Section VII. 2. *Classification and Housing Placement*, below.)

Trump Administration Change in Policy on Housing Adult Transgender Prisoners

The Federal Bureau of Prisons announced in May 2018 that while it will continue to make housing determinations on a case-by-case basis as required by PREA, it will use "biological sex" to make initial determinations in the type of housing transgender inmates are assigned, and will assign transgender prisoners to facilities conforming to their gender identity only "in rare cases."[50.5] This reverses the 2016 DOJ policy, described above, that housed adult prisoners based on their gender identity, not their birth sex.

The authors believe that the BOP's decision runs directly counter to the text and spirit of PREA, will undermine the safety and security of one of the most vulnerable prison populations, and attempts to negate decades of progress on LGBT rights and protections that were reflected in the issuance of

[47] 28 C.F.R. 115.315(f).

[48] 28 CFR 115.341.

[49] http://www.prearesourcecenter.org/node/3927.

[50] 28 CFR 115.342.

[50.5] The May 11, 2018 revisions to the Federal Bureau of Prisons Transgender Offender Manual are set forth in the Change Notice posted by the Bureau at https://www.documentcloud.org/documents/4459297-BOP-Change-Order-Transgender-Offender-Manual-5.html.

[51] The standards do not specifically state how these requirements apply to transgender people. Many agencies permit transgender individuals to make a choice at admission as to whether they will be searched by male or female officers for purposes of these requirements, and we recommend this as a best practice that conforms to the standards. See., e.g. Boston (http://bpdnews.com/news/2013/6/11/boston-police-department-issues-special-order-for-interacting-with-transgender-individuals); New York City (https://www.dnainfo.com/new-york/20120613/jackson-heights/nypd-releases-new-patrol-guidelines-address-transgender-harassment/).

[52] 28 CFR 115.315.

[53] 28 CFR 115.315(e).

[54] 28 C.F.R. 115.315(d).

PREA standards in 2012. While this federal policy change does not directly impact LGBTQI youth in detention, the decision could have a ripple effect on this population and their treatment, particularly in light of the Trump administration's overall roll back of nondiscrimination policies, data collection, and other LGBT-supportive policies.

Searches and Cross-Gender Viewing

PREA prohibits all cross-gender strip searches (of females by males, of males by females)[51] and cavity searches except in emergencies, or those conducted by a medical professional. Similarly, PREA prohibits cross-gender pat-down searches except in exigent circumstances. Any cross-gender searches that occur must be documented. Many agencies permit transgender youth to choose the gender of the officer conducting the search.[52] This is emerging in the field as a best practice.

PREA is clear that no search or physical exam may be conducted when the only purpose is to determine an inmate's genital status. If the youth's "genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner."[53]

More generally, a facility should implement policies and procedures that "enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit. In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing."[54]

2. RIGHT TO BE FREE FROM HARASSMENT AND DISCRIMINATION

The United States District Court for the District of Hawaii was the first federal court in the country to specifically address the treatment of LGBTQI youth in juvenile facilities.[55] The youth who brought the case identified as or were perceived to be lesbian, gay, bisexual, or transgender (LGBT) and at varying points had been held in the Hawaii Youth Correctional Facility. While at the correctional facility, the youth were verbally abused and harassed by other youth as well as by staff based on their LGBT status.[56] Some youth endured physical and sexual assault and threats of sexual assault based on their actual or perceived sexual orientation or gender identity.[57] The supervisor defendants were aware of the pervasive abuse and harassment and yet took no meaningful action to remedy the conditions.[58] In addition, the facility isolated youth who complained of LGBT-based harassment, allegedly for the purposes of keeping LGBT youth safe.[59] The youth filed a motion for preliminary injunction seeking relief on Due Process and Equal Protection claims, amongst other claims. The defendants in the case were staff from the correctional facility, as well as staff from the state's Department of Human Services and Office of Youth Services.

The court issued a preliminary injunction order instructing the correctional facility to stop harassment and discrimination of LGBT youth; to develop policies, procedures, and practices for staff regarding LGBT youth; and to appropriately investigate and respond to grievances of youth who allege discrimination or harassment.[60] The court found that the defendants "control and bear ultimate responsibility for the environment they create at that facility."[61] The court also found that conditions at the facility were dangerous and that abuse and harassment was pervasive. The court held that isolation of youth is "inherently punitive."[62] The court found that defendants were aware of the unsafe conditions and still 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."[63] The court held that "failure to adopt any professionally acceptable methods of maintaining order and safety . . constitute[d] deliberate indifference."[64] After this order entered, the case settled.

R.G. v. *Koller*, 415 F. Supp. 2d 1129 (D. Haw. 2006), & 2006 U.S. Dist. LEXIS 21254 (D. Haw. Mar. 1, 2006)

- Court issued preliminary injunction order instructing youth correctional facility to:
- Not to discriminate based on actual or perceived SOGI[65] status;
- Stop harassment and discrimination of LGBT youth by staff or other youth;
- Stop use of isolation as a means of keeping a ward safe from discrimination, harassment or abuse based on actual or perceived LGBT status.
- Develop policies, procedures, and practices for staff regarding LGBT youth; and
- Appropriately investigate and respond to grievances alleging discrimination or harassment.

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55 *R.G. v. Koller,* 415 F. Supp. 2d 1129 (D. Haw. 2006).
56 *Id.* at 1142-44.
57 *Id.* at 1144-45.
58 *Id.* at 1145-48.
59 *Id.* at 1148-49.
60 *R.G. v. Koller*, 2006 U.S. Dist. LEXIS 21254 (D. Haw. Mar. 1, 2006).
61 *Id.* at 1135.
62 *Id.* at 1155.
63 *Id.* at 1157.
64 *Id.*
65 Sexual Orientation and Gender Identity (SOGI).
66 *See* Cal. Gov't Code §§ 12920, 12940; Colo. Rev. Stat. § 24-34-402; Conn. Gen. Stat. § 46a-60; D.C. Code §§ 2-1401 and 2-1402; Del. Code Ann. tit. 6 § 4501; Haw. Rev. Stat. § 378-1–3; 775 Ill. Comp. Stat. 5/1-103; Iowa Code § 216.6; Mass. Gen. Laws Ch. 151B § 4; Me. Rev. Stat. Ann. tit. § 4571; Md. Code Ann., State Gov. § 20-606; Minn. Stat. § 363A.08; Nev. Rev. Stat. § 613.330; N.J. Rev. Stat. § 10:5-12; N.M. Stat. § 28-1-7; Or. Rev. Stat. § 659A.030; 29 L.P.R.A. § 156a; R.I. Gen. Laws § 28-5-7; 21 Vt. Stat. Ann. tit. § 495; Wash. Rev. Code § 49.60.030; N.H. Rev. Stat. Ann. § 354:A1.

3. RIGHT TO LIVE CONSISTENT WITH ONE'S GENDER IDENTITY

Increasingly, federal and state laws are being used to protect individuals, including youth, based on their gender identity. Twenty states as well as DC and Puerto Rico explicitly provide protection from discrimination on the basis of gender identity.[66] Existing case law on the issue supports LGBTQI youth in expressing their gender identity and having their medical needs addressed, including transition-related care, which is in keeping with case law involving medical care for incarcerated LGBT adults in prisons.

For example, in 2003, a transgender female housed in an all-male foster care facility run by New York City's Administration for Children's Services (ACS) brought suit for failure to respect her gender identity. The girl always dressed in stereotypical feminine clothing, finding men's clothing to be "awkward" and "alienating." The Supreme Court of New York held that ACS needed to accommodate the youth and allow her to dress in a way that was consistent with her gender identity.[67]

ACS was also required to support a youth's transgender-related health care needs. A transgender female youth in state care sought an order requiring the agency to pay for her gender dysphoria-related medical needs.[68] The court found that ACS' refusal to pay for medically necessary care and procedures was "arbitrary and capricious" and ordered ACS to pay for them.[69]

While these cases involve foster care, the principles should apply to all youth in care, including in a juvenile facility.[70] Indeed, juvenile justice professionals need to know that the failure to provide proper treatment for gender dysphoria not only can cause serious health problems for transgender children, but can also lead to legal liability for confinement facilities. Courts have held prisons liable for violating the Eighth Amendment's ban on cruel and unusual punishment when they have been "deliberately indifferent" to "objectively serious medical needs."[71] A juvenile confinement facility that is on notice of a youth's gender dysphoria and denies treatment has a high chance of being found "deliberately indifferent" since courts have uniformly held that gender dysphoria is an "objectively serious medical need" for which treatment is medically necessary.[72] For more information on proper medical care and treatment for transgender adolescents, see *Transgender Health Needs* in Section VII.3., *Medical and Mental Health Care, below*.

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[67] *Doe v. Bell*, 194 Misc. 2d 774 (N.Y. Sup. Ct. 2003).

[68] Changing one's gender identity is not possible. Gender dysphoria is the condition that results when transgender children do not receive appropriate care and endure very high levels of distress and anxiety over the mismatch of their physical bodies with their gender identities.

[69] *Matter of D.F. v. Gladys Carrion*, 43 Misc. 3d 746 (N.Y. Sup. Ct. 2014). *See also Brian L. v. A.C.S., 51 A.D.3d 488, 500 (N.Y. App. Div. 2008)* (holding that "While ACS has a duty to provide medically necessary and surgical care to all of the children in its care and must, if necessary pay for that care," Family Court did not have power to rule that ACS provide particular care).

[70] Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 40(a) (2012) (stating that "[a]n actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship."); *Nguyen v. Massachusetts Institute of Tech.*, Mass. Supreme Judicial Court Dkt. No. SJC-12329 (slip. op. May 7, 2018 at 29) (holding that a university has a special relationship with a student and a corresponding duty to take reasonable measures to prevent his or her suicide in [certain] circumstances); *Slaven v. Salem,* 386 Mass 885, 887-888 (1982) (addressing the duty and accompanying responsibilities of a jailor for the suicide of a prisoner in his custody and stating:

> "One who is required by law to take or voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a duty (1) to protect them against unreasonable risk of physical harm, and (2) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.")

[71] Southern Poverty Law Center. *Entitled to Treatment: Medical Care for Transgender Adolescents in the Juvenile Justice System*. April, 2016. (Hereinafter "Entitled to Treatment.") Montgomery, AL; SPLC. Available at https://www.splcenter.org/sites/default/files/lgbt_right_to_treatment_final_web.pdf.

[72] Statement of Interest of the United States at 1-2, Diamond v. Owens, No. 5:15–CV–50 (MTT), 2015 WL 5341015 (M.D. Ga. Sept. 14, 2015). Available at https://www.splcenter.org/sites/default/files/documents/doj_statement_of_interest_diamond.pdf.

IV. Foundational Issues: Professionalism, Respect, and Creating a Safe, Respectful, Non-discriminatory Environment

The foundational issues addressed in this section underpin the specific solutions proposed throughout this paper. They should be considered and implemented by leadership at all levels and through all stages of the policy and procedure development as well as education processes.

1. KEY FOUNDATIONAL ISSUE #1: PROFESSIONALISM

The process that agency leadership is undertaking and asking staff to actively contribute to, shape, and implement is fundamentally about what it means to be an effective professional in juvenile confinement settings. This process is not about asking anyone—administrator or staff—to change their personal beliefs. Rather, these necessary changes grow directly from administrators' and staff members' duties and obligations as professionals—whether in the area of safety and security, providing services to youth, or otherwise. Leadership and staff must embrace their duty to protect all individuals in their custody and care from discrimination, harassment, and a hostile environment based on actual or perceived sexual orientation, gender identity or expression. It is the responsibility of all administrators and staff to protect and care for LGBTQI youth equitably with other youth in their care. When administrators and staff report to work, they are charged to act as the professionals they were hired to be, and should expect to be held accountable for their behavior. Staff are hired to work with youth to change the problematic behaviors that brought them into state custody, not to change their identity. To reiterate: no one is being asked to change their personal religious or other beliefs, but are being asked to perform the duties they were hired to do in a professional manner regarding the safety and security of the youth in their custody.

> "We felt what we needed to do to get an LGBTI policy accepted by staff was to frame it in terms staff could understand, by not leading with or appealing to issues of civil rights or empathy, but principles of security and professionalism. People need to feel safe inside. All else is predicated on that. Residents need to feel that all are concerned that they are kept safe. By emphasizing what is common to the profession and has always been a source of pride, we have received a lot of buy-in."
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> –A.T. Wall, Director, Rhode Island Department of Corrections

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[73] Perry R., et al., NYC Administration for Children's Services, *Safe and Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Justice Systems*, at 4 (2014). Available at http://www1.nyc.gov/assets/acs/pdf/lgbtq/FINAL_06_23_2014_WEB.pdf.

[74] For the purpose of this policy all references to "youth" and/or "children" will to apply to youth/children receiving custodial and/or community-based services from Children's Services, including children and youth receiving any and all child protective and preventative services, youth in alternative-to-detention/placement programs, youth in foster care placements, youth in juvenile justice placement, and youth in confinement facilities.

2. KEY FOUNDATIONAL ISSUE #2: RESPECT

A key component of professionalism in juvenile justice settings is that all administrators and staff members must treat all youth in their care with respect. Indeed most agencies have a staff code of conduct reflecting this key directive. Treating detained LGBTQI youth with respect is essential to achieving two core objectives critical for operating a safer and more secure facility:

1. Showing respect is the best and most effective way to elicit information necessary to establishing safety for LGBTQI youth. As has been documented, LGBTQI populations often encounter biases and discrimination when they self-identify or their status as LGBTQI becomes known, or when they present as gender-nonconforming. Youth who become involved in the juvenile justice system are particularly likely to have had past experiences with discrimination and bias that may make them reluctant to open up about their sexual or gender minority status. In a juvenile confinement setting, vital information about safety and security is likely to be elicited from LGBTQI youth only if they feel safe and that they won't be bullied, harassed, or harmed as a result of allowing their sexual orientation or gender identity to be known to anyone. Respectful treatment is a prerequisite to collecting accurate information about vulnerability and other issues that are critical for making the best classification and housing decisions. Classifying and housing detained youth most appropriately goes to the heart of operating a safe and secure facility and is required by law. A lack of respect shown to LGBTQI youth will minimize, if not shut down, self-disclosure and thereby contribute to unsafe and potentially dangerous placement decisions. Respectful treatment is also critical when responding to grievances and investigating incidents involving applications of force by staff on residents.

2. Staff fulfillment of their professional obligation to treat facility populations with respect creates a safer overall confinement environment. Respectful communication and attitudes exhibited by administrators and staff members toward LGBTQI staff and youth have a powerful positive impact on the overall environment and climate of a facility. Conversely, homophobic and transphobic attitudes and behavior left unchecked by staff create a climate for discrimination, harassment, and abuse, and make LGBTQI youth even more vulnerable by communicating to other residents that administrators and staff will not come to the defense of LGBTQI youth or support them when they are harassed or abused by other residents.

Model language from New York State Office of Children's and Family Services setting forth principles for creating a safe, respectful and non-discriminatory environment[73]

Children's Services is committed to providing all youth[74] and families served by Children's Services and our contracted provider agencies a safe, healthy, inclusive, affirming and discrimination-free environment. This includes any child, youth or family member receiving services from Children's Services Protective, Preventative, Foster Care, Juvenile Justice Placement, Detention, or Alternative to Detention (ATD) and Alternative to Placement (ATP) settings, who self-identities as or is perceived as lesbian, gay, bisexual, transgender and questioning (LGBTQ). This LGBTQ policy provides best practice guidelines to both Children's Services and provider agency staff on sensitive, respectful and culturally competent practice as well as strategies to address bias and meet the unique needs of youth and their families.

3. KEY FOUNDATIONAL ISSUE #3: CREATING A SAFE, RESPECTFUL, AND NON-DISCRIMINATORY ENVIRONMENT

Following directly from the first two foundational principles, juvenile justice administrators and staff are obligated to create a professional, non-discriminatory environment where *all* youth in their charge, including LGBTQI youth, are physically and emotionally safe and treated respectfully. This obligation extends to all employees, contractors, and volunteers who interact with any juvenile justice system-involved youth.

a. Nondiscrimination

Administrators leading the effort to establish an LGBTQI policy must ensure it includes a comprehensive non-discrimination policy that prohibits any form of discrimination against youth based on actual or perceived sexual orientation and gender identity or expression. The policy should guarantee equal and equitable access to treatment and services for all youth, including LGBTQI youth. Administrators should also ensure that any specific staff code of conduct that requires staff to treat facility populations with respect applies to LGBTQI youth if it does not already do so, or re-emphasize the policy's relevance to LGBTQI youth if it does apply.

b. Respectful Communication

Respectful communication is key to creating an environment of safety and respect for LGBTQI youth. Agency leaders should develop specific guidance for staff regarding their interactions with LGBTQI residents that specifies the use of respectful language and avoidance of demeaning language, including common slurs. Respectful communication means always using the chosen name and pronouns consistent with the gender identity of transgender, gender non-conforming, and intersex youth in custody when communicating with or about them.[75] The guid-

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[75] For more detailed information on the topic, *see* section VII.1.e., Addressing transgender and intersex youth identification and search needs, *below*.
[76] For more information on staff training, see Section VII.5., *below*.

ance should include instruction in the use of inclusive terminology that does not make assumptions about sexual orientation or gender identity. For example, when speaking with any youth, instead of making an assumption of what pronoun to use, ask what pronoun to use, ask what pronouns the person uses. (E.g., “My name is Sean and I use he, him, and his pronouns. What is your name and what pronouns do you use?”) In addition to policy guidance, an educational module on respectful communication should be included in any training and orientation program for staff and administrators created as part of LGBTQI policy implementation efforts.[76]

c. Privacy

Creating a safe, respectful environment means that staff should not disclose a youth’s sexual orientation or gender identity to anyone without the youth’s consent (“outing a youth”) unless it is an emergency. In addition, staff’s professional obligations to provide for a youth’s safety and security (e.g., in connection with placement and housing decisions) may require them to share a youth’s LGBTQI status with other employees. Youth should be told that such disclosure will only occur with the youth’s knowledge.

Not only is it important to respect a youth’s wishes for privacy; “outing” a youth can create safety issues within the facility and with family members or in the community. As part of developing policy, appropriate and explicit controls on the dissemination of youth sexual minority status must be enacted and clearly explained to all staff, contractors, and volunteers.

MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES LGBTQI YOUTH POLICY

SECTION II: DISCLOSURE

A. The only way that anyone knows someone's sexual orientation or gender identity is if they tell you.

B. All state and contract provider employees shall create an environment that is safe and welcoming for LGBTQI and GNC youth. Youth may disclose their sexual orientation and/or gender identity when, and if, they feel ready and when, and if, a safe environment and trusting relationship has been established. For example, an employee should not assume that a youth is heterosexual and use gender neutral pronouns when discussing dating relationships. An example may be asking a youth "Are you dating someone?"

If youth disclose that they are lesbian, gay, bisexual, transgender, intersex, questioning, queer, or gender non-conforming, it is important to talk with them about it in an open and understanding manner. An employee should never just "move on" as that may send a negative message; For example, an employee can talk about what it means for this youth.

C. If a youth discloses this information to an employee, and taking into consideration positive youth development model, they shall ask the youth to what extent they want to disclose this information and to whom. It is important to respect a youth's confidentiality regarding their status as LGBTQI or GNC. Youth shall be told that information regarding their status as LGBTQI or GNC shall not be disclosed to their parent or legal guardian without the youth's consent whenever possible but in no circumstances without the youth's knowledge. In addition, DYS shall not disclose this information to outside 3rd parties such as but not limited to courts, schools, service referrals.

D. Youth shall also be informed that, under certain circumstances, the youth's status as LGBTQI or GNC may need to be shared with other employees (i.e. in connection with a placement/transfer request) but shall not be disclosed to other employees without the youth's knowledge.

E. In order better understand and help the population DYS serves, DYS will collect statistics on the number of LGBTQI and GNC youth in its care consistent with the youth's confidentiality requests. Youth that self-identify as LGBTQI or GNC will be asked if they will agree to such information being reported to a Central Office DYS Staff for record keeping purposes only.

d. Training in Agency Policy for All Staff, Contractors, and Volunteers

In order to create an environment in which LGBTQI youth feel safe, it is essential for all staff, contractors and volunteers to receive proper training on agency policies related to LGBTQI youth. Education on LGBTQI issues will help increase staff understanding and awareness of the specific needs and elevated risks that LGBTQI youth face, which in turn will help staff to understand why it is necessary for them to enforce policies to ensure that LGBTQI youth are treated fairly and equitably. Staff training can go a long way in securing staff buy-in to LGBTQI policies, explaining why policies and practices are being incorporated, and understanding how they impact the safety and security of the juvenile facility including youth in custody, staff and other workers. Appropriate training will also increase staff confidence and comfort in carrying out their professional duties and obligations. The key foundational issues of professionalism and respect must underpin all education and training efforts. (For more information on training and education, *see* Section VII,5., *Staff Training*, below.)

e. Grievance Procedures

Appropriate, safe, and confidential grievance procedures need to be in place to protect youth who disclose their sexual orientation or gender identity from negative consequences and to provide a means to address non-discrimination and other policy violations. A well-designed and safe grievance process can also help in staff management since grievances can be a key indicator of how effective the agency's LGBTQI policies and practices are, whether staff training and accountability measures are sufficient, etc. For more information about appropriate grievance procedures, see the subsection on grievance procedures below, in Section VII, 1.c.iii., *Grievance Procedures*, below.

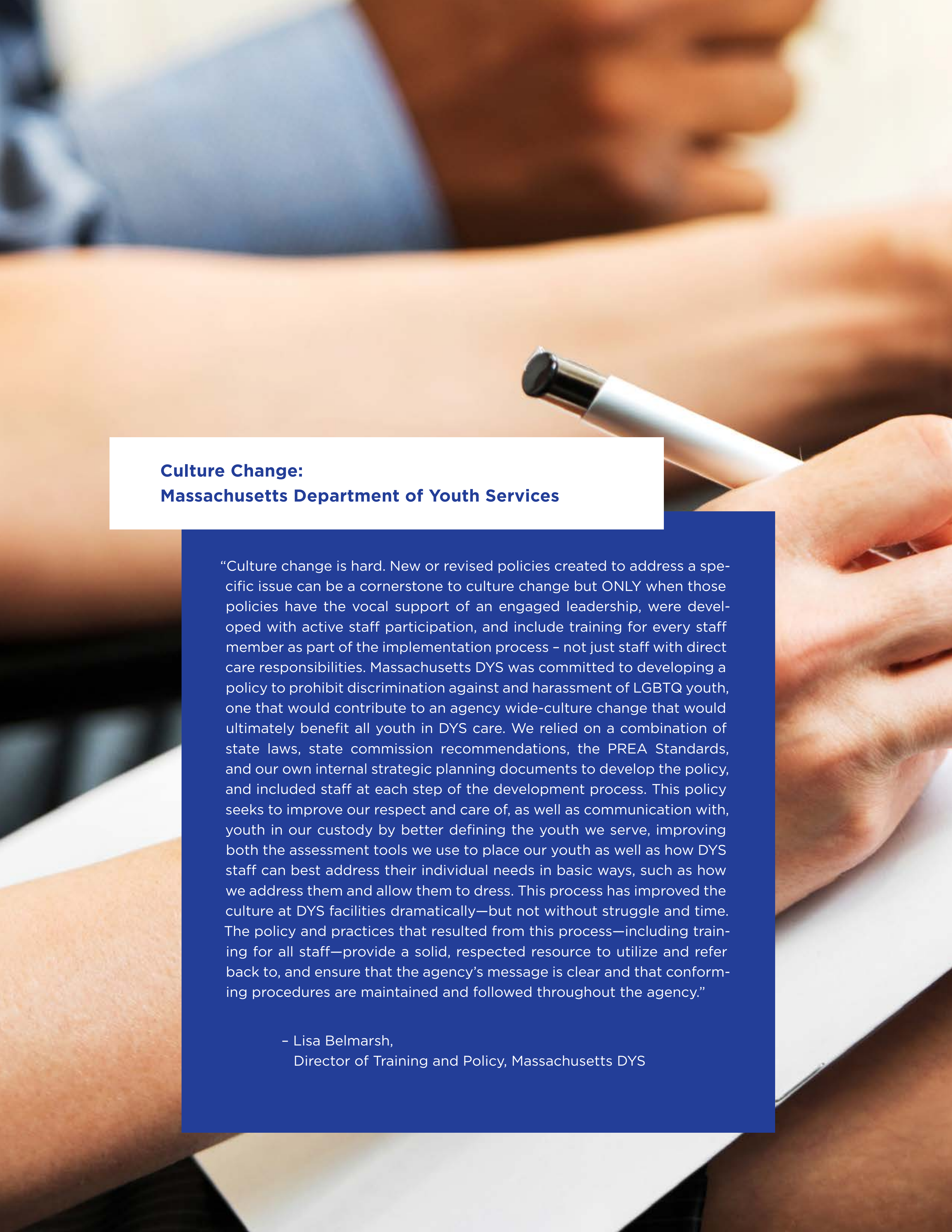
V. Institutional Culture and Effective Policy Development and Implementation

Given the heightened risk of abuse LGBTQI youth face in confinement settings, the mandates of PREA, and growing support of courts in protecting the rights of LGBTQI individuals, it is incumbent on senior administrators of juvenile justice agencies to identify strategies to address issues facing LGBTQI youth in their care, including discrimination. Adopting policies to address these challenges is critical, whether the motivation for change is administrative initiative or a lawsuit challenging institutional practice. However, if policy change occurs without clearly articulated administrative support or in an institutional culture that is not conducive to it, the policy will be ineffective at best. Assessing institutional culture will have a direct impact on the ability to shape, implement, and enforce an effective policy. As will be seen, change in this arena has been most effective where policies have been (i) championed by motivated, engaged leadership; (ii) developed from within with the active participation of staff, facilitating staff ownership of the policies; and (iii) accompanied by appropriate staff training programs.

Houston, Texas:
Developing Policies for LGBTI Inmates

"In Houston, the major impetus for developing policies for the management of LGBTI inmates came in the form of lawsuits over the treatment of a transgender male and transgender female in the jail. The response began with leadership saying that they could do better and treat transgender inmates with respect. They met with people from the community, including the legal counsel for the transgender man. Community representatives were invited to be policy advisers. The leadership found a local transgender advocate, and would run concepts by him to get a sense of how policies would play out in the community. Recognizing that it was important to bring the right people in-house, they put together an internal committee of the medical director, who covered mental health policy; representatives from the training academy, classification, legal department, detention; and line staff who would weigh in how policies would work with the average person in jail or on the street. We had to face changes in what we could and could not do, trying things and assessing what would happen with each. We reviewed 20-25 policies and took the best parts of each to develop our LGBTI protocol. Some didn't always work well together. It's still a work in progress."

– Asst. Chief Debra Schmidt,
Harris County (Houston) Sheriff's Office



Culture Change: Massachusetts Department of Youth Services

"Culture change is hard. New or revised policies created to address a specific issue can be a cornerstone to culture change but ONLY when those policies have the vocal support of an engaged leadership, were developed with active staff participation, and include training for every staff member as part of the implementation process – not just staff with direct care responsibilities. Massachusetts DYS was committed to developing a policy to prohibit discrimination against and harassment of LGBTQ youth, one that would contribute to an agency wide-culture change that would ultimately benefit all youth in DYS care. We relied on a combination of state laws, state commission recommendations, the PREA Standards, and our own internal strategic planning documents to develop the policy, and included staff at each step of the development process. This policy seeks to improve our respect and care of, as well as communication with, youth in our custody by better defining the youth we serve, improving both the assessment tools we use to place our youth as well as how DYS staff can best address their individual needs in basic ways, such as how we address them and allow them to dress. This process has improved the culture at DYS facilities dramatically—but not without struggle and time. The policy and practices that resulted from this process—including training for all staff—provide a solid, respected resource to utilize and refer back to, and ensure that the agency's message is clear and that conforming procedures are maintained and followed throughout the agency."

– Lisa Belmarsh,
Director of Training and Policy, Massachusetts DYS

1. ASSESSING INSTITUTIONAL CULTURE

In order to establish the nature and extent of issues facing LGBTQI youth in the care and custody of the agency overseeing detained youth, three general and overlapping areas of inquiry should be assessed:

- The experiences, needs, and risks that LGBTQI youth face in their day-to-day lives within the agency's facilities.
- Staff and administration attitudes and knowledge about LGBTQI issues.
- Informal or formal practices staff engage in when working with LGBTQI populations and what (if any) policies or staff training the agency has on this topic.

This information will provide the agency with a clearer picture of the problems and practices that need to be addressed in developing policy, training and quality assurance monitoring covering the treatment of LGBTQI youth in its charge. The sections that follow explore these areas in more detail.

a. Experiences, Needs, and Risks of LGBTQI Youth and Agency Staff

Significant problems for LGBTQI youth in confinement facilities are the result of a number of interlocking factors, including stigma and discrimination against LGBTQI individuals in society at large that carry over to confinement settings; myths and stereotypes about the population that inform institutional culture and individual behavior toward LGBTQI youth; and a lack of guidance at the agency level about how to treat and work with this population. LGBTQI youth who have contact with the juvenile justice system often experience a number of serious problems, starting before their involvement and continuing through release, as highlighted by cases and studies cited in Section III, *Legal Considerations*, and elsewhere in this paper.

In assessing the culture at an agency's facilities and developing appropriate system-wide policies that are LGBTQI sensitive, it is important to be aware of the common problems and risks that LGBTQI youth face in those facilities. Developing a policy that effectively addresses the particular challenges faced by an agency's LGBTQI population requires knowledge about the specific experiences, risks, and needs of the LGBTQI individuals in each of the agency's facilities. How best to gather that information? Most agencies have historically not collected information about a youth's sexual orientation or gender identity at intake. This is changing since PREA requires institutions to inquire into and make housing and classification decisions based on factors such as sexual orientation and gender identity and expression that can make a youth more vulnerable to harm by others. (For more detailed information about the PREA requirement, *see* Section VII, 1b. Information to be collected, *below*.) Moving forward, this data could be the basis for learning about particular issues LGBTQI youth face, and we encourage facilities to begin to collect this data electronically and systematically, as other demographic and population data is regularly collected. But in the absence of such data, other methods have been effectively used to collect information about the experiences, risks and needs of LGBTQI youth in a facility's charge. Two have proven to be particularly useful in formulating policy in a number of jurisdictions, and are replicable in almost all settings. These are both promising practices.

- *Bring staff directly into the information gathering and (ultimately) the policy development and implementation phases of the agency's project.* Involve staff in planning committees, roundtable discussions, or other structured venues, such as focus groups. Seek their active contributions to the development of the agency's policy and practice beginning with the culture assessment/information gathering phase. These practices can generate important dividends. Meaningful information regarding staff's perception of issues facing LGBTQI youth, including their understanding of institutional culture (both between staff and youth and among youth) and problematic policies or practices that need to be addressed, can result. In addition, individual staff might know LGBTQI youth whose experiences they can refer to as part of the information gathering process, providing critically important information. Of course, any discussion of past or present youth in the facility must be done anonymously. Bringing staff into the process early and soliciting their input in a substantive way throughout the information gathering, policy development, and implementation processes is critical to an even more important result: securing staff buy-in to any new policies developed or changes made to agency- or facility-level practice.
- *Conduct outreach to local, state, or national LGBTQI organizations.* Community and/or state organizations that provide services to or advocate on behalf of LGBTQI youth can provide needed insight into the specific challenges they face as well as appropriate and effective approaches to addressing the challenges. Discussions with local or state LGBTQI service providers can provide information about the experiences of LGBTQI youth including those who have been formerly detained. For facilities that operate in local communities, reaching out to local LGBTQI groups can provide institutional benefits by improving community relations with the LGBTQI community. For institutions located in more remote settings, outreach at the agency level to statewide LGBTQI groups can provide similar valuable insight and recommendations. Discussions with individuals in these organizations can elicit useful information, particularly if the group works with LGBTQI individuals who have had recent experience with juvenile justice facilities. Not all LGBTQI organizations will have experience with justice-involved youth. While they may need to develop additional competencies to work with justice-involved youth, their advice on how to communicate with LGBTQI youth and best meet their needs should be valuable.

As noted, PREA requires agencies to collect data on sexual orientation and gender identity from youth in their custody when they arrive. We recommend that agencies systematically both collect *and* track this data electronically, always ensuring confidentiality. This can help facilities better understand the issues that LGBTQI youth in their care and custody face, and will also help policy makers and health experts by providing critical data on LGBTQI youth. An example of how Massachusett DYS asks incoming youth about their sexual orientation and gender identity is set forth in Section VII, 1.c.i.Initial intake information gathered regarding identification and search needs, *below*.

Other methods to obtain important information involve youth in the information gathering process. These methods stand to produce valuable insights, providing a direct perspective into youth experience. These include:

- Reviewing grievances filed by youth reflecting LGBTQI issues or concerns.
- Reviewing any complaints made by youth to an ombudsman office reflecting LGBTQI issues or concerns.
- Conducting surveys of randomly selected youth in a facility's care about their experiences with and/or observations of the treatment of LGBTQI youth living there. In larger facilities medical staff might be able to conduct anonymous surveys of youth who have identified as LGBTQI.
- Conducting anonymous surveys of released LGBTQI youth who are using LGBTQI service providers that offer post-release services.

These methods can also serve as useful tools for quality assurance and continuous quality improvement efforts after policies have been implemented and staff have been trained.

b. Current Knowledge and Attitudes of Staff and Administration Relating to Sexual Orientation and Gender Identity and Expression

Assessing an agency and/or a facility's culture and experience requires an understanding of the skills, knowledge, and comfort of staff and administration about working with LGBTQI youth. For smaller agencies, administrators may already have a good sense of agency culture based on conversations at staff meetings or discussions with management. For larger agencies, getting this information may require a more deliberate effort. For example, the staff focus groups and roundtables described in the previous section could be structured to include a discussion of staff attitudes as well as youth experiences. This information could help administrators determine where the agency needs to provide training, and how current attitudes may affect implementation efforts.

This assessment must inquire into staff attitudes not only toward LGBTQI youth, but toward LGBTQI colleagues as well. Disrespectful attitudes and communication toward youth or other staff have a powerful impact on institutional culture and create a climate of demeaning and abusive practice. A distinction needs to be made, then, between one's personal and/or conventionally religious beliefs and values, which are not the focus of an assessment, and the attitudes one conveys through one's behavior and words, which are very important, since these can create or support an atmosphere conducive to demeaning others or can otherwise be unprofessional. As such, the assessment can be used to uncover unconscious bias as well. While these attitudes may be a function of lack of awareness on staff's part of the unique risks and needs faced by LGBTQI populations, their expression can create an atmosphere of fear and lack of safety. This can often result in unmet safety and health needs of LGBTQI individuals by increasing reluctance to self-disclose. It is

important that staff understand sexual orientation and gender identity and the needs, views, and risks LGBTQI youth and any LGBTQI staff face in order to create policies to appropriately address these issues. Determining to what extent negative attitudes, expressions, and misconceptions toward any LGBTQI population or individual are prevalent in an institution is therefore a critical goal of the culture assessment.

The general areas to consider in these feedback and information gathering sessions include the following:

KNOWLEDGE
- Familiarity with LGBTQI terms
- Awareness of agency policies and trainings on LGBTQI youth
- Awareness off federal, state, and local nondiscrimination laws

ATTITUDES AND BELIEFS
- Attitudes and beliefs related to sexual orientation and gender identity
- Attitudes and beliefs concerning LGBTQI people in general
- Attitudes towards LGBTQI youth in particular

COMFORT
- Ease with working with LGBTQI staff and youth
- Ease with interacting with LGBTQI people outside of the workplace

EXPERIENCES
- Personal interactions with LGBTQI staff and youth
- Observations of other's interactions with LGBTQI staff and youth

WORKPLACE
- Overall culture
- Availability of supervision
- Training

c. Current Agency/Facility Norms, Informal Procedures, Written Policies, and Training Relating to LGBTQI Youth

An agency's written policies, informal procedures, facility norms, and training opportunities related to LGBTQI youth should be examined by administrators to determine how an agency currently serves the LGBTQI youth in its care, if at all. Below are some examples of the types of policies and areas of practice to examine:

- Nondiscrimination policy
- Policy to create a safe, affirming environment
- Intake and risk assessment
- Classification
- Searches
- Discipline
- Grievance
- Operational issues specific to transgender and intersex youth
- Communication
- Medical and mental health care
- Programming
- Visitation
- Privacy and safety
- Discharge

The agency should evaluate any existing training relevant to these areas, review individual LGBTQI youth files and records, observe staff interactions with youth who are or are perceived to be LGBTQI, and make informal inquiries to staff in order to gain a full understanding of LGBTQI issues in the agency. The findings from the survey on staff knowledge and attitudes may also be informative when attempting to establish current practice in this area. Repeating these evaluations after policy changes and training have been implemented can also be useful for quality assurance/continuous quality improvement measures.

2. ESTABLISH LGBTQI POLICY DEVELOPMENT AND IMPLEMENTATION MECHANISMS

Once an agency decides to develop formal or enhance existing policies and procedures related to LGBTQI youth, how can it increase its chances that the development and implementation process will be effective and sustainable? Agencies that have successfully navigated the process, and experts who have advised them and others, point to five critical components that have each helped to maximize the effectiveness of the process. These five key elements, explained more fully below, are:

- Leadership
- Active staff participation in the process
- Participation of an outside expert
- Staff education
- Accountability

a. Leadership

Strong, clearly communicated, and unambiguous leadership support is critical to developing and implementing effective policies and procedures representing potentially major change for any organization, particularly one operated with a defined, strict chain of command. It is the leadership at the top of the agency that sets the tone for the entire organization. Leadership from the top of each of an agency's facilities is similarly critical to setting the tone at the institutional level. While change begins with committed leadership at the top, real leadership will also be needed at all facility levels and in all areas. Administrators charged with developing policy should seek and identify potential champions at all staff levels to

Need for Strong, Engaged Leadership: Massachusetts Dept. of Youth Services

"Our policy development and training curriculum starts at the Commissioner's desk. Our policy and training on LGBTQ Youth are part of DYS's critical and strategic goals, and are communicated through senior staff meetings to all DYS facilities and community locations. Staff know they are expected to follow the policy, attend the training, and adhere to all guidelines provided. Staff also know they can provide feedback to the policy steering committee as well as through their supervisors to help improve a practice or policy. This dynamic provides more understanding and acceptance of the policy by emphasizing continuing staff input. We believe this process allows staff to feel more empowered about how their daily work experiences can impact the agency's overall policy decisions. It is leadership at every staff level—not just from senior staff—that contributes to the policy's success and its effective implementation, which is what benefits our youth."

– Lisa Belmarsh,
Director of Training and Policy, Massachusetts DYS

help move the process forward throughout a facility, and to promote awareness of the initiative and, as importantly, the rationale and hoped for results of the policy shift. These champions are critical to successfully navigating the initiative through different parts of a facility. Once a policy is adopted, leadership at both the agency and facility level should also communicate clearly and unambiguously that the policy applies to the entire agency and to each of the agency's facilities, and that staff will adhere to the policy as they would with any other agency policy (*see* Accountability, subsection e., *below*).

Denver, Colorado: Sheriff Leads a Process to Develop a More Effective Policy

"In Denver, the process of creating a new policy and approach started at the top – our Sheriff wanted to build a policy with a different dynamic from how we've approached these in the past. All of the momentum and activities that went into the policy wouldn't have happened without the openness of the Sheriff, who felt it was his responsibility as Sheriff in a municipality as large as Denver to build a policy as comprehensive as possible to help everyone in the jails. He invited experts to the table and was committed to being at every meeting. The topic was new and difficult, but he was understanding of disagreement. He was clear to staff that change wouldn't happen overnight. But he led the charge."

– Capt. Paul Oliva, Denver Sheriff's Office

b. Active Staff Participation in LGBTQI Policy Development and Implementation Process

A critical issue to address early in the policy development and implementation process is identitying the most appropriate staff members who should be involved in moving this process forward in the agency.

The importance of the role that staff should play in assessing the agency's culture around LGBTQI issues described in the previous section is heightened in the context of policy development and implementation. A critical component of effective implementation is staff acceptance, if not actual ownership and buy-in, of any new policy and practices. An agency should therefore identify and engage representatives from across the agency in the development process, including administration, intake, classification and housing, medical, mental health, programming/treatment and line staff. From these representatives, potential champions can be identified who will prove helpful in building initiative to move the process forward. Establishing a policy development committee (or committees) with strong staff participation that includes respected and tenured line staff from all levels of the agency and affected units and departments will help ensure several key objectives. First, it will provide an ongoing opportunity for leadership and staff level champions to respond to concerns and explain the rationale for particular proposed changes. Second, actively involving affected staff representatives in the development process will offer them regular opportunities to shape and comment on policy that will have a direct impact on their work procedures and practices as well as the work environment as a whole. This should result in a more effective policy, grounded in and responsive to the particular realities, needs, and constraints of an environment known best to affected staff. Third, involving respected staff in a meaningful way in shaping and implementing policy and involving them in training and rollout of policy will promote staff understanding and ownership of the evolving policy and practice, which as mentioned is a key goal of the overall process.

Rhode Island: Leadership is Needed at All Levels to Ensure Success

"Leaders need to model positive behavior, yes, but even more than them, those whom the line staff respect, and whoever is on charge on their shift. Working at the grassroots level to identify leaders is every bit as important as positive leadership at the top. Heads of department will set the tone, and top-level leadership can set things in place, but people on the ground who will actually implement the policy and lead by example are crucial too."

–A.T. Wall, Director,
Rhode Island Department of Corrections

c. Participation of an Outside Expert

The importance of bringing in an outside expert to help an agency gather and assess information about institutional culture is clear. At the policy development stage, the agency should continue to engage community and/or state representatives of LGBTQ organizations in shaping the policy development initiative. LGBTQ representatives will be useful sources of knowledge on issues affecting the agency's LGBTQ population, and they will likely have important insights into policy considerations. Another option is to bring in an individual or agency with relevant experience in this process for technical assistance, such as the National Institute of Corrections (NIC) as well as experts on working with different religious traditions (e.g., Family Acceptance Project; www.familyproject.sfsu.edu) or on the intersection between religious identity and sexual or gender identity (e.g., Institute for the Study of Sexual Identity; www.sexualidentityinstitute.org).

Outside experts will bring much-needed tools and expertise to the policy development process, including clearly articulating both policy challenges and possible approaches to successfully addressing them. They are also best equipped to provide informed responses to questions and concerns that will arise during the process, based on prior experience, helping to facilitate the forward momentum of the project.

The agencies that we are most familiar with who successfully navigated this process all turned to outside experts to help inform and guide them through it. The Massachusetts Department of Youth Services and Rhode Island Department of Children, Youth and Families both turned to Boston-based LGBTQI advocacy organization GLBTQ Legal Advocates & Defenders (GLAD).[77] Massachusetts Department of Youth Services also worked with other outside experts. The Denver and Houston jails turned to local LGBTI organizations and advocates; the NYS DOC requested technical assistance from experts at NIC. The team of staff and experts developing policy should also determine how the agency will create education modules and train staff on the policy, and how the agency will evaluate its implementation.

Staff Participation in LGBTQI Policy Development and Implementation: Mass. DYS

"Massachusetts DYS uses a policy steering committee model where all areas of the agency – community, residential, regional, operations, health services, etc. – are represented in monthly meetings to discuss new or revised policies. These representatives then communicate back to other staff and locations the policies that are being discussed, and illicit feedback for the steering committee to review. Staff input is key to our creating a solid and balanced policy that incorporates not only a 'best practice' but how best to implement and actually put the policy into practice."

–Lisa Belmarsh, Director of Training and Policy, Massachusetts DYS

Participation of an Outside Expert: Massachusetts DYS Experience

"In every policy we seek to create, we look to those on staff who know the most about that topic in order to help create the best document possible. This policy was no exception, except we realized we did not have staff experts in this area. For competency and expertise with LGBTQ issues, we had to look outside the agency for best practices. Our collaboration with GLAD helped us create a better, more comprehensive policy faster than we could have on our own. We also saved considerable time by including them from the beginning of the drafting process rather than bringing them in toward the end to review our final work."

–Lisa Belmarsh, Director of Training and Policy, Massachusetts DYS

d. Staff Education

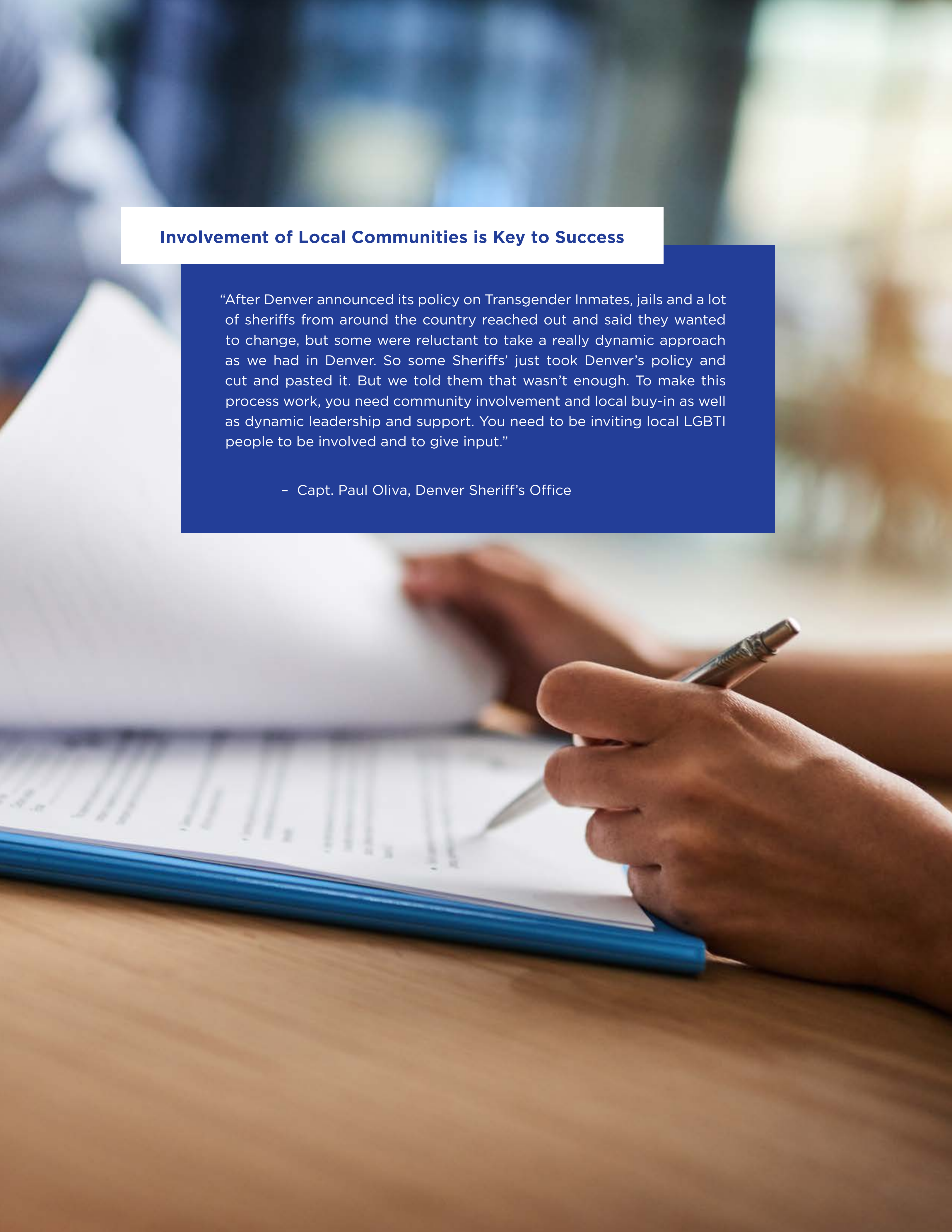
Staff education and training is critical to increasing staff understanding and awareness of the populations in question and the specific needs and elevated risks they face, helping staff to understand the necessity for appropriate practices to make sure LGBTQI individuals are treated fairly and equitably. The foundational issues of professionalism, respect, and establishment of a therapeutic environment (see Foundational Issues) need to underpin staff education efforts. Education can go a long way to securing staff buy-in at every level, explaining why policies and practices are being incorporated, and how they impact the safety and security of the facility and its population. For further discussion of needed education activities at the agency, as well as approaches to education tools, please see the section VII.5. below, on Staff Training.

e. Accountability

Any LGBTQI policies developed by an agency must be treated by staff and all other workers and volunteers in the same way, with the same respect and attitude of compliance as any other agency policy. Policies must be designed to be enforceable, rather than merely aspirational. Enforcement mechanisms must be built into the policies, and those mechanisms must actually be followed. It is critically important that staff be held accountable for not enforcing or otherwise not following any policy as well as for behaviors that are deemed demeaning, harassing, or abusive. Policies will be ignored if specific consequences for failure to comply are not explicitly enumerated. This could mean that frequent monitoring is necessary during the implementation phase with ongoing quality assurance monitoring at regular intervals after implementation.

For staff, accountability is fundamentally about professionalism: if a policy or practice is adopted by an agency, it is staff's professional responsibility to follow and enforce the policy or practice. The key issue here is to hold staff accountable for their professional responsibilities, not to change their personal values. Setting and enforcing standards and competencies is important as well. In addition, and as important, acknowledgment and praise for complying with LGBTQI policies will help to contribute to and support a culture of respect and inclusion throughout the agency and its facilities.

[77] Then known as Gay & Lesbian Advocates & Defenders (GLAD).



Involvement of Local Communities is Key to Success

"After Denver announced its policy on Transgender Inmates, jails and a lot of sheriffs from around the country reached out and said they wanted to change, but some were reluctant to take a really dynamic approach as we had in Denver. So some Sheriffs' just took Denver's policy and cut and pasted it. But we told them that wasn't enough. To make this process work, you need community involvement and local buy-in as well as dynamic leadership and support. You need to be inviting local LGBTI people to be involved and to give input."

– Capt. Paul Oliva, Denver Sheriff's Office

ON STAFF EDUCATION:

"Initially we had a one hour in-house training, but we felt this needed to be more thoughtfully developed. So, we made a 12 hour online class which 3600 of 4500 of our staff have taken. We are currently working on in-classroom training."

– Asst. Chief Debra Schmidt,
Harris County (Houston) Sheriff's Office

"Throughout the policy and training development, DYS partnered with a third party consultant to provide specific in depth knowledge on youth who identify as LGBTQI. This partnership extended into the training as we partnered again with the same consultants to offer more than 100 trainings to over 2,000 employees and third party contracted providers. DYS provides this training, which lasts 4 hours, to each new staff. Using a policy on the Prohibition of Discrimination and Harassment Against Youth, staff discuss all types of identities of our youth and better ways to understand them, communicate with them, and create safer places for both youth and employees. The Department followed up approximately 6 months later with an on-line survey and continuing evaluation process. DYS will continue this work by training other youth in confinement the same concepts."

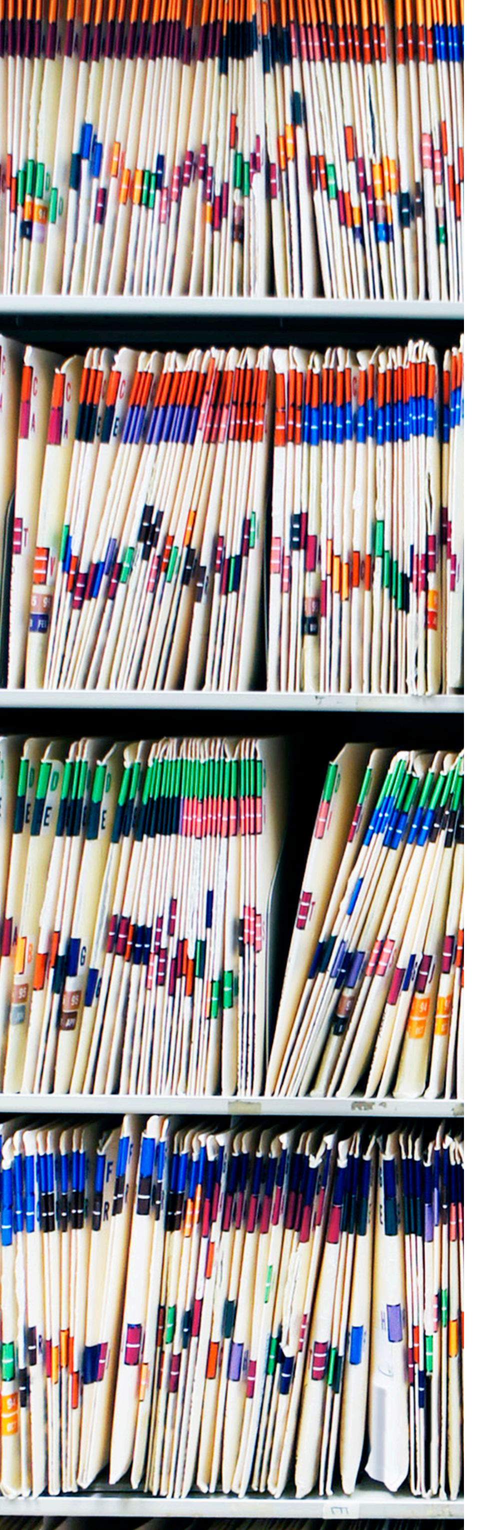
– Lisa Belmarsh,
Massachusetts Department of Youth Services

VI. Privacy and Confidentiality

Facilities should have policies and procedures in place to ensure that the information of all juveniles remains confidential. Information such as sexual orientation, gender identity, and HIV status is protected by the constitutional right to privacy and may not be disclosed without valid reason. In general, the youth in custody are the only people allowed to disclose their own personal information. Without the permission of the youth in custody, agency staff may not disclose their sexual orientation or gender identity to anyone absent an emergency. PREA specifically provides that "[t]he agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this [screening] standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents."[78] This requirement would not interfere with the staff's professional obligation to provide for a youth's safety and security, which could require that they share a youth's LGBTQI status with another employee, e.g., in connection with placement and housing decisions. However, dissemination of such information should only occur with the youth's knowledge. Any such exception must be pursuant to specific agency policy and in writing.

Housing a transgender youth in custody inconsistent with their gender identity would out them automatically, and should be avoided for the safety and privacy of the youth, unless the youth expresses that they would feel safer being housed in that manner.[79] Facilities should always attempt to protect the privacy of the individual to the greatest extent

[78] 28 C.F.R. § 115.341(e).
[79] For more information on housing transgender youth, see Section III. 1. Prison Rape Elimination Act (PREA) Housing for Transgender Youth, above, and Section VII. 2. Classification and Housing Placement, below.
[80] Ibid.



possible. Even if the staff member believes that revealing information would be in the best interest of the youth, the staff member should not disclose the information without the youth's consent unless it is absolutely necessary to achieve a specific beneficial purpose for the youth as specified in writing by facility policy.[80]

LGBTQI youth might not be comfortable with their gender identity or sexual orientation yet, making it very important to avoid singling them out, assuming their LGBTQI status, or forcing them to disclose information they are not comfortable expressing. Honest communication between facility staff and youth is important to create a trusting environment where LGBTQI youth feel safe.[81] Any data collected regarding the sexual orientation and/or gender identity of any and all youth in custody cannot be shared or disclosed pursuant to the requirements of privacy and confidentiality unless and until such data has been de-identified. That means that no disclosure can occur unless and until any and all references to an individual about whom data has been collected have been removed such that there is no way to identify an individual from or based on the data, or to otherwise link any specific individual to the data or to any answer or response they may have provided that underlies the data.

For more information on addressing the topic of confidentiality with youth entering a juvenile detention facility, see Section VII.1.c.iv. *Confidentiality*, below.

[81] See Section IV.3. Key Foundational Issue #3: Creating a safe, respectful and non-discriminatory environment.

VII. Operations

1. INTAKE

Intake is generally a facility staff's first point of contact with youth who will be housed in the facility. It is therefore the optimal (and critical) time to identify incoming resident's particular vulnerabilities, with an eye to optimizing their sense of safety and security while minimizing their risk of victimization. Information gathered at intake will be critically important in making appropriate and well-informed decisions for LGBTQI youth in classification, housing, and program placements, allowing a facility and the state juvenile justice authority to make data-driven, evidence based decisions. Conducting an appropriate risk assessment at intake is therefore vitally important to insuring a new resident's physical, sexual, and emotional safety.

Intake is also a key opportunity to introduce youth to the culture, policy, and practices of a facility.

The following sections address LGBTQI-sensitive practices to incorporate into existing intake procedures. These topics and recommended practices should be clearly conveyed to intake personnel during training and made part of facility policy.

a. Identifying Vulnerable Individuals

Acknowledged markers of vulnerability include being LGBTQI or being perceived as LGBTQI.[82] For example, a slightly built, effeminate young man who identifies as straight or is otherwise gender non-conforming could be viewed as a potential target of abuse, and should be identified as vulnerable. If vulnerable youth are not identified during intake, the institution is more likely to be unaware of safety and other concerns that are needed to make evidence-based placement decisions. Staff will also have a difficult time meeting the healthcare and privacy needs of transgender youth if they are not identified.[83] As a result, intake policies and identification procedures should be in place to identify LGBTQI youth and those perceived to be LGBTQI.[84] Collecting accurate information at intake from incoming youth, as mandated by PREA, can facilitate the jobs of all staff, equipping them to better provide for the needs of all youth in their care and minimize risk for vulnerable youth in housing assignment, bathroom use, health care and other practices. Accurate information collection can also help prevent potential legal violations and future challenges.

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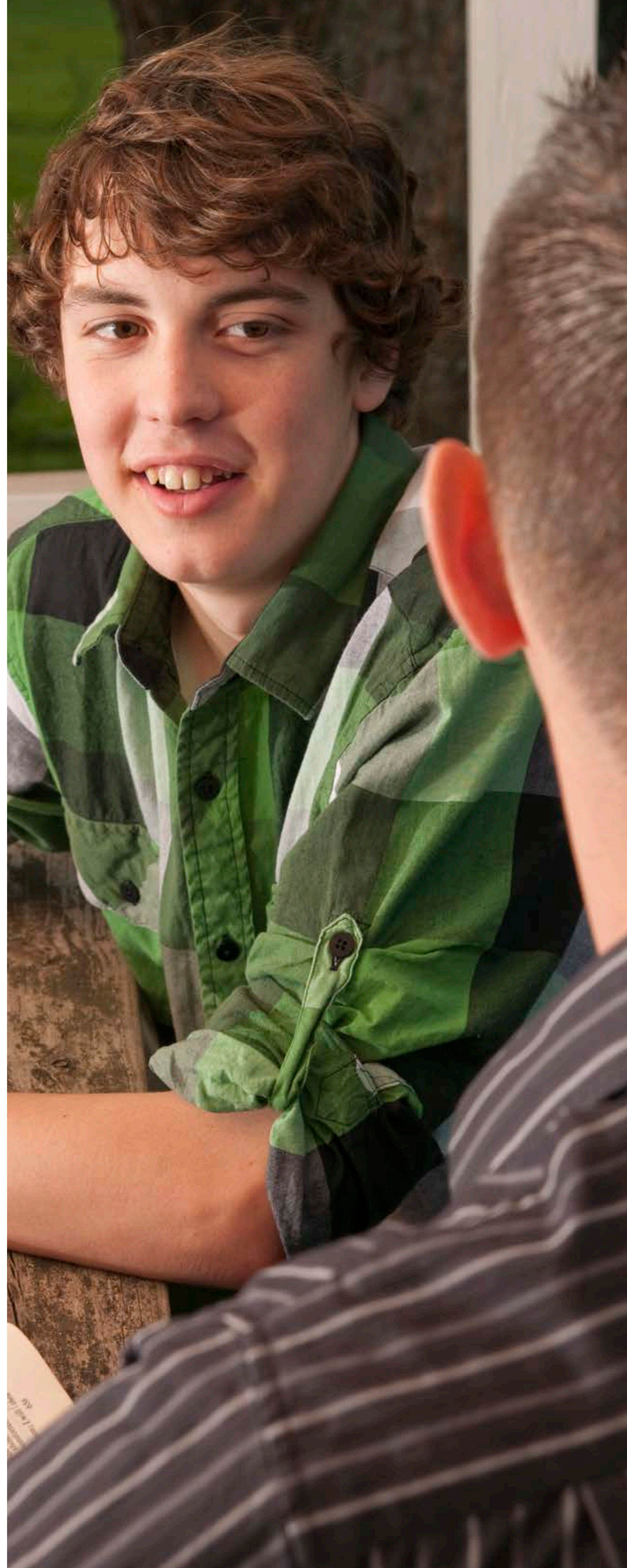
[82] It is important in this context to understand that appearance, mannerisms, and behaviors cannot be the sole basis for identifying a person as LGBTQI. However, these indicators should be used to identify those who may be *perceived* as LGBTQI, regardless of their actual sexual orientation or gender identity.

[83] Marksamer J, Tobin HJ (April 2014). *Standing with LGBT prisoners: An advocate's guide to ending abuse and combating imprisonment* (hereinafter "*Standing with LGBT prisoners*") p. 29. Washington, DC: National Center for Transgender Equality. http://transequality.org/issues/resources/standing-lgbt-prisoners-advocate-s-guide-ending-abuse-and-combating-imprisonment.

[84] Ibid.

The goal of these policies and procedures is to identify vulnerable youth both by supporting self-disclosure through creation of a safe and respectful intake process as well as by providing staff with the tools to independently assess residents' vulnerability. Policies should be designed not to *require* youth to identify themselves as LGBTQI, but instead to ensure that an incoming resident has a clear opportunity during intake to inform staff of (i) their LGBTQI identity, if they so choose; (ii) any concerns they might have about vulnerability based on LGBTQI identity; and (iii) any medical or accommodation needs that respect their gender identity. If a youth chooses not to self-identify as LGBTQI, that choice should be respected.

Staff has an important complementary role to play in this critical information gathering process as identifiers of potentially vulnerable residents. Some LGBTQI youth will not be comfortable disclosing their status to staff, and some youth will face vulnerabilities similar to LGBTQI youth because they are perceived to be LGBTQI but do not self-identify as such. Since residents' appearance, mannerisms, and/or other characteristics may make them vulnerable to sexual or other abuse or harassment, for a policy to be effective in determining vulnerability it must also provide guidance to intake staff on identifying youth perceived to be LGBTQI who do not otherwise indicate that they are LGBTQI.



b. Information to be Collected

PREA sets forth specific guidance for information to be gathered at intake that reflects potential vulnerability of incoming facility residents. The following PREA excerpt outlines required elements of intake. items of particular importance to LGBTQI youth have been bolded:

§ 115.341 Obtaining information from residents.

(a) Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

(b) Such assessments shall be conducted using an **objective screening instrument.**

(c) At a minimum, the agency shall attempt to ascertain information about:

(1) **Prior sexual victimization** or abusiveness;

(2) **Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;**

(3) Current charges and offense history;

(4) Age;

(5) Level of emotional and cognitive development;

(6) Physical size and stature;

(7) Mental illness or mental disabilities;

(8) Intellectual or developmental disabilities;

(9) Physical disabilities;

(10) The **resident's own perception of vulnerability;** and

(11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.

The facility should also develop a policy that provides guidance to staff on how to identify, at intake and later times, residents who are—or may be perceived to be—LGBTQI through observation. This policy can build off of the PREA risk assessment criteria listed above, particularly the inquiry about a youth's self-perception of vulnerability. As noted earlier, not all youth will feel comfortable self-disclosing. When a staff member believes a resident may be vulnerable, either due to self-disclosed LGBTQI status or observation of gender nonconforming or other behavior based on criteria established by agency protocol and appropriate training, a policy should be in place to have the staff member refer the youth to a trained staff member (such as a Gender Classification Specialist, described below in subsection VII.1.d.i. Conducting interviews about youth SOGI status: LGBTQI expertise) to privately discuss safety and vulnerability concerns with the youth. Such a referral is not in conflict with requirements of confidentiality set forth elsewhere. Outside of intake, this information can also be collected by medical and mental health professionals, with appropriate follow-up for any youth deemed vulnerable because of LGBTQI status or being perceived to be LGBTQI.

c. Creating a Safe, Respectful, and Non-discriminatory Environment at Intake

Intake policies and procedures will only be effective in eliciting sensitive information from youth, particularly LGBTQI youth, if they are conducted in a safe, respectful, and nondiscriminatory environment, as highlighted in Section IV, *Foundational Issues*. As described there, not treating youth with respect can result in a failure to obtain this information due to fear of discrimination and potential abuse. On the other hand, showing youth respect and assuring their safety can elicit accurate information that will prepare staff to account for all potential vulnerabilities and to mitigate any potential risks a youth may face.

Entering a juvenile confinement facility is generally a time of very high stress, particularly for youth confined for the first time. To the extent staff can reassure incoming youth from the very beginning of the intake process that they are entering a supportive environment where staff is committed to their safety, the better the chances of reducing a youth's fear and anxiety while laying the groundwork for eliciting accurate information about the individual's safety and health needs. To reiterate, maintaining a respectful, inclusive, non-discriminatory environment at intake is critically important. We highly recommend that the following practices be conducted at the very beginning of the intake process as an important means to help establish such an environment from the time of a youth's initial encounter with facility staff.

i. Initial Intake Information Gathered Regarding Identification and Search Needs

All incoming youth will be asked basic questions in their very first contact with the facility at intake, including identifying potentially sensitive information, particularly for LGBTQI youth. Each incoming youth will also be subject to a full body search as part of the initial screening process. While intake is often a chaotic and stressful time for new residents, the initial point of contact can be structured to show respect for them while underscoring staff's (and the agency's) commitment to their safety and well-being.

In Massachusetts, for example, all youth entering a DYS facility are asked the same set of basic questions in their first encounter with staff (see accompanying box). Included in the few questions all incoming residents must answer are inquiries into the name and pronouns that the youth uses (notwithstanding official records), their gender identity, whether they identify as transgender or intersex, and if so, the gender of the person they want to conduct body searches. Not asking this information at the first encounter with staff creates the real possibility that youth's gender identity or expression will not be respected during this critical initial period. In addition, they could feel that their safety and security have been compromised if the initial invasive body search they are subject to is not conducted by a staff person whose gender they are comfortable with. Establishing a genuine sense of safety and respect at the very start of the intake process can make staff's jobs easier and more efficient, and assure new residents that the staff is in fact committed to their sense of well-being and comfort in addition to their safety and security.[85] (*See* subsection VII.1.e., *below*, 'Addressing transgender and intersex identification and search needs')

New Orleans Juvenile Detention Center

Staff must promptly and consistently intervene to stop other youth from using terms that convey hatred, contempt, or prejudice toward LGBT juveniles, and initiate disciplinary action against youth who harass others.

ii. Inform Incoming Youth About Agency Policies on LGBTQI Residents

Dissemination of an institution's policies affecting LGBTQI youth can be an important tool in the intake process. Intake staff should explain that the facility has a nondiscrimination policy (if it does) and that it attempts to create a safe, respectful, nondiscriminatory environment for all youth, including those who are LGBTQI. Informing incoming youth about such policies at the very beginning of the intake process can help them to understand better the environment they are moving into. In the New Orleans Juvenile Detention Center, for example, staff members tell all youth upon intake, "Name-calling and other harassment [of LGBT youth] is disrespectful and not accepted." It is also explained that failure to follow this rule has consequences.

Using this as a starting point, intake personnel should go on to explain the basics of the facility's policy towards LGBTQI youth. This will help youth understand that self-disclosure is meant to improve their safety in confinement rather than increase their vulnerability.

[85] We note that this initial set of questions does not investigate the full range of inquiries around LGBTQI identity and potential vulnerability. PREA gives institutions 72 hours to conduct a full assessment. While we urge facilities to conduct the assessment as soon as practicable in the intake process, conducting the assessment sensitively is very important. Identifying information concerning a youth's gender identity and expression as well as possible identity as transgender and/or intersex at the earliest stage of intake is critical for addressing the particular safety, security and respect needs of these youth.

Massachusetts Department of Youth Services
Dialogue Tree for Disclosure of a Youth's Gender Identity using JJEMS General Assessment E-File

Name of youth: Date:

Intake staff name and title administering the questionnaire:

Name of location:

Instructions to Staff: DYS welcomes all youth to disclose their preferred name, pronouns, and gender identity. This questionnaire offers youth who are transgender or intersex a chance to discuss additional supports they might need. This questionnaire also provides DYS information to better place youth who are transgender or intersex. A youth could disclose to anyone, and anyone should be prepared to talk about this and provide support. These conversations should also happen confidentially, within mandated reporter requirements. The following **bolded** questions in this dialogue tree shall be used at the following times:

- By the first employee to conduct the first initial intake of a youth BEFORE the first initial search and during the General Intake E-File;
- After returning from being in the community due to a revocation (not required upon return from a pass);
- By clinicians reviewing these questions for updated information for youth transferring within DYS programs and units during their regularly scheduled clinical sessions.

1. **I have that your name is ____________________. Is there a different name you prefer to use?**
   Note to Staff: Preferred names are not guaranteed to be used if they are vulgar or are related to drug use or gang affiliation. Names that may be inappropriate should be reviewed with supervisors.

   Preferred name:

2. **Do you use the pronoun he, she, they, or another pronoun? A pronoun is the word someone uses instead of your name, for example, "He has a nice sweater." If someone was talking about your sweater, would you want them to say he, she, they, or something different?** Pronoun:

3. **Do you identify as a boy, girl, or another gender?** Gender identity:

4. **Do you identify as transgender or intersex?**
   If yes, record answer:
   If they answer *I don't know or What does that mean?* You can continue on, or use the provided explanation: **For some people, their sense of themselves as a boy, girl, or another gender doesn't always match their body parts in ways that it typically does for other people. Some people use the term "transgender" for themselves when that happens. There are also some people who are born with variations of reproductive sexual anatomy, which is called an intersex condition. Here at DYS it is important for us that everyone is safe and supported. So, we ask this to make sure we're meeting everyone's needs. Do you have any other questions about this?**

5. **We are going to proceed with a search.** For all youth, talk about the process of a search to help make the youth feel more comfortable with a search. If a shower is typically offered at this time, you can tell youth that they can request to go first or last if in a group setting. Youth who have answered yes to question 4 may be transgender or intersex and should be asked what gender they would prefer to be searched by. These youth might be more worried about a search or shower than youth who do not identify that way. This should be accommodated whenever possible and noted here.

For a youth who answers Yes to Question 4, identifying that the youth may be transgender or intersex, and a clinician is not available at the program, for example after hours, intake staff should continue here. You can create this plan with any youth, but transgender and intersex youth may need extra support:

7. **We want to make sure you're in a place you feel safe and comfortable. A clinician will talk with you more about which unit you would feel safest in and your general safety. I want to make sure that you're feeling safe right now. Let's talk about ways we can help you feel safe right now.**

Notifying others: **For now, we need to let some of our staff know how you identify so that we can make sure you are safe, while respecting your identity. I would want to tell** (insert names of shift supervisor on duty and on call manager and explain their role). **When my shift is over, I will introduce you to another person who will be with you. I'll tell them your name and pronouns. How does that feel?**

Documentation: At this time documentation should only be communicated to the shift supervisor and on call manager either through verbal or email communication.

For all youth, intake staff can consider the following: Create support plan with youth.

Things to ask/consider:

- Their fears and concerns for the night
- Healthy coping skills they use
- Who they can talk to if they are feeling unsafe
- How long you are working and When you can expect a clinician to come in
- Shower special requests (going first, last, separately)
- Search procedures (transgender/intersex youth can request the gender of the person searching them, procedures already in place for protection such as a witness)
- What is already in place to protect youth, ie. single room available? Staff available at all times, light that can be left on? What else?

Document the support plan so that other staff are aware of it. Documentation does not need to include disclosure of gender identity or intersex condition.

iii. Grievance Procedures

Incoming youth should also be informed of the agency's policy and procedures for filing a grievance or complaint if they experience inappropriate conditions or behavior by staff or another youth. PREA requires that allegations of sexual harassment or abuse be referred to an appropriate agency for investigation.[86] PREA standards further mandate that an agency provide "multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents" as well as "at least one way for residents to report abuse or harassment to a public or private entity… that is not part of the agency and that is able to receive and immediately forward resident reports… to agency officials."[87] A well-designed policy should protect youth filing grievances against retaliation or reprisal, must be enforceable, and hold accountable youth or staff who violate the policy. See the Massachusetts Department of Youth Services grievance policy for youth in confinement, attached as Appendix B, for an example of a well-designed policy, and the Massachusetts DYS policy on Prevention of Sexual Abuse and Sexual Harassment of Youth, which contains additional details about PREA compliance regarding dealing with grievances.

iv. Confidentiality

Confidentiality is another important topic for staff to address in an initial interview since LGBTQI youth may be in danger if family or others learn about their sexual orientation or gender identity. This discussion should be detailed enough for youth to understand who could be informed of their LGBTQI identity and under what circumstances before choosing whether or not to disclose this information. An excellent example of how to approach this is set forth in the next section of the Massachusetts DYS initial intake dialogue tree (see box).

v. Other Considerations

The physical characteristics of where intake is conducted can have a direct impact on creating a safe, respectful environment. This includes:

- Physical separation from other youth during the intake interview is essential to put youth at ease and decrease concerns about being overheard. All interviews conducted that will touch on issues of sexual orientation and gender identity and expression should be conducted in private.
- Making visible a wide range of diverse informational materials in the area where youth are questioned about sensitive issues is encouraged. These should include posters, books, or other visual indicators that the intake space is open to LGBTQI issues. Informational posters about sexual assault or suicide prevention may be especially helpful for LGBTQI youth dealing with those issues. All resources should be accessible, multiracial, and multilingual based on the population of the facility.

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[86] PREA Standards, 28 C.F.R. § 115.322, *Policies to ensure referrals of allegations for investigation*. For a model grievance policy, see Massachusetts *DYS Youth Grievance Policy*, effective Jan. 6, 2014 and available at www.mass.gov/eohhs/docs/dys/policies/030401a-youthgrievance.doc.

[87] PREA Standards, 28 C.F.R. § 115.351, *Resident reporting*.

d. Collecting Information About Sexual Orientation, Gender Identity and Expression and Other Markers of Vulnerability

Thorough and standard collection of data from incoming youth forms the basis of good intake. As noted, a key vulnerability marker for facility residents is LGBTQI status or perception as LGBTQI. As highlighted above in the Massachusetts DYS initial intake protocol, incoming youth should be asked directly about their sexual orientation and gender identity (SOGI). Incorporating questions about a youth's SOGI status into an agency's intake protocol for all incoming youth makes the questions routine, while demonstrating a facility's acknowledgment of the LGBTQI population. It allows youth who have concerns about LGBTQI needs and accommodations to voice them.

i. Conducting Interviews About Youth SOGI Status: LGBTQI Expertise

The best way for facilities to prepare for individual situations with LGBTQI youth is to use an expert with specific training in LGBTQI issues. The Harris County (Houston) Sheriff's Office, for example, realized it needed an expert with special training in this area when it decided to create a LGBTQI protocol for all detainees in its charge, and so it began to work with community experts and train staff to fill the need. (See box) Since no policy or set of guidelines can anticipate every possibility, a LGBTQI youth specialist on staff can support all staff in dealing with new situations involving LGBTQI youth and help them to react appropriately. While all staff, contractors, volunteers, and interns should receive thorough training on how to work with and treat LGBTQI youth, a staff expert in LGBTQI issues should be available who has additional training in this area. Their expertise should be used from intake onwards to communicate with youth, determine appropriate classification and housing placements, and work with other staff as issues arise. The expert can also serve as a facility ombudsman to deal with grievances and complaints related to LGBTQI issues.

ii. Manner of Conducting Intake Interviews

Throughout their interactions with all youth, intake staff should:

- Use respectful language and appropriate terminology. Minimize use of slang and jargon and explain terms a youth may not be familiar with. Understand that youth may use a variety of terminology to discuss their identity depending on their background. For example, some youth are more likely to describe themselves as queer or pansexual rather than LGBTQI.
- Be open and approachable and emphasize confidentiality. Intake staff should assure incoming residents that they are not obligated to answer any questions they feel uncomfortable answering, nor will they be disciplined for opting to skip questions. They should be told that any information disclosed will be kept confidential and only shared on a need-to-know basis with other specified staff such as medical personnel and those involved in securing the youth's safety (e.g. those responsible for determining housing and placement).
- Emphasize safety. Staff conducting interviews should inform youth of the routine nature of the questions and explain that their purpose and priority is to ensure safety by assessing and minimizing risk through established protocols and policies.
- Avoid making assumptions; treat each youth as an individual. Ask questions in a direct yet respectful manner. Avoid asking leading questions, instead using neutral language to avoid pressuring or otherwise compelling the interviewee to provide a particular answer.
- Ask follow-up questions, particularly if appearance/body language does not appear to align with reported gender or sexual identity.

Creating a Staff Expert on LGBTQI Youth:
Houston Sheriff's Gender Classification Specialist

An example of a practice designed to improve the safety of LGBTQI and gender nonconforming youth, developed by the Harris County (Houston) Sheriff's Office, is the introduction of Gender Classification Specialists (GCS). GCS undergo additional institutional training, certification, and recertification as necessary in gender and sexuality issues. GCS supervise and manage intake screening processes so that they comply with the prison's LGBTQI-specific policy. If a youth in custody has already disclosed LGBTQI status in booking information or prior records, the youth should be referred to a GCS for all intake questions.

Gender Classification Specialists are notified when an LGBTQI inmate is identified at intake and are given the initial vulnerability assessment of the youth in custody. They then conduct private and respectful interviews with the youth in question. During these conversations, GCS should acquaint LGBTQI offenders with protocols for housing, commissary, etc. and available resources. Gender Classification Specialists assess both a youth's chance of being sexually abused and of being sexually abusive. Using this information, GCS represent LGBTQI and gender nonconforming youths' best interests and foresee risks in housing and classification decisions. GCS also serve as individuals for youths to contact throughout their stay if they want to report an incident or seek information.

e. Addressing Transgender and Intersex Youth Identification and Search Needs

Staff should explain to youth how to register their identification and search needs and report complaints if their needs are not respected (see Subsection VII.1.c.iii., above, on Grievance procedures.)

i. Names and Pronouns

All personnel interacting with transgender or intersex youth should be required to use the youth's expressed name and gender pronouns, regardless of whether or not these match their legal name or gender marker on official identification documents. If use of transgender or intersex youths' expressed names is not feasible in a particular facility, or is counter to the institution's security policy (e.g., denying use of gang names), it is strongly recommended that staff refer to the youth by last name than by a first name that the youth rejects.

NAMES AND PRONOUNS POLICY EXCERPTS:

New Orleans Juvenile Detention Center

G. Transgender youth will be called by the first name and pronoun they request even if their name has not been legally changed.

Massachusetts Department of Youth Services

SECTION VIII: LANGUAGE AND NAME

All youth shall be addressed in person by their preferred name that is associated with their gender identity as preferred by the youth as well the pronouns that reflect a youth's stated gender identity. Such preferred name shall not be used if it is believed to be associated with criminal activity or vulgar connotations. A request by a youth to use gender neutral pronouns such as the singular "they", "ze/hir", or other gender neutral pronouns should be honored, as well.

ii. Searches

The policies of juvenile confinement facilities in Massachusetts, Washington, D.C., New Jersey, and Illinois, among others, allow transgender youth to choose the gender of the staff who will search them. While not all these policies address intersex youth and some only address strip-searches, the policy is becoming more common to reduce the risk of humiliation and trauma that can occur due to searches based on assumptions rather than stated need. Staff needs clearly articulated guidance on searches that complies with PREA, at a minimum.

PREA standards forbid cross-gender strip searches and cavity searches, except in the case of emergencies or when conducted by medical personnel. In translating this policy in individual facilities, they need to clarify what "cross-gender" refers to for transgender and intersex youth. It is of special relevance to LGBTQI youth to note that humiliating searches or searches done specifically to determine a youth's anatomy are never acceptable.

SEARCH POLICY EXCERPT:

New Jersey Juvenile Justice Coalition

Section 10 – Cross gender search restrictions

(c) The Superintendent or designee shall implement procedures permitting transgender or intersex juveniles to request that either a male or female staff member conduct a strip search. Such a request will be granted to the extent consistent with the orderly operation of the facility.

f. Medical and Mental Health Assessments

All youth have the right to appropriate medical and mental health care. In general, LGBTQI youth have many of the same health needs as other youth. Facilities must also be aware of the unique health needs of this population, including, for example, increased rates of HIV, social anxiety, and post-traumatic stress disorder. Intersex and transgender youth each have their own particularized needs, including different preventive screening needs that may be atypical of the other youth housed in the facility.

At a minimum, facilities must ensure that LGBTQI youth have access to medical and mental health personnel who are knowledgeable about LGBTQI health needs and can offer needed therapeutic and rehabilitative care. Previous treatment that any youth received prior to arriving at the facility should be continued upon arrival after appropriate consultation. Additionally, youth must be reassessed upon intake regarding their medical needs to ensure that all conditions are being treated in the appropriate manner.

Once a youth is identified as LGBTQI, an agency should determine in what instances they should be referred to medical and/or mental health screening. If any youth presents with a potential mental health or medical disorder, their health and safety should be prioritized for immediate clinical attention. An appropriate screening can elicit mental health and/or medical information that will be very useful in making appropriate classification, housing, and placement decisions. Mental health and medical screenings can reveal vulnerabilities and other information that should be included in these critical decisions that will have a direct impact on a youth's safety and sense of security.

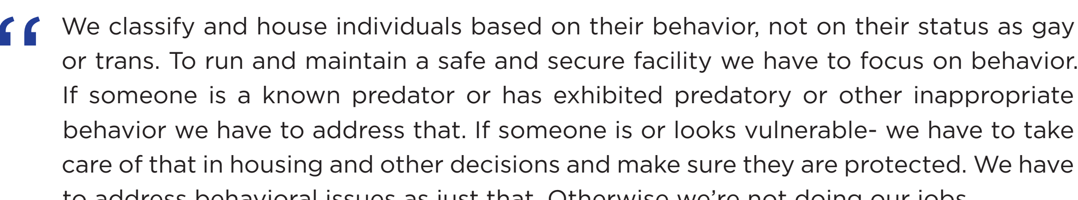
For more information, see Section VII.3, "Medical and mental health care," *below*.

2. CLASSIFICATION AND HOUSING PLACEMENT

Facilities should use all available information to make the most informed decision with respect to classifying and housing LGBTQI youth. Agencies must remember that the goal of the classification and housing process is to keep all youth physically and emotionally safe.[88] Intake staff should identify youth who are at elevated risk for victimization, including those who identify as LGBTQI and those who might be perceived to be LGBTQI. Youth identified after intake as being at elevated risk of victimization should be treated the same as a vulnerable youth identified at intake, including referral to a staff specialist on LGBTQI issues and otherwise handled in accordance with applicable policies and protocols (see e.g., *Conducting interviews about youth SOGI status: LGBTQI expertise*, above). PREA standards pertaining to classification and obtaining information at intake can be found above in subsection VII.1.a. Identifying vulnerable individuals.

Housing determinations must be made incorporating a variety of factors, but the top priority should always be the safety and well-being of the youth in custody. As described in the Prologue, LGBTQI youth are at disproportionate risk of sexual abuse in juvenile confinement facilities compared to their heterosexual and gender-conforming peers, and much more likely to be sexually victimized than to victimize others. Nevertheless, because of myths oversexualizing LGBTQI youth, LGBTQI juveniles are sometimes treated as sex offenders, housed with sex offenders, and/or sent to sex offender treatment programs based solely on their gender identity or sexual orientation. This is not appropriate, could cause serious harm and trauma, and is contrary to PREA mandates.

Additionally, juvenile facilities should not use the youth's sexual orientation or gender identity as an indicator of sexual abusiveness. Facilities should examine their existing classification and housing placement procedures for any policies or statements that may cause discrimination or harm to LGBTQI youth, such as policies requiring youth to be isolated into protective custody, classified as sex offenders, or housed based on genitalia or birth sex.[89] PREA regulations regarding facility assignments such as housing and work are set forth in the box below.



"We classify and house individuals based on their behavior, not on their status as gay or trans. To run and maintain a safe and secure facility we have to focus on behavior. If someone is a known predator or has exhibited predatory or other inappropriate behavior we have to address that. If someone is or looks vulnerable- we have to take care of that in housing and other decisions and make sure they are protected. We have to address behavioral issues as just that. Otherwise we're not doing our jobs.

– Staff Corrections Officer, Rhode Island Department of Corrections, in a focus group conducted at Moran Men's Medium Security Facility, Cranston, RI, December 18, 2013.

[88] Department of Justice National Institute of Corrections. "Policy review and development guide: Lesbian, gay, bisexual, transgender, and intersex persons in custodial settings" (Publication No. 027507, 2nd Edition) (M. L. Thigpen, Comp.) (August 2014). Avaiilable at http://info.nicic.gov/lgbti/?q=node/3.

[89] See e.g. PREA Standard §115.342(c) in following box.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

(a) The agency shall use all information obtained pursuant to §115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.

(b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

(c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive. (d) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.

(e) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.

(f) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.

(g) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.

(h) If a resident is isolated pursuant to paragraph (b) of this section, the facility shall clearly document:

(1) The basis for the facility's concern for the resident's safety; and
(2) The reason why no alternative means of separation can be arranged.

(i) Every 30 days, the facility shall afford each resident described in paragraph (h) of this section a review to determine whether there is a continuing need for separation from the general population.

Youth have a right to be free from unreasonable restrictions of confinement, including isolation or segregated housing as protective custody, because it is cruel, harmful, and unconstitutional.[90] Being isolated for lengthy periods of time for protective custody can cause psychological distress and often, youth who are put into isolation do not have access to the same supportive services that other youth in the juvenile facilities do. Segregation into protective custody may occur more frequently for LGBTQI youth in custody, either as punishment for expressing their identity or as protection from the possible abuse of other youth in the facility.[91] Under PREA standards, neither of those practices is allowed.[92] Instead, facilities must find alternative ways to ensure that LGBTQI youth are not abused by other youth, such as increased supervision or housing with similarly vulnerable youth in custody.

In general, housing determinations should be made consistent with the gender identity of the youth in question, rather than their assigned birth sex or genitalia, unless the youth makes a safety-based objection. Placing transgender or intersex youth in the wrong juvenile facilities could increase their vulnerability to assault and harassment, so it is very important to ensure that housing placements are considered carefully and that safety is always the top concern.

In May 2018 the Trump Administration announced changes to the Federal Bureau of Prisons' (BOP's) Transgender Offender Manual that state that BOP will use "biological sex" in making initial transgender housing assignments, and will assign transgender prisoners to facilities conforming to their gender identity only "in rare cases." This change undermines transgender prisoner safety. However, this change does not directly impact housing policy in youth facilities, and the recommendations set forth in PREA and here should be followed in making such decisions for youth

[90] E.g., H.C. by Hewett v. Jarrard, 786 F.2d 1080, 1088 (11th Cir. 1986) (juvenile isolated for seven days was entitled to damages for violation of 14th Amendment); Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983); Milonas, 691 F.2d

[91] Markshamer, Tobin, *Standing with LGBT Prisoners*, 2014. pp. 3, 11.

[92] PREA Standards, 28 C.F.R. § (115.14)(g).

3. MEDICAL AND MENTAL HEALTH CARE

a. Meeting Developmental and Other Health Care Needs of LGBTQI Youth

As noted in the Prologue, juvenile justice facilities have traditionally had a strong commitment to the rehabilitation and treatment needs of youth in their care. In fact, most youth are held in facilities that screen for education needs, substance abuse, and mental health needs.[93] Many strive to create a reparative environment for adolescents.[94]

Youth, regardless of whether or not they are in custody and/or identify as LGBTQI, experience developmental and social challenges during adolescence. LGBTQI youth not only face the changes and challenges of adolescence, but also the stress of developing and living with a stigmatized identity including possible family and societal rejection. Understanding the contextual factors that many LGBTQI adolescents face will help providers and clinicians in the juvenile justice system not only to understand the root causes of what can bring LGBTQI youth into the system, but also to develop the most effective therapeutic and rehabilitative treatment plans for each youth.

Adolescence is a time of personal growth and self-exploration, and as such, a young person's understanding of their sexual orientation or gender identity may change throughout this time period, as may their ability and comfort with expressing their orientation and identity. Not all youth who have same-sex attractions or identify as LGBTQI will continue to do so into adulthood, but this does not make their attractions and feelings any less legitimate nor does it reduce their need as youth for protection.[95] Juvenile justice facilities should offer mental health and other support services to all youth in their care to aid them in the process of maturation. These services should always be offered and tailored to the unique needs of each individual, including LGBTQI youth.[96]

LGBTQI youth share many of the same medical and mental health care needs as other youth. But due to family and societal rejection and the accompanying stigma LGBTQI youth regularly face, they may be disproportionately affected by issues such as substance abuse, STIs, social anxiety, isolation, and depression. Sexual minority youth also exhibit a great deal of health and resiliency.[97] Chapter 5 in *The Fenway Guide to Lesbian, Gay, Bisexual, and Transgender Health* (2015, American College of Physicians) offers a clear outline of how to care for LGBTQI youth, and is a good resource for further information.[98] Treatment and therapy for LGBTQI youth should only be offered by trained providers and clinicians who have experience treating this population.

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[93] Sickmund, M., & Puzzanchera, C. (Eds.). "Juvenile Offenders and Victims: 2014 National Report". Retrieved August 4, 2015, from http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf (2014, December 1).

[94] Marksamer, Tobin, ibid. p. 8. *Standing with LGBT Prisoners*, 2014.

[95] Majd et al., *Hidden Injustice*, fn. 17, above.

[96] Department of Justice National Institute of Corrections. *Policy review and development guide: Lesbian, gay, bisexual, transgender, and intersex persons in custodial settings* (Publication No. 027507) (M. L. Thigpen, Comp.) August 2013.

[97] Cianciotto, J., & Cahill, S. (2012). *LGBT Youth in America's Schools*. Ann Arbor: University of Michigan Press.

[98] Gayles TA, Garofalo R (2015). "Caring for LGBT Youth." In *The Fenway Guide to Lesbian, Gay, Bisexual, and Transgender Health* (Makadon HJ, Mayer KH, Potter J, Goldhammer H, editors; 2nd ed.,). Pp. 79-104. Philadelphia, PA: American College of Physicians and The Fenway Institute.

Massachusetts's Department of Youth Services is seen as the gold standard for the development of best practices relating to LGBTQI youth in confinement and have several recommendations for counseling, mental health, and substance abuse while incarcerated. The protocol discusses ways to decrease barriers to care including:

- clinical staff should be more open, free from judgment, and empathetic;
- clinicians should not assume that problems exist only because of sexual orientation or gender identity;
- group and individual sessions for all youth should be offered to discuss questions of gender identity and sexual orientation, as well as what it is like to be "different."[99]

Facilities should provide culturally competent clinical and mental health services. For these services to be most effective, they should take place in a safe, respectful and affirming environment, as discussed in Foundational Issues and elsewhere in this paper, which will allow LGBTQI youth in custody to grow and develop their sense of identity during the critical period of adolescence. A healthier, less stressful, and more inclusive environment will lead to better outcomes for all youth in the facility.

i. Conversion Therapies are Prohibited

Agencies should never attempt to change an individual's gender identity or sexual orientation, hinder them from expressing themselves, or recommend sex offender therapy solely on the basis of gender identity or sexual orientation. The leading health professional associations—including the American Academy of Pediatrics[100], the American College of Physicians[101], and the American Medical Association[102]—oppose conversion therapy and note the harm it can cause youth who are subjected to it. The American Academy of Pediatrics states that: "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."[103] The American Psychological Association states that "there is insufficient evidence to support the use of psychological interventions to change sexual orientation."[104] This consensus is reflected in the 2015 report from the Substance Abuse and Mental Health Services Administration (SAMHSA), "Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth."[105] As of mid-2018, 10 states and the District of Columbia have outlawed conversion therapy for minors.[106]

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[99] Massachusetts DYS "Guidelines for Lesbian, Gay, Transgender, Questioning, Queer, Intersex, and Gender Non-Conforming Youth". DYS Grievance Policy, 03.04.01

[100] Beach, RK, Boulter S, Felice ME (Committee on Adolescence, 1992-1993) (1993). Homosexuality and adolescence. *Pediatrics*. 92(4): 631-634. http://pediatrics.aappublications.org/content/pediatrics/92/4/631.full.pdf

[101] Daniel H, Butkus R, for the Health and Public Policy Committee of the American College of Physicians (2015). Lesbian, gay, bisexual, and transgender health disparities: Executive summary of a policy position paper from the American College of Physicians. *Annals of Internal Medicine*. 163:135-137. http://annals.org/aim/article/2292051/lesbian-gay-bisexual-transgender-health-disparities-executive-summary-policy-position

[102] Davis RM, Genel M, Howe JP (1996). Health care needs of gay men and lesbians in the United States. *JAMA*. 275(17):1354-1359. http://jamanetwork.com/journals/jama/article-abstract/401656

[103] Beach et al., ibid. 633.

[104] Anton BS (2010). Proceedings of the American Psychological Association for the legislative year 2009: Minutes of the annual meeting of the Council of Representatives and minutes of the meetings of the Board of Directors. American Psychologist, 65, 385–475. doi:10.1037/a0019553. http://www.apa.org/about/policy/sexual-orientation.pdf

SAMPLE LANGUAGE:

Coercion and Imposition of Beliefs

A. Medical and mental health professional organizations, including the National Association of Social Workers, the American Psychiatric Association, the American Psychological Association, the American Academy of Pediatrics, the American Medical Association, and the American School Counselor Association strongly condemn any attempt to “correct” or change a youths’ sexual orientation, gender identity or expression through corrective or reparative therapy.

B. Service providers shall not do or say anything to disparage or try to change a youth’s sexual orientation, gender identity or expression; nor shall they tell a youth that they can or should change their sexual orientation, gender identity or expression.

C. Service providers shall not impose their personal or organizational religious beliefs on any families, including LGBTQI youth or families or allow those beliefs to limit the way individual needs of youth or families are met.

D. Service providers shall not employ, contract with, or make referrals to, mental health providers and/or other service providers who attempt to change a youth’s sexual orientation, gender identity or expression.

E. Service providers shall not refer to youth by using derogatory language in a manner that conveys disapproval or hatred of LGBTQI people.

F. Service providers shall not imply or tell LGBTQI youth that they are abnormal, deviant, or sinful, or that they can or should change their sexual orientation, gender identity or expression.

[105] HHS Publication No. (SMA) 15-4928. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015.
[106] Movement Advancement Project (no date). Conversion Therapy Laws. http://www.lgbtmap.org/equality-maps/conversion_therapy. Accessed April 23, 2018.

b. LGBTQI Youth Health Needs Generally

The more complete the information that providers and clinicians have about the youth in their care, including the many factors contributing to a youth's mental and psychological profile, the better prepared they will be to identify physical, emotional, psychological, and behavioral issues, create appropriate treatment plans and counseling options, as well as educational plans that can best support the youth during their stay and after release. In the following sections we provide information that can contribute to a more complete understanding of the many different and often overlapping factors that need to be addressed by providers and clinicians who are treating justice-involved youth.

Compared to the general population, the LGBTQI population experiences significant health disparities often associated with factors such as discrimination, stigma, and family rejection. For example, according to the CDC, young gay and bisexual males have disproportionally high rates of HIV, syphilis, and other sexually transmitted infections.[107] That being said, however, most gay and bisexual males practice safer sex and do not become HIV infected. Lesbian and bisexual female adolescents are more likely to have ever been pregnant than their heterosexual counterparts.[108] This may be surprising, but it is consistent with youth who are trying to determine their sexual orientation or hide their sexual orientation from friends and family. Transgender individuals experience disproportionally high rates of stress and mental health burden.[109] Overall, LGB people as a population are 1.5 to 2.5 times more likely than other Americans to smoke.[110] In addition to these disparities in health behaviors and outcomes, LGBT people also experience barriers to accessing health care, including low rates of insurance coverage,[111] discrimination in health care,[112] lack of LGBT-inclusive sex education, and lack of access to culturally appropriate health care.[113]

LGBT youth in particular experience a number of health disparities compared to heterosexual youth. For example, young men who have sex with men are disproportionately burdened by HIV, being the only demographic group that showed a significant increase in estimated new infections with a 22% increase in new infections from 2008 to 2010.[114] In addition, one study of sexual minority youth in Massachusetts showed that sexual minority males had significantly greater odds of recently engaging in unhealthy weight management behaviors, such as fasting for greater than 24 hours, using diet pills, or vomiting/using laxatives, compared to exclusively heterosexual males.[115] At the same time, the same study showed that sexual minority females were more likely to be overweight or obese than exclusively heterosexual females, and almost twice as likely to perceive themselves as being at a healthy weight or underweight despite an overweight or obese weight status.[116] Data from the 2015 Massachusetts YRBS showed that 11.9% of sexual minority youth reported being a victim of physical dating

[107] "Health Risks among Sexual Minority Youth". Retrieved September 1, 2015, from http://www.cdc.gov/healthyyouth/disparities/smy.htm.

[108] "Health Risks among Sexual Minority Youth". Retrieved September 1, 2015, from http://www.cdc.gov/healthyyouth/disparities/smy.htm.

[109] Institute of Medicine. "The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding". Washington, DC: The National Academies Press, 2011. Available at: http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx

[110] Lee, J., Griffin, G., & Melvin, C. "Tobacco use among sexual minorities in the USA, 1987 to May 2007: a systematic review". *Tob Control*. Aug 2009; 18(4):275-282. (2009).

[111] Ponce N, Cochran S, Pizer J, Mays V: "The effects of unequal access to health insurance for same-sex couples in California". *Health Aff*. 2010; 29:1539–1548.

[112] Lambda Legal. *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV*. New York: Lambda Legal. 2010. Smith D, Mathews W. "Physicians' attitudes toward homosexuality and HIV: Survey of a California medical society-revisited (PATHH-II)." *Jnl Homosexuality*. 2007; 52(3-4):1-9.

[113] Mayer K, Bradford J, Makadon H, Stall R, Goldhammer H, Landers S. "Sexual and gender minority health: What we know and what needs to be done". *Am J Public Health*. 2008: 98: 989-995.

violence, compared to 6.0% of heterosexual youth; and 15.4% of sexual minority youth reported being a victim of sexual dating violence in the past year, compared to 6.4% of heterosexual youth.[117]

LGBT people, and youth especially, also face disparities when it comes to mental and behavioral health. Studies show higher rates of mental health burden, including depression, anxiety, and suicide, among the LGB population compared to the heterosexual population.[118] According to the 2015 *Massachusetts Youth Risk Behavior Survey*, LGB adolescents reported smoking cigarettes in the past 30 days at greater than twice the rate of heterosexual youth (16.8% vs 6.9%, respectively). Compared to heterosexual youth, sexual minority youth were more likely to report using heroin (4.3% vs. 1.3%) and using prescription drugs that were not prescribed to them (20.1% vs. 10.5%). These differences were statistically significant.[119] Suicide is also extremely prevalent in this population. Suicide is the leading cause of death among U.S. adolescents overall and has been postulated as the leading cause of death among LGBTQI youth. Suicide risk is associated with all adolescents because of its predisposing influences such as isolation, substance use, and family dysfunction, issues that may be more present among LGBTQI youth.[120] Furthermore, LGBT people experience barriers in accessing mental and behavioral health services. For example, one study showed that previous experience with discrimination in mental health care settings made LGBT people less likely to access needed mental health services.[121]

Compared to the general population, the LGBTQI population experiences significant health disparities often associated with factors such as discrimination, stigma, and family rejection.

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[114] Centers for Disease Control and Prevention. "HIV Among Youth." June 30, 2015. Accessed at: http://www.cdc.gov/hiv/group/age/youth/index.html.

[115] Hadland, S., Austin, S., Goodenow, C., and Calzo, J. "Weight Misperception and Unhealthy Weight Control Behaviors Among Sexual Minorities in the General Adolescent Population." *Journal of Adolescent Health*. 2014 March; 54(3): 296-303. doi: 10.1016/j.jadohealth.2013.08.021.

[116] Ibid.

[117] Massachusetts Department of Public Health. "2015 Report: Health and Risk Behaviors of Massachusetts Youth." Data from the 2015 Massachusetts Youth Risk Behavior Survey. Available at:http://www.mass.gov/eohhs/docs/dph/behavioral-risk/youth-health-risk-report-2015.pdf.

[118] King, M, Semlyen, J, Tai, SS, Killaspy, H, Osborn, D, Popelyuk, D, Nazareth, I. "A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people". *BMC Psychiatry*. 2008; 8:70. Cited in Committee on LGBT Health Issues (IOM), 2011, 190.

[119] Massachusetts Department of Public Health. "2015 Report: Health and Risk Behaviors of Massachusetts Youth." Data from the 2015 Massachusetts Youth Risk Behavior Survey. Available at:http://www.mass.gov/eohhs/docs/dph/behavioral-risk/youth-health-risk-report-2015.pdf.

[120] Gayles TA, Garofalo R (2015). "Caring for LGBT Youth."

[121] Burgess, D, Lee, R, Tran, A, van Ryn, M. "Effects of perceived discrimination on mental health and mental health services utilization among gay, lesbian, bisexual and transgender persons". *Journal of LGBT Health Research*. 2007; 3: 1-14.

c. Transgender Health Needs

Transgender people have unique health needs that require access to affirming and non-discriminatory health care. Gender dysphoria is a persistently and deeply felt cross-gender identification including an enduring sense that a person's body is of the wrong sex. People with gender dysphoria experience distress and discomfort that causes clinically significant impairment in functioning in all aspects of life.[122] Medical professionals, the American Medical Association, the World Health Organization, and other medical and health-related organizations recognize gender dysphoria as a medical condition that requires professional medical and mental health care.

Juvenile justice professionals need to understand that the failure to provide proper medical and psychological treatment for gender dysphoria can cause serious health problems for transgender children. Importantly, failure to provide proper care can also lead to legal liability for confinement facilities. Courts have uniformly held that gender dysphoria is a serious medical condition for which treatment is necessary.[123] Failing to provide it can violate the Eighth Amendment's ban on cruel and unusual punishment.

Internationally accepted standards of care for individuals with gender dysphoria were developed by the World Professional Association for Transgender Health (WPATH Standards).[124] Medical treatment for transgender adolescents under the WPATH Standards consists of an individualized protocol that can include psychological, social, and physical interventions.[125]

- Psychological interventions can include psychotherapy focused on reducing distress related to gender dysphoria and any other psychosocial difficulties.
- Social interventions can include a partial social transition (e.g., wearing clothing and having a hairstyle that reflects gender identity) or a complete social transition (e.g., also using a name and pronouns congruent with gender identity).
- Medical interventions can include puberty suppression, hormone therapy, or surgery.

Treatments for gender dysphoria have been shown to significantly improve quality of life, general health, social functioning, and mental health of transgender patients, including transgender youth.[126, 127] The results of a study of 55 transgender adolescents in the Netherlands who were identified early, received puberty suppression and then cross-sex hormonal treatments, followed by gender affirming surgery, were quite positive. The study found that one year after surgery, the youth's gender dysphoria was alleviated, their psychological functioning had steadily improved, clinical problems (including anxiety, anger, and depression) were indistinguishable from the general same age population, and their subjective well-being was similar to or better than same age young adults from the general population.

Changes by the Trump Administration and the Federal Bureau of Prisons to the Transgender Offender Manual modify section 9, which covers hormones and medical treatment, by adding the word "necessary" before all appearances of the word medical.

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[122] *American Psychiatric Association*. Gender dysphoria. DSM-5. Arlington, VA, 2013. http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf

[123] See *Entitled to Treatment*, *above,* fn. 71 at 4.

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

[125] *Entitled to Treatment*, pp. 1-3.

[126] DeVries, A.L.C. et al. "Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment." *Pediatrics*: Oct. 2014, 134:4, Available at http://pediatrics.aappublications.org/content/134/4/696.

[127] Murad MH, Elamin MB, Garcia MZ, Mullan MJ, Murad A, Erwin PJ, Montori VM. "Hormonal therapy and sex reassignment: A systematic review and meta-analysis of quality of life and psychosocial outcomes". *Clinical Endocrinology*. 2010; 72(2): 214-231. Keo-Meier CL, Herman LI, Reisner SL, Pardo ST, Sharp C, Babcock JC. "Testosterone treatment and MMPI-2 improvement in transgender men: A prospective controlled study". *J Consult Clin Psychol*; 2014, Aug 11 [epub ahead of print]. PMID: 25111431

Since the only treatment that institutions should provide to transgender youth is that which medical professionals deem "medically necessary," this change should have little impact in practice.

When developing treatment plans for transgender youth, important considerations need to be incorporated. Adolescence is a period of physical, emotional, and cognitive change in which many youth are still developing their sexual orientation and gender identity, and may not have the maturity or cognitive ability to express their gender experiences. As such, medical and mental health needs of transgender youth in custody must be addressed only by medical professionals who follow the WPATH Standards, have appropriate training, and have previously treated other transgender youth. Facilities should have medical professionals who meet these requirements on hand or be able to provide transportation or otherwise connect transgender youth in custody to qualified professionals should they need medical treatment.

Treatments for transgender youth can range from non-medical treatments, such as hair removal or breast binding, to medical treatments, such as hormone treatment and gender affirmation surgery. Treatment will vary on a case-to-case basis, and individualized treatment plans should be developed from consultation between the youth and qualified professionals. Any treatment deemed to be medically necessary by a qualified professional should be provided. Courts have held that if the state has custody of the youth, the state will be obligated to pay for treatments.[128]

Many juvenile confinement facilities do not provide appropriate treatment for gender dysphoria and/or may enforce "freeze-frame" policies.[129] A freeze-frame policy prohibits the initiation of gender dysphoria treatment for individuals in custody and allows only the continuation of medical care received prior to confinement—without individualized assessments and despite medical need. Facilities or departments with freeze-frame policies are subject to legal challenges. The Georgia Department of Corrections (GDOC), for example, rescinded its policy in 2016 after the Southern Poverty Law Center filed suit on behalf of a transgender inmate

[128] See discussion of Federal District Court decision in *R.G. v. Koller*, in subsection III.2. Right to Be Free from Harassment and Discrimination, *above*.

[129] Southern Poverty Law Center. "Entitled to Treatment: Medical Care for Transgender Adolescents in the Juvenile Justice System" p. 3, April, 2016. Available at https://www.splcenter.org/sites/default/files/lgbt_right_to_treatment_final_web.pdf.

who was denied proper treatment.[130] In addition, the U.S. Department of Justice (DOJ) has argued that freeze-frame policies constitute cruel and unusual punishment because they fail to provide individual assessment and advancement of treatment for gender dysphoria.[131] In the summer of 2016, a transgender inmate in Missouri sued the Missouri Dept. of Corrections (MODOC) for failure to provide hormone therapy recommended by MODOC's doctors, citing the Georgia case and settlement.[132]

In addition to providing treatments, facilities should take an all-encompassing, multidisciplinary approach to case management to ensure the safety and well-being of transgender youth in custody. This could entail providing primary care, counseling, and other mental health services in order to support transgender youth in custody as they continue to develop their own sense of gender identity. This may also include the provision of resources, family and friend support, or support groups if possible. It is important to note that services offered to transgender youth should support them in an open and affirming manner. Services should not be provided in an attempt to alter or inhibit the gender expression of transgender youth.[133]

d. Intersex Health Issues

One in 5,500 births involves a difference of sexual development (DSD), also known as intersex condition.[134] Intersex people have atypical gonads, sex chromosomes, genitalia, and/or reproductive ducts, putting them outside the typical definitions of "male" and "female." Key health care issues affecting intersex individuals are: sexual function and satisfaction, fertility, therapy to support psychosocial adjustment, controversies surrounding genital and gonadal surgeries and sequalae, and sensitive, affirming, and culturally competent care.[135]

[130] Id. See also http://www.dailykos.com/story/2016/2/17/1486744/-Settlement-reached-with-Georgia-Department-of-Corrections.

[131] Statement of Interest of the United States at 1-2, Diamond v. Owens, No. 5:15–CV–50 (MTT), 2015 WL 5341015 (M.D. Ga. Sept. 14, 2015). Available at https://www.splcenter.org/sites/default/files/documents/doj_statement_of_interest_diamond.pdf.

[132] Michaels S. "Missouri transgender inmate sues after state denies hormone treatment." *Mother Jones*. August 24, 2016. http://www.motherjones.com/politics/2016/08/transgender-inmate-sues-missouri-department-corrections-over-hormone-treatment

[133] Irvine, Angela, "LGBTQ Youth in the Juvenile Justice System," Literature Review. Washington, DC.: Office of Juvenile Justice and Delinquency Prevention (2014). Available at http://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsintheJuvenileJusticeSystem.pdf

[134] Kim SK, Kim J. Disorders of sexual development. Korean J Uroil. 2012;53:1-8. Cited in American Medical Association. Report of the Board of Trustees [Patrice M. Harris, MD, MA, Chair] Supporting Autonomy for Patients with Differences of Sex Development (DSD) (Resolution 3-a-16). 2016. https://assets.ama-assn.org/sub/meeting/documents/i16-bot-07.pdf

[135] Intersex Society of North America. Are there medical risks associated with intersex conditions? (No date.) http://www.isna.org/faq/medical_risks

Intersex characteristics are not always physically obvious, so it is important to prioritize confidentiality and privacy with intersex youth, as they should not be compelled to share their biological condition. The wide variety of intersex conditions that exist make it important to remember to view intersex conditions as a spectrum, in that there are many possibilities between being strictly male and strictly female. Intersex youth may identify as male or female, or may identify as exclusively intersex.[136] Youth should be housed in the safest and least restrictive setting possible. It is important to allow the youth to share their wishes and concerns regarding any housing placement decisions.

In some cases, intersex infants and children are given surgery. However, it is usually not medically necessary to perform surgery on an infant.[137] Surgeries are controversial within the intersex community, with many intersex individuals viewing them as unnecessary and harmful.[138] According to Medcape eMedicine:

> Whereas surgical genital reconstruction has been widely applied to infants with DSD [Disorders of Sexual Development] in the past, the growing understanding of the psychological and social implications of gender assignment has shifted the paradigm away from early reconstruction in some cases.[139]

As youth get older, they may want treatments and, with appropriate consent, correctional facilities should provide any treatments that are deemed medically necessary by medical or mental health professionals.[140] These treatments follow the same guidelines as any treatment needed or received in a juvenile correctional facility. It is important that facilities do not take these needs lightly nor administer treatment that is not actually deemed medically necessary.

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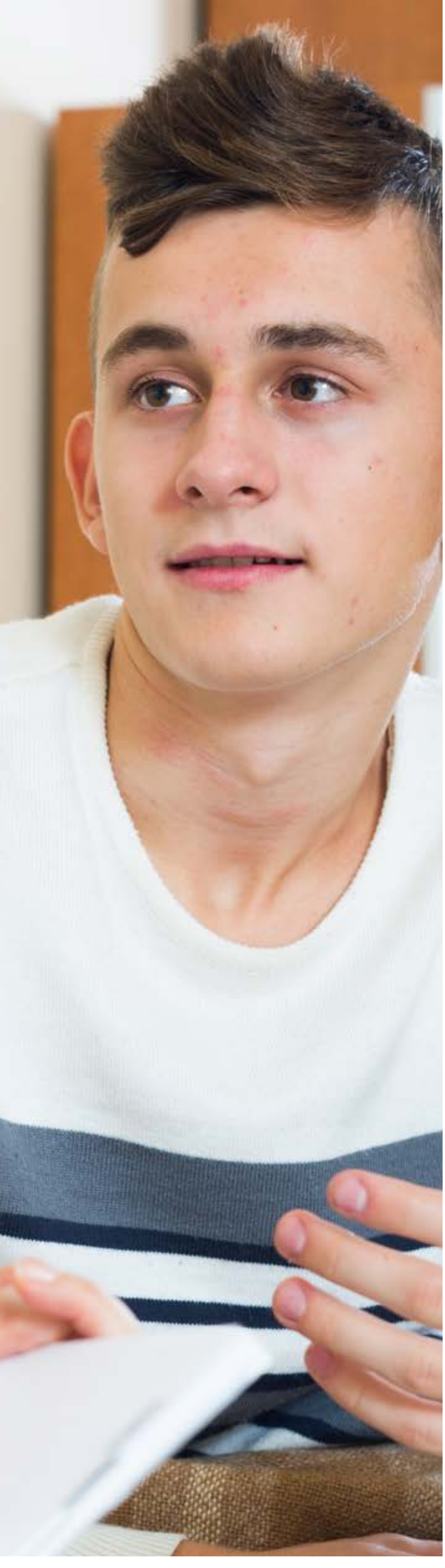
136 "Faking It". Retrieved August 25, 2015, from http://interactyouth.org/post/100048044990/laverne-cox-is-on-this-weeks-faking-it-in-honor (November 1, 2014).

137 Schneider, M., Bockting, W., & Ehrbar, R. "Answers to your questions about individuals with intersex conditions." American Psychological Association Retrieved August 26, 2015, from https://www.apa.org/topics/lgbt/intersex.pdf (2006).

138 InterACT Advocates for Intersex Youth. *What we wish our doctors knew*. 2015. https://interactadvocates.org/wp-content/uploads/2015/12/BROCHURE-interACT-Doctors-final-web.pdf

139 Hutcheson J, Cendron M, et al. Disorders of Sex Development. Medcape eMedicine. https://emedicine.medscape.com/article/1015520-overview. Accessed July 25, 2018.

140 "Faking It". Retrieved August 25, 2015, from http://interactyouth.org/post/100048044990/laverne-cox-is-on-this-weeks-faking-it-in-honor (November 1, 2014).



e. HIV Care

The following sections examine specific diseases as they relate to the LGBT population. It is important to note that most LGBT people are happy and healthy individuals. However, LGBT people experience disparities in disease burden, often associated with the stigma and discrimination that LGBT people face in their everyday lives. For example, most gay men do not get HIV, but gay men as a group are disproportionately vulnerable to HIV infection. It is important to note these disparities in order to address and best care for LGBT youth in custody. It's also important not to stigmatize LGBT people as a group.

Since the onset of the HIV epidemic in the United States, gay and bisexual men, other men who have sex with men (MSM) regardless of how they self-identify, and transgender women have been disproportionately affected by the virus, and continue to experience disproportionate rates of HIV infection.[141] The disproportionate burden of HIV on the MSM community is even worse among young MSM and particularly MSM of color.[142] This is especially important as LGBT youth and youth of color are overrepresented in the juvenile justice system.

It is essential that any youth living with HIV in custody receive life-saving anti-retroviral medications that can keep them relatively healthy and allow them to live a long life. Good treatment adherence not only improves the health of youth living with HIV, but also helps decrease HIV transmission by suppressing the HIV viral load of people on treatment. Youth living with HIV may require counseling or assistance with respect to anti-retroviral treatment adherence since non-adherence is associated with factors that disproportionately affect LGBT youth, such as mental health issues, substance use, and housing instability. Additionally, many youth may enter the system unaware of their HIV status and some youth may contract HIV over the course of their time in custody, so it is also essential to provide HIV screening services for youth in custody, especially those at high risk—gay and bisexual males, transgender females, and those with a history of injection drug use.

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[141] Centers for Disease Control and Prevention. "HIV surveillance in men who have sex with men (MSM)". *HIV/AIDS Statistics and Surveillance.* June 6, 2011. http://www.cdc.gov/hiv/topics/surveillance/resources/slides/msm/index.htm?source=govdelivery

[142] Centers for Disease Control and Prevention. "HIV in the United States: At A Glance. HIV/AIDS Statistics and Surveillance". July 1, 2015. http://www.cdc.gov/hiv/statistics/basics/ataglance.html

f. STIs

Like HIV, syphilis also disproportionately affects MSM in the US.[143] MSM also present the majority of cases of genital warts, which are caused by specific types of human papilloma virus (HPV).[144] HPV can also cause several forms of cancer, including anal cancer. Anal cancer is emerging as among the most important non-AIDS-defining malignancies affecting people living with HIV, especially gay and bisexual men.[145] MSM with HIV are at even greater risk for HPV and its related complications. All youth ages 11 to 26—males and females alike—should be offered the HPV vaccine, according to the U.S. Advisory Committee on Immunizations Practices.[146]

Furthermore, STIs in general disproportionately affect adolescents and young adults regardless of sexual orientation or gender identity. The CDC estimates that youth ages 15–24 account for half of all new STIs that occur in the US each year, despite only making up just over a quarter of the sexually active population.[147] Because STIs disproportionately affect members of the LGBT community and adolescents and young adults, it is especially important to consider STI care and prevention for LGBT youth in custody.

g. Hepatitis C

Chronic hepatitis C (HCV) infection has long been a concern in the justice system, given that it is most commonly transmitted by sharing needles, and many injection drug users end up in custody. As such, recommendations for HCV screenings of those in custody have been in existence for quite some time. In its *Preventive Health Care Clinical Practice Guidelines*, the Federal Bureau of Prisons (BOP) notes that individuals at risk for Hepatitis C are those who:

- have ever injected illegal drugs and shared equipment
- received tattoos or body piercings while in jail or prison
- are HIV infected
- are Hepatitis B (HBV) infected (chronic)
- received a blood transfusion or organ transplant before 1992
- received a clotting factor transfusion prior to 1987
- exhibit percutaneous exposure to blood (all)
- were ever on hemodialysis (if currently, screen semiannually).

[143] Centers for Disease Control and Prevention. "Sexually Transmitted Disease Surveillance: Syphilis". http://www.cdc.gov/std/stats10/syphilis.htm (2010).

[144] CDC, "STD Surveillance Network—Genital Warts—Prevalence Among Sexually Transmitted Disease (STD). Clinic Patients by Sex, Sex of Partners, and Site". 2010. *http://www.cdc.gov/std/stats10/figures/51.htm*.

[145] Palefsky, J., "Human papillomavirus-related disease in people with HIV". Curr Opin HIV AIDS, 2009. 4(1): 52-56.

[146] ACIP recommends all 11–12 year-old males get vaccinated against HPV. Press briefing transcript. Atlanta: Centers for Disease Control and Prevention. October 25, 2011. http://www.cdc.gov/media/ releases/2011/t1025_hpv_12yroldvaccine.html. Accessed September 13, 2012.

[147] Centers for Disease Control and Prevention. Sexually Transmitted Diseases: Adolescents and Young Adults. Division of STD Prevention. August 20, 2013. http://www.cdc.gov/std/life-stages-populations/adolescents-youngadults.htm

The BOP recommends that prisoners that meet any of these criteria be screened for HCV. This is a major concern for LGBT youth in custody because they are much more likely to be injection drug users. Additionally, recent research has revealed that MSM are more likely to contract HCV, especially if they are HIV-positive. As CD4 cell counts decrease, risk of HCV infection rises.[148]

Drug therapies and regimens have been evolving to treat HCV over the past few years, with more treatments coming on the market regularly. The newest drugs have the potential to eliminate HCV infection, and formerly very high costs are moderating with more competition in the market and negotiated discounts with large payors.

Aside from the cost of treating prisoners, monitoring HCV infected individuals also requires a great deal of attention. Those who are also HIV positive may need to adjust their antiretroviral therapy as they start HCV treatment, as drug interactions may occur. Sofosbuvir and simeprevir are of particular concern in this regard.[149]

h. Model Policy for Care and Treatment of LGBTQI Adolescents

Attached as Appendix C is a model policy for the care and treatment of LGBTQI youth that juvenile facilities should consider adopting and implementing. It is the Massachusetts Department of Youth Services *Guidelines for LGBTQQI and GNC Youth*.[150] A number of other state and municipal juvenile justice policies for managing LGBTQI youth are available at http://www.equityproject.org/type/policy/index.html.

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[148] Ard K, Goldhammer H, and Makadon H. *Emerging Clinical Issue: Hepatitis C infection in HIV-infected men who have sex with men.* National LGBT Health Education Center. (2014). https://www.lgbthealtheducation.org/wp-content/uploads/Emerging-Clinical-Issue_Hepatitis-C-Infection-Final.pdf

[149] AIDSinfo.gov. *Guidelines for the use of antiretroviral agents in adults and adolescents living with HIV.* https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/26/hcv-hiv.

[150] Massachusetts Department of Youth Services. *Massachusetts Department of Youth Services, Guidelines for LGBTQQI and GNC Youth* 3-4 (2014), available at http://www.equityproject.org/resource/massachusetts-department-youth-services/e.

4. YOUTH MANAGEMENT

a. Clothing and Grooming

Clothing and grooming are two tools all youth use to express their identity. Access to gender-affirming clothing and personal grooming items for LGBTQI youth can be especially important for justice-involved youth cut off from other means of self-expression. Facilities should make sure that transgender and gender nonconforming youth are able to present themselves in a manner that is consistent with their gender identity. For facilities that provide institutional clothing, this may mean providing youth with clothing and undergarments consistent with their gender identity, as the Washington D.C. Department of Youth Rehabilitation Services does.

Dress and grooming codes should apply to all youth regardless of gender. For example, rather than creating restrictions on makeup that apply only to girls, facilities could instead create restrictions on makeup or jewelry that apply to all youth. Making commissary products available to all youth regardless of gender would be another step consistent with this policy. This would allow an institution to retain safety-based restrictions to clothing and grooming products while permitting youths' gender expression.

b. Showering and Restrooms

Transgender and intersex youth should be permitted to shower and use the facilities that correspond with their gender identity, and/or that they feel safest in. They should also be given the option to shower and use the restroom separately, typically at a reasonable time before or after other youth use the facilities unless there is a private space available. This is to ensure that the showering process does not undermine the youth's gender identity in the eyes of other youth. There is a growing consensus among juvenile confinement centers in New Orleans, Philadelphia, New Jersey, Ohio, Washington, D.C. and Cook County, Illinois that transgender youth have the right to shower and use the restroom privately.

Staff supervision should be limited to only what is necessary for safety and health of the youth and cross-gender viewing should not be permitted except in an emergency.

CLOTHING AND GROOMING POLICY EXCERPTS:

Massachusetts Department of Youth Services

SECTION IX: CLOTHING

A. All youth shall wear the clothing provided by the location or according to the clothing allowed by the location if there is no uniform required. Youth shall be not forced to wear clothing that does not match their gender identity or expression in any setting.

B. Where clothing is provided, youth may receive undergarments of their choice among available agency supplies, regardless of gender.

C. Transgender and gender non-conforming youth may possess items necessary to present their gender identity consistent with safety and security procedures including ***binders, packers***, girdles, breast inserts, bras and other items as requested. DYS may supply items upon request through the Regional Clinical Coordinators.

SECTION X: HAIR AND OTHER PERSONAL GROOMING

A. Personnel grooming rules and restrictions, including those regarding hair, make-up, shaving, etc., shall be consistent in all male and female programs. A youth should not be prevented from, or disciplined for, a form of personal grooming that does not match typical gender norms.

Washington D.C. Department of Youth Rehabilitation Services

X. Clothing and Gender Presentation

A. Youth shall be permitted to dress and present themselves in a manner consistent with their gender identities.

B. DYRS shall provide all youth at DYRS secure facilities with clothing, including undergarments, of the youth's choice.

C. Grooming rules and restrictions, including rules regarding hair, makeup, and shaving, shall be the same in male and female units at DYRS youth facilities. Youth shall not be required to maintain hairstyles or to dress in keeping with a style perceived to be appropriate for one gender or the other.

SHOWERING AND RESTROOMS POLICY EXCERPTS

Cook County Juvenile Temporary Detention Center

D. Showers and Bathrooms

All showers shall be conducted in accordance with JTDC Policy 5.16, Showers.

The JTDC shall allow residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine safety checks. Transgender and intersex residents shall be given the opportunity to shower separately from other residents and use the bathroom privately, if possible. When individual showers are not available, these residents shall be the first or last in line so that they can shower separately.

New Orleans Juvenile Detention Center

I. Transgender youth will not be required to use the shower or bathroom or dress in front of youth or staff, and staff efforts to ensure privacy will be done in a way that is not humiliating. LGBT youth will not be treated as sex offenders unless they have been found guilty of nonconsenting sexual behavior.

c. Same-sex Behavior in Youth Facilities

It is widely understood and age-appropriate for adolescents to want to experiment and explore sexually. Voluntary sexual behavior between youth is not "sexual abuse" under PREA and does not violate state law if both youth are of the age of legal consent.[151] Even when one or both of the involved youth is under the age of consent, voluntary sexual behavior is still distinct from coerced sexual behavior. Staff should not immediately punish sexual behavior on the assumption it is abusive. Consensual adolescent sexual behavior is normal developmental behavior that should not be punished. Youth nevertheless need to be informed of and to follow rules of the institution and to understand that there can be consequences for not following them.

Sexual behavior may be for pleasure or company. Sexual behavior also may be strategic, possibly as a trade for protection, for some other good or service, or coerced, possibly through threats. Facility staff must be able to recognize the differences between coerced sex and other scenarios and understand their varied responsibilities when addressing each.[152] PREA standards include screening juveniles for risk of sexual victimization and abusiveness as well as procedures for reporting, investigating, and disciplining coerced sexual behavior.[153]

d. Education and Resources

LGBTQI-specific knowledge and experiences go unaddressed in most mainstream books, media, and resources. In order to address these shortcomings, some juvenile justice facilities have been developing collections of LGBTQI content. The ideal LGBTQI youth policy contains a section on the type of materials offered and ensures that those materials are age-appropriate and culturally diverse.

Youth education also includes LGBTQI policy dissemination, though the two topics may be addressed in different sections of the policy. Though the facility's LGBTQI policy should be briefly addressed during intake, it should later be fully explained in an age-appropriate manner. Orientation is a time when some juvenile confinement facilities supply the full written policy and go over it with youth. The goal of presenting the policy in multiple ways is complete youth understanding of their options, rights, and responsibilities.

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[151] PREA Standards, 28 C.F.R. § 151.16(g).

[152] Department of Justice National Institute of Corrections. *Policy review and development guide: Lesbian, gay, bisexual, transgender, and intersex persons in custodial settings* (Publication No. 027507) (M. L. Thigpen, Comp.) (August 2013)

[153] PREA Standards, 28 C.F.R. 115.311 et seq.

EDUCATION AND RESOURCES POLICY EXCERPTS

Washington D.C. Department of Youth Rehabilitation Services

XV. YOUTH EDUCATION

A. Staff, contractors, and volunteers responsible for youth orientation shall inform youth about their rights and responsibilities under this policy, the procedures for reporting violations, resources available, opportunities to talk to staff, and how to communicate special needs.

B. The Superintendents of DYRS secure facilities shall ensure that youth have access to supportive and age appropriate information, including books, periodicals, community resources, and advocacy groups that provide information to youth about LGBTI issues.

Massachusetts Department of Youth Services

SECTION VI: LGBTI and GNC LITERATURE AND RESOURCES

E. Programs should affirm the diversity and cultural identity of the youth with respect to creating a supportive environment. It is important that educational books and other reading materials for youth interested in learning more about LGBTI and GNC issues are available. Materials should be made available in languages other than English as needed and as funding is available.

F. LGBTI and GNC literature and other visible signs should be available in the common areas, office, etc., that indicate staff are knowledgeable and open to communication on these topics.

G. Youth should have access to supportive resources with age appropriate LGBTI and GNC information, including a book list, website list of community resource supports, and advocacy groups.

5. STAFF TRAINING

Nondiscrimination and non-harassment policies should be updated and implemented in correctional facilities to protect LGBTQI youth or youth who are perceived to be LGBTQI. PREA guidelines call for training of all staff to explain the goals of the non-discrimination policy, how to treat LGBTQI youth in custody in a respectful and non-discriminatory way, and how to respond to and prevent abuse against LGBTQI juveniles.[154]

Staff, contractors, volunteers, management, and supervisors must be trained so that they are aware of all relevant policies affecting LGBTQI youth, including new and revised policies as part of the overall implementation process. All personnel must be trained to understand that compliance with these policies is mandatory, and that failure to comply may result in disciplinary sanctions.

Administrators should also be able to measure compliance by using evaluation measures such as observation periods and surveys that measure knowledge of new policies and procedures. Staff members who are not compliant or competent with policies should receive extra training, supervision, and other individualized support. When conducting staff performance evaluations and making decisions surrounding promotion and termination, policy compliance should be taken into consideration. Procedures should be in place to ensure that contractors and volunteers are informed of the nondiscrimination and non-harassment policies and are required to abide by them when working with or in the facility.

Ongoing quality assurance monitoring and continuous quality improvement measures should be designed and administered, setting benchmarks for compliance with the new policies, and routinely screening related grievances and conducting resident surveys to measure outcomes. Policies must be routinely reviewed in order to ensure that they are being complied with, are in alignment with the law, and are enhanced and improved over time. Set forth below are the PREA regulations that outline employee and juvenile training requirements.

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[154] PREA Standards § 115.31. See box on following pages for text.

§ 115.31 Employee training

(a) The agency shall train all employees who may have contact with inmates on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Inmates' right to be free from sexual abuse and sexual harassment;

(4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in confinement;

(6) The common reactions of sexual abuse and sexual harassment victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with inmates; 17

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.32 Volunteer and contractor training

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.33 Inmate education

(a) During the intake process, inmates shall receive information explaining the agency's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents. 18

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

§ 115.34 Specialized training: Investigations

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.35 Specialized training: Medical and mental health care

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and

(4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.[155]

[155] PREA Resource Center. Prisons and Jail Standards. (2012, May 17). Retrieved August 18, 2015, from http://www.prearesourcecenter.org/training-technical-assistance/prea-101/prisons-and-jail-standards

EMPLOYEES ALSO MUST BE TRAINED IN THEIR DUTY TO REPORT DISCRIMINATORY OR HARASSING BEHAVIOR TOWARDS YOUTH

MASSACHUSETTS DYS ENFORCEMENT LANGUAGE MANDATING REPORTING OF PROBLEMATIC BEHAVIOR

DYS state and contract provider employees shall report alleged discriminatory and/or harassing behavior by an employee against a youth that may be in violation of this policy and the Guidelines by immediately reporting the allegation to a supervisor. Such allegation shall be reported further using the Serious Incident Reporting Policy.

Enforcement: In accordance with DYS policy and procedures and consistent with current collective bargaining agreements, supervisors and managers shall promptly address and investigate any reported incident of alleged discrimination and/or harassment against a youth by an employee or another youth and, if determined to have occurred, will result in corrective action and may result in disciplinary action. Failure to report an allegation of harassment or discrimination against a youth by another youth or a DYS state or contract provider employee will result in discipline up to and including termination.

6. REENTRY AND REINTEGRATION

Many LGBTQI youth are discharged back into situations where they struggle with family rejection, domestic violence, societal discrimination, drug and alcohol abuse, homelessness and other housing stability issues, disruption in academic work and challenges with academic transfers and credits, unemployment, and poverty. All of these factors increase the risk of criminal behavior and the chances of returning to the justice system.[156] It is important that reintegration programs include positive community capacity building, life skills training, and empowerment to prepare juveniles to return to their communities.[157]

A common provision in supervised release is for a youth to "obey home rules." However, if the youth and their parents are in conflict over the youth's sexual orientation, gender identity, or gender expression, there may be conflict over home rules. No youth should be held to have violated parole or probation because of conflict with their parent or guardian for this reason.

Reintegration programs must be multifaceted in order to meet the needs of all youth in custody, but this is especially true for LGBTQI youth. Elements of reentry programs should be focused on stabilizing influences, such as community connections, school enrollment and attendance, employment status, and stable housing. These are three of the most important facets of reintegration programs for LGBTQI youth, since they not only face the obstacles associated with being in the justice system, but also the social barriers caused by being part of the LGBTQI population.

The importance of school enrollment has been well studied. Youth who are enrolled in and attend school regularly are less likely to commit crimes in both the short and long term.[158] As such, school placement should be a high priority for every reentry program. Studies have also shown that reentry programs that connect youth with professional case managers, mentors, and education/employment opportunities can reduce recidivism.[159] Because LGBTQI youth are often subject to harassment and bullying in schools, it is especially important that reentry programs connect any LGBTQI youth in custody with case managers who are experienced with connecting youth to educational resources or programs that are more LGBTQI-friendly, or alternative educational paths like online education if the available traditional school options expose LGBTQI youth to abuse. If truancy becomes an issue, the court system or case worker should explore whether discrimination is a factor.

Employment status is another predictor of criminal behavior. Negative stereotypes and stigma directly impact youth with criminal histories as well as youth who identify as LGBTQI. While juvenile records are often sealed, discrimination based on LGBTQI status remains problematic. In 2016, 18 states and D.C. have laws that prohibit discrimination based on sexual orientation and gender identity in the private sector. Four additional states prohibit employment discrimination based on sexual orientation. But 52% of LGBT people live in states that do not prohibit either type of discrimination, and new state laws are preempting local non-discrimination

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[156] Nellis, A., Wayman, R., & Schirmer, S. (2009, Fall). *Back on Track: Supporting Youth Reentry from Out-of-Home Placement to the Community.* Washington, DC: Juvenile Justice and Deliquency Prevention Coalition. http://www.njjn.org/uploads/digital-library/resource_1397.pdf

[157] Grunwald HE, Lockwood B, Harris PW, Mennis J. Influences of Neighborhood Context, Individual History and Parenting Behavior on Recidivism Among Juvenile Offenders. *Journal of Youth and Adolescence*. 2010;39:1067–79.

[158] Nellis et al., Back on Track, ibid.

[159] Ibid.

measures. Accordingly, LGBTQI youth face often face a significant barrier to employment, making it vitally important for reentry programs to acknowledge and ultimately overcome these barriers. Reentry programs should have employment services available that can connect LGBTQI youth with potential employers.

The National Juvenile Justice and Delinquency Prevention Coalition and the Sentencing Project offer policy recommendations for facilities that should be used as best practices for the reentry of all youth into society.[160] Reintegration programs should support educational and employment goals and focus on family (including a youth's "chosen family) and school relationships. Counseling and mental health professionals should be available for all youth once released from correctional facilities. Reentry programs should be individualized to all youth, and staff members must be culturally competent regarding the specific needs of LGBTQI youth. Because LGBTQI youth in the criminal justice system have high rates of homelessness, substance abuse, and family rejection, LGBTQI youth need professionals who understand these issues and offer appropriate resources to address them.

Programs should include employment preparation, mentoring, family connections, school attendance and success, housing support, and mental health and substance abuse treatment. All programs must be culturally competent in the specific obstacles and needs of LGBTQI youth.

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[160] National Juvenile Justice and Delinquency Prevention Coalition, *Youth Reentry*. 2012. Available at http://www.sentencingproject.org/publications/youth-reentry/

VII. CONCLUSION

LGBTQI youth are overrepresented in the U.S. juvenile justice system, especially lesbian and bisexual girls and young women and LGBT youth of color. They experience disproportionate physical, emotional, and sexual abuse while in custody. We as a society should take steps to drastically reduce and prevent youth involvement in juvenile justice systems. This should include reducing violence victimization, reducing poverty, improving education, strengthening families and communities, and addressing racial/ethnic and LGBT disparities in these areas. Juvenile justice professionals should also take steps to improve the safety and well-being of LGBTQI youth in their care. This will allow them to create a more respectful and therapeutic environment, and a safer and more secure facility, for all youth and staff.

A number of systems have adopted model policies to reduce victimization, including sexual assault, among LGBTQI youth, and to provide affirming care to transgender and gender nonconforming youth. This should be the goal of all systems. Key approaches include professionalism, respect, and creating a safe and non-discriminatory environment for all. Agencies should examine their institutional culture, and ways to improve facility norms through policies and staff training. Specific steps can be taken to identify vulnerable LGBTQI youth at intake, house them appropriately, and conduct searches of transgender and gender nonconforming youth in a non-abusive manner. Understanding health care needs unique to LGBTQI youth is also important. Model policies can address clothing, grooming, and commissary issues with LGBTQI youth. Addressing same-sex behavior among adolescents in a reasonable manner is important, while simultaneously preventing exploitative and inappropriate abuse. Helping LGBTQI youth reenter and reintegrate into society is also essential. The organizations that researched and created this document stand ready to assist juvenile justice systems and facilities in supporting LGBTQI youth in their custody and helping them to rehabilitate, heal, and reenter society.

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Appendices

APPENDIX A: GLOSSARY

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX TERMINOLOGY

Asexual: a person who is not romantically or sexually attracted to another person of any gender.

Assigned sex at birth: The sex (male or female) assigned to a child at birth, most often based on the child's external anatomy. Also referred to as birth sex, natal sex, or sex.

Bisexual: a person who is romantically or sexually attracted to both males and females.

Cisgender: A person whose gender identity and assigned sex at birth correspond (i.e., a person who is not transgender).

Cross dresser: a person who wears clothing, jewelry, or makeup not traditionally associated with their anatomical sex, and who generally has no intention or desire to change their anatomical sex.

Gay: exclusively attracted to others of the same sex. Most commonly used to refer to men who are attracted to other men, but may also be used to refer to women who are attracted to other women (lesbians).

Gender: a socially constructed concept classifying behavior as either "masculine" or "feminine," unrelated to one's genitalia.

Gender conforming: when gender identity, gender expression and sex assigned at birth "match" according to social norms.

Gender dysphoria (formerly gender identity disorder): the formal diagnosis used by psychologists and physicians to describe persons who experience significant discontent with the sex they were assigned at birth and/or their gender roles associated with that sex.

Gender expression: a person's external expression of their gender identity, including appearance, dress, mannerisms, speech, and social interactions.

Gender identity: distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male, female or something else.

Gender non-binary: gender characteristics or behaviors that do not conform to those typically associated with a person's birth sex.

Gender non-conforming: gender characteristics or behaviors that do not conform to those typically associated with a person's birth sex. See also gender non-binary.

Gender "norms": the expectations associated with "masculine" or "feminine" conduct, based on how society commonly believes males and females should behave.

Gender variant behavior: conduct that is not normatively associated with an individual's assigned sex at birth.

Heterosexual: sexual or romantic attraction to the different sex.

Homosexual: a technical term for sexual, emotional, or romantic attraction to persons of the same sex. "Gay" is preferred to this term. Not recommended for use due to its historical use to pathologize and criminalize same-sex behavior and attraction.

Intersex: an uncommon condition in which a person is born with external genitalia, internal reproductive organs, chromosome patterns, or an endocrine system that does not fit typical definitions of male or female.

LGBTI: acronym for a group of sexual and gender minorities including lesbian, gay, bisexual, transgender, and intersex individuals. Many variations of this acronym may be used depending on context.

Lesbian: commonly refers to women typically attracted to other women (the term "gay" may also be used to describe these individuals).

Pansexual: commonly refers to a person who has the capacity to be attracted to all genders.

Queer: historically a negative, derogatory term, it has been reclaimed by some LGBTI individuals particularly among youth. Its use is not recommended, especially in a professional environment.

Questioning: an active process in which a person explores his or her own sexual orientation or gender identity and questions the cultural assumptions that they are heterosexual or gender conforming. LGBTQ or LGBTQI is often associated with adolescents and young adults.

Sex: the designation of a person as either male or female based on anatomical make-up, including genitalia, chromosomes, and reproductive system.

Sexual orientation: an enduring personal quality that inclines people to feel romantic or physical attraction to persons of the different sex or gender, the same sex or gender, or both.

SOGI: acronym for sexual orientation and gender identity.

Transgender: an umbrella term for persons whose gender identity differs from their assigned sex at birth

Transgender girl/woman: a person whose birth sex was male but who understands herself to be female and desires to live her life as a female.

Transgender boy/man: a person whose birth sex was female but who understands himself to be male and desires to live his life as a male.

Transition: sometimes used to describe the process people go through to change their gender expression or physical appearance. May refer to everything from changing identity documents to medical intervention (e.g., hormones, surgery).

Transsexual: a person whose physical anatomy does not match his or her gender identity, and seeks medical treatment (sex reassignment surgery or hormones). May be used interchangeably with "transgender" depending on the context.

Transvestite: a person who mainly cross dresses for pleasure in appearance and sensation.

Two spirit: a term used by some Native Americans to identify LGBTI and gender variant persons within their community. Historically, in some cultural traditions, two spirit people were viewed as privileged and sacred.

APPENDIX B. Massachusetts Department of Youth Services Grievance Policy

Commonwealth of Massachussetts

Executive Office of Health and Human Services

Department of Youth Services Official Policy

POLICY NAME:	Youth Grievance Process
POLICY #:	03.04.01
EFFECTIVE DATE:	January 6, 2014
REPEALS:	None
REFERENCES:	Prevention of Sexual Abuse and Sexual Harassment Of Youth Policy
SIGNATAURE:	Comissioner Peter Forbes November 11, 2013
APPLICABILITY:	This policy shall apply to DYS staff, contracted providers, youth, volunteers, and interns.

POLICY

It is the policy of the Department of Youth Services (DYS) that youth under the care of DYS and third party individuals on behalf of such youth have the right to file a grievance at any time for any inappropriate conditions or behavior of staff or other youth in accordance with these procedures.

Any youth or third party who reports a grievance shall not be subjected to any adverse action, discipline, or retaliation pertaining to the filing of a grievance. Employees or youth who attempt to retaliate against a youth for utilizing the grievance process will face disciplinary measures.

All phases of the grievance process shall remain confidential to only those parties who need to know about the grievance.

Topics that are not subject to the youth grievance process include but are not limited to placement decisions, grid level decisions, issues currently in litigation or pending litigation, actions or decisions by any agency other than DYS, and any other category where a process currently exists to resolve that issue.

PROCEDURE

A. Definitions

1. The following definitions shall have the meanings assigned to them in this policy for purposes of interpreting this policy.

Emergency Grievance: Any complaint alleging that the youth believes he or she is at substantial risk of imminent sexual abuse.

First Clinical Session: First scheduled meeting a youth has with his/her assigned clinician or clinical designee following the completion of the Intake Procedures, and occurs within 72 hours of admission to DYS custody.

Grievance: An allegation by a youth or third party on behalf of a youth based upon actual, perceived or alleged circumstances concerning a violation of this or other policies, or conditions of confinement.

Grievance Box: Locked drop box labeled 'grievance box' to collect completed grievance forms.

Grievance Form: Standardized forms that youth or employee or third party, on behalf of a youth, may use to submit a youth grievance.

Grievance Review Team (GRT): Two person team that includes two of the following: For residential placement, the location's PREA Compliance Manager, Program Director, Assistant Program Director, Clinical Director, Program Clinician, Provider Executive Operational Employees and/or Regional Senior Staff Employee(s). For community placement, the District Manager, Director of Community Services, Provider Contract Managers, Provider Executive Operational Employees and/or Regional Senior Staff Employee(s). For alternative lockup programs (ALP), the two person team can be anyone within this definition.

Grievance Box Log: A bound book that is used to record the grievances filed in the grievance box including the date, time, signatures of the team emptying the box, number of grievances in the box and if the grievance is related to PREA.

PREA: Prison Rape Elimination Act, Federal juvenile standards, that provide requirements for DYS to prevent, detect and respond to allegations of sexual abuse, sexual harassment or retaliation by employees or youth for reporting such conduct.

PREA Compliance Manager: A DYS state or contracted provider employee assigned to coordinate a location's efforts to comply with the PREA juvenile standards. Such individual has the title of Facility Administrator of a set of programs located within one or more buildings or Program Director for locations that physically stand alone and do not share a building or campus with DYS or other provider.

PREA Coordinator: Upper level statewide DYS employee who develops, implements and oversees agency efforts to comply with the PREA juvenile standards in all DYS residential programs.

Third Parties: Individuals who can report a grievance on behalf of a youth or assist a youth in filing a grievance including other youth, employees, family members, attorneys, and outside advocates.

Youth Orientation Materials: Information presented to youth that shall include but is not limited to the DYS approved pamphlet on 'How to Conduct Yourself' including the Department of Children and Families Child at Risk Hotline 1- 800-792-5200; postings of Rape Crisis Centers.

Youth Education Materials: Information presented to youth that shall include but is not limited to the following: the DYS approved intake presentation; Policy on the Youth Grievance Process; Policy on the Protections of Youth Under PREA; notification of the Department of Children and Families Child at Risk Hotline 1- 800-792-5200, and numbers for the MA Rape Crisis Programs.

2. Terms that are defined Policy #01.01.04, "Policy Definitions" shall have the meanings assigned to them in that policy, unless a contrary meaning is clearly intended.
3. Terms not defined in Policy #01.01.04 or in this policy shall have the meanings assigned to them by reasonably accepted standard dictionary definitions of American English.

B. Notification of the Grievance Process to Youth and Third Parties

1. Within 24 hours of arriving at the location and during the DYS Intake Process, employees shall notify all youth using the youth orientation materials that they have the right to file a grievance. Youth shall sign that they have been informed of the above information with a copy of the acknowledgement kept within the youth intake packet and scanned into JJEMS.
2. At the first scheduled clinical session, clinical employees shall review the Youth Grievance Process as part of the youth education materials. Such information shall include:
    a. Youth's right to file a grievance at any time;
    b. Instructions on how to fill out a grievance form;
    c. Location of the grievance boxes and forms;
    d. How to file a grievance in community placement;
    e. Disciplinary sanctions for youth who intentionally make false allegations;
    f. Clinicians shall document that youth have received the youth education materials by noting such in the JJEMS clinical progress notes.
3. This policy, procedures and grievance forms shall be posted at two or more areas visible to:
    g. Youth such as in the library, bathrooms, school, cafeteria and clinical offices; and
    h. Third parties outside the youth living areas such as in the visiting locations, bathrooms, entrance areas and waiting rooms.
4. Information on the Youth Grievance Process shall be provided in formats accessible to all youth including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to youth who have limited reading skills. Staff seeking alternative formats shall notify the regional clinical coordinator immediately upon identifying this need.

C. Filing a Youth Grievance

1. Employees shall be available to youth to listen to their concerns and take appropriate action to resolve a concern whenever possible without filing a grievance.
2. Grievances may be filed in a grievance box using a grievance form in alternative lockup programs (ALP) and residential placement locations. Employees shall provide assistance to youth when they believe a youth seeks to use a grievance form but is unable to adequately complete the grievance form.
3. Youth in an ALP and residential placement shall not be required to use the grievance box to file a complaint or concern but may use other means verbally or in writing to report a grievance to employees or third parties.
4. Grievance boxes will not be placed in community locations. Youth in community placement and third parties may submit a grievance verbally or in writing to employees.

D. Grievance Boxes, Forms and Log

1. All ALP and residential locations shall have a clearly marked 'grievance box' in any area that is easily accessible to youth, where youth are on a daily basis and where the grievance forms can be dropped in order to maintain confidentiality.
2. Location Managers shall place blank grievance forms at multiple locations within the program allowing youth unobstructed access to the forms such as in classrooms, clinical offices, cafeteria or general living areas. Youth may be allowed to write out a grievance at any reasonable time.
3. Grievance boxes shall be immediately repaired or replaced if damaged.
4. The Grievance Review Team (GRT) shall open the grievance box together once per day Monday through Friday. No other staff shall open the grievance box.
5. Grievance forms may be accepted by any employee on behalf of a youth without using the grievance box. Upon receiving a written grievance form, the receiving employee shall follow the procedure outlined in Section E.
6. Each grievance form shall be reviewed by both members of the GRT and entered into the Grievance Log upon receipt.
7. The Grievance Log shall include: the date and time the grievance was received, and the name and signatures of the employees checking the grievance box and the number of grievances in the box.
8. If a grievance form refers to one or more of the GRT, the alternative member(s) of the GRT shall continue the review process.
9. Within 24 hours of receipt of the grievance form, the GRT reviewing the form(s) shall:

   i. Confirm receipt of the grievance form with the youth who filed the grievance, if known and if the youth is still within DYS care and custody;

   j. Refer to the appropriate place depending on the grievance in accordance with Section E.

E. Determination of Type of Grievance

1. Any grievance in writing or verbally that alleges sexual boundary violations, sexual abuse and/or sexual harassment as defined by the Prevention of Sexual Abuse and Sexual Harassment of Youth Policy shall be referred immediately to the Location Manager who shall act in accordance with such policy.

2. Any grievance that alleges that a youth is subject to a substantial risk of imminent sexual abuse will be considered an emergency grievance and referred immediately to the Location Manager who shall act in accordance with the Prevention of Sexual Abuse and Sexual Harassment of Youth Policy.

3. Any grievance via a verbal complaint or written form that alleges any other serious incident including but not limited to, discrimination, harassment and/or retaliation by or against any DYS staff or youth, shall be referred immediately to the Location Manager in accordance with the Serious Incident Policy.

4. Any grievance on any other topic shall be referred to 2 members of the GRT for that location for a determination on whether a review shall be conducted in accordance with these procedures in Section F.

F. Review of a Grievance Not Considered a Serious Incident

1. Within four calendar days of receiving a written grievance that is not a serious incident, two members of the GRT will review the grievance to determine if the issue should be reviewed or closed.

2. A verbal grievance may be referred by an employee to a member the GRT to determine whether to take additional steps to review the issue or close the matter. If closed, no other action is required.

3. Upon determining whether to conduct a review of a verbal or written grievance, one member of the GRT shall conduct an interview with the complaining youth, if known, and employee named in the grievance, witnesses involved in the matter, and collect any evidence associated with the grievance.

4. All information obtained from the review shall be documented in writing.

5. A recommendation for resolution or denial of the grievance shall be issued within ten calendar days after the review commences and submitted to the Administrative Team.

6. A member of the GRT shall review the final proposed resolution with the youth and shall document such conversation in the JJEMS progress notes. The proposed resolution needs to clearly identify the corrective measure(s), if any, which will be taken so that the youth understands what remedy is being provided.

7. Any youth who files frivolous or fabricated grievances may be subject to discipline based on the recommendation of the GRT. A youth will not be denied a Grievance Form at any time.

8. If a youth has been transferred after a grievance is filed but not resolved, the GRT shall determine whether to keep the grievance at the originating location or refer to the new location. If the youth is no longer within DYS care or custody, the GRT can determine whether or not to continue the review of such grievance.

9. At any point during the grievance process a youth may withdraw the grievance. The GRT can determine whether or not to continue the review of such grievance with or without the youth. The GRT should consider whether or not the withdrawal was due to retaliation felt by the youth.

10. At any time during the review, the GRT can refer the grievance to the Director of Investigations for questions or additional review.

11. All documentation on any grievance not considered a serious incident shall be filed in a Grievance Review Log maintained by the Program Director or District Manager. Such documentation shall include but is not limited to the grievance form, interview notes, evidence used in the review and any written recommendation.

12. The Administrative Team shall review grievances filed on a weekly basis summarizing in the monthly report any trends and patterns.

G. Training

DYS Basic Training will include information on the DYS Youth Grievance Process and Procedure.

APPENDIX C. Massachusetts Department of Youth Services Prevention of Sexual Abuse and Sexual Harassment of YouthPolicy

Commonwealth of Massachussetts

Executive Office of Health and Human Services

Department of Youth Services Official Policy

POLICY NAME:	Prevention of Sexual Abuse and Sexual Harassment of Youth Policy
POLICY #:	01.05.07(b)
EFFECTIVE DATE:	June 30, 2014
REPEALS:	01.05.07(a), Prevention of Sexual Abuse and Sexual Harassment of Youth
REFERENCES:	Prison Rape Elimination Act (PREA) Code of Employee Conduct Policy Youth Grievance Process Policy Serious Incident Policy Legal Advisory on 51A and 51B Reporting
SIGNATAURE:	June 20, 2014
APPLICABILITY:	This policy shall apply to DYS staff, contracted providers, youth, volunteers, and interns.

POLICY

It is the policy of the Department of Youth Services ("DYS") to comply with the requirements of the Prison Rape Elimination Act ("PREA") to protect its youth and have zero tolerance toward all forms of sexual abuse and sexual harassment. In accordance with PREA, DYS seeks to prevent, detect and respond to allegations of such conduct. All allegations of sexual boundary violations, sexual abuse sexual harassment or retaliation for reporting such conduct against youth by employees shall be considered a serious incident, investigated and may subject employees to appropriate discipline in accordance with these procedures.

All youth in DYS care and staff are prohibited from engaging in sexual boundary violations, sexual abuse, sexual harassment and retaliation for reporting such conduct as defined in this policy. All acts of a sexual nature are considered non-consensual due to the fact that DYS youth are persons in custody. Youth cannot consent to any such act(s) due to age and/or their custodial status. All allegations against youth by another youth shall be investigated in accordance with these procedures.

The DYS PREA Coordinator shall oversee the agency's efforts to comply with the Federal Juvenile PREA standards in all its locations including state and contracted provider locations. PREA Compliance Managers shall coordinate efforts within each location in coordination with the DYS PREA Coordinator.

PROCEDURE

A. Definitions

1. The following definitions shall have the meanings assigned to them in this policy for purposes of interpreting this policy.

Administrative Team: Such team includes the Program Director, Assistant Program Director, and Clinical Director.

First Clinical Session: First scheduled meeting a youth has with his or her assigned clinician or clinical designee following the completion of the Intake Procedures, and occurs within 72 hours of admission to DYS custody.

Sexual Boundary Violations: Any behavior in an alternative lockup, residential or community placement of a sexual or overly personal nature that does not maintain appropriate and respectful verbal and/or physical boundaries and is not otherwise defined in this policy. Such acts include but are not limited to making threats of a sexual nature, unreasonable invasion of privacy, inappropriate discussion of matters of a sexual nature, written communication of a sexual or overly personal nature, and exerting pressure or coercion to engage in inappropriate physical behavior. Such acts are violations of this policy whether or not they are welcomed by the youth. Other boundary violations not defined here may be a violation of the DYS Code of Conduct or other policy, advisory or practice.

Emergency Grievance: Any complaint alleging that a youth in residential placement believes he or she is at substantial risk of imminent sexual abuse.

Grievance: An allegation by a youth or third party on behalf of a youth based upon actual, perceived or alleged circumstances concerning a violation of this or other policies, or conditions of confinement.

Grievance Box: Locked drop box labeled 'grievance box' to collect completed youth grievance forms.

Grievance Form: Standardized form that a youth, employee or third party, on behalf of a youth, may submit in order to file a grievance.

Mental Health Evaluation: Assessment conducted by a licensed clinician of a youth's current emotional state and current mental health needs.

Mandated Reporter: All DYS and provider employees in direct care positions who are required to report to the Department of Children and Families ("DCF") abuse or neglect of a child by a caretaker, under the provisions of G.L. c. 119, §51A.

PREA: Prison Rape Elimination Act: The Federal juvenile standard that creates requirements to prevent, detect and respond to allegations of sexual abuse, sexual harassment or retaliation by employees or youth for reporting such conduct.

PREA Compliance Manager: A DYS state or contracted provider employee assigned to coordinate a location's efforts to comply with the PREA standards. Such individual has the title of Facility Administrator of a set of programs located within one or more buildings or Program Director for locations that physically stand alone and do not share a building or campus with DYS or another provider.

PREA Coordinator: DYS employee who develops, implements and oversees statewide agency efforts to comply with the PREA standards.

Serious Incident Report (SIR): A standardized form used by DYS state and contracted employees to report serious incidents in accordance with the DYS Serious Incident Reporting Policy.

Sexual Abuse of a youth by another youth: As defined by PREA, sexual abuse includes any of the following acts, even with consent by a youth:

(1) contact between the penis and the vulva or the penis and the anus, however slight;

(2) contact between the mouth and the penis, vulva or anus;

(3) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

(4) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual Abuse of a youth by an employee, volunteer or contracted provider: As defined by PREA, sexual abuse includes any of the following acts, even with consent by a youth:

(1) contact between the penis and the vulva or the penis and the anus, however slight;

(2) contact between the mouth and the penis, vulva or anus;

(3) contact between the mouth and any body part where the employee, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

(4) penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the employee, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire; and

(5) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee, contractor, contracted provider or volunteer has the intent to abuse, arouse or gratify sexual desire;

(6) any attempt, threat, or request by an employee, contractor, or volunteer to engage in the activities described in paragraphs (1) –(5) of this section;

(7) any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks or breast in the presence of a youth; and

(8) voyeurism by a staff member, contractor or volunteer.

Sexual Harassment by a youth to another youth: As defined by PREA, repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another.

Sexual Harassment by an employee, volunteer or contracted provider toward a youth: As defined by PREA, repeated verbal comments or gestures of a sexual nature including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

Third Parties: Individuals who can report a grievance on behalf of a youth or assist a youth in filing a grievance including other youth, employees, family members, attorneys, and outside advocates.

Youth Orientation Materials: Information presented to youth that shall include but is not limited to the DYS approved postings of Rape Crisis Centers and the pamphlet on 'How to Conduct Yourself' which contains information regarding the Department of Children and Families Child at Risk Hotline 1- 800-792-5200.

Youth Education Materials: Information presented to youth that shall include but is not limited to the following: the DYS approved intake presentation; Policy on the Youth Grievance Process; Policy on the Prevention of Sexual Abuse and Sexual Harassment of Youth; notification of the Department of Children and Families Child at Risk Hotline 1- 800-792-5200; and numbers for the MA Rape Crisis Programs.

Volunteer: Any individual with authorization to be at a DYS location that is not a DYS staff or contracted provider including interns.

Voyeurism by a staff member, contractor or volunteer: As defined by PREA, an invasion of privacy of a youth by an employee for reasons unrelated to official duties such as peering at a resident using the toilet, taking images of all or part of a youth's naked body or of youth performing bodily functions.

2. Terms that are defined DYS Policy No. 01.01.04, "Policy Definitions," shall have the meanings assigned to them in that policy, unless a contrary meaning is clearly intended.

3. Terms not defined in DYS Policy No. 01.01.04 or in this policy shall have the meanings assigned to them by reasonably accepted standard dictionary definitions of American English.

B. Notification of Protections

1. Within 24 hours of arriving at the location, during the DYS Intake Process, employees shall notify every youth of the protections contained in this policy using the youth orientation materials. Youth shall sign the acknowledgement form verifying that they were informed of this information. Employees shall retain a copy within the youth intake packet and scan into JJEMS.

2. At the first scheduled clinical session, clinical employees shall review the youth education materials with the youth and document that the youth has received the information by noting such in the JJEMS clinical progress notes. Such presentation shall include but not be limited to the following:

    a. Protections contained in this policy, including the definitions of sexual boundary violations, sexual abuse and sexual harassment;

    b. Information on the various reporting mechanisms for youth who allege being a victim of or witness to sexual boundary violations, sexual abuse and/or sexual harassment including the Youth Grievance Process and the Department of Children and Families (DCF) Child at Risk Hotline (1- 800-792-5200); and

    c. Responses to youth who intentionally make false allegations.

3. This policy and procedures, statewide listing of Massachusetts Rape Crisis Centers and DCF Child at Risk Hotline (1- 800-792-5200) shall be posted at residential and community locations in two or more areas visible to:

   a. Youth, in areas such as the library, bathrooms, classroom, cafeteria and clinical offices; and

   b. Third parties, in areas outside the youth living areas such as the lobby, visiting locations, bathrooms, entrance areas and waiting rooms.

4. Information in the youth orientation and education materials and posters on the Rape Crisis Centers, and DCF Child at Risk Hotline (1- 800-792-5200) shall be provided in formats accessible to all youth, including those who have limited English proficiency, are deaf, visually impaired, or otherwise disabled, as well as to youth who have limited reading skills. Employees seeking alternative formats for conveying this information to youth shall notify the Regional Clinical Coordinator upon identifying this need. Youth shall not be used in order to translate or relay this information to other youth.

C. Youth Reporting Allegations of Sexual Boundary Violations, Sexual Abuse and/or Sexual Harassment

1. Youth may report allegations of sexual boundary violations, sexual abuse and/or sexual harassment in any way including but not limited to:

   c. Verbally to any employee;

   d. In writing through a grievance form using the Youth Grievance Process;

   e. In writing or verbally to any third party who may file a grievance in accordance with the Youth Grievance Process; and/or

   f. Verbally through the DCF Child at Risk Hotline (1- 800-792-5200).

2. Youth may report that he or she is or perceives him or herself to be subject to a substantial risk of imminent sexual abuse. Such report is considered an emergency grievance, can be reported verbally or in writing and requires investigative response within 48 hours as described in section E.3.

D. Employee Reporting and Responding Requirements for Allegations of Sexual Boundary Violations, Sexual Abuse and/or Sexual Harassment

1. Allegation occurred within an ALP or residential placement: Any DYS state or contracted provider employee, intern or volunteer in an alternative lock up program (ALP), residential or community placement who learns of or suspects alleged sexual boundary violations, sexual abuse or sexual harassment within an ALP or residential placement shall immediately report the information to their Location Manager and either the PREA Compliance Manager or one of the members from the administrative team where the allegation occurred. Such initial report may be verbal, but the reporter must also complete a written incident report prior to the end of the shift.

2. <u>Allegation occurred in the community</u>: Any DYS state or contracted provider employee, intern or volunteer in the community who learn of or suspect alleged sexual boundary violations, sexual abuse or sexual harassment, including any non consensual sexual activity, against a DYS youth that may have occurred in the community either by a state employee, contract provider or any other individual shall follow the all the same requirements for reporting and responding in Section D(1) and (3).0 For circumstances involving sexual activity of a DYS youth under the age of 16, employees shall notify the youth's parent or guardian. Community employees shall also consult with their supervisors regarding their reporting duties, and are encouraged to consult with the PREA Coordinator or Director of Investigations for guidance.

3. Allegation of Sexual Abuse that includes allegation of contact or penetration as found in the definition of sexual abuse for this policy alleged to have occurred within the last 5 days: Location Manager and/or designee(s) shall complete the following immediate actions, as applicable:

    a. For obvious physical injury, call 911 for emergency medical response and provide immediate first aid, if warranted.

    b. Request that the alleged victim not take any actions that could destroy physical evidence including washing or showering, brushing teeth, changing clothes, urinating, defecating, drinking or eating;

    c. Attempt to prevent the alleged abuser from leaving the site and taking any action that could destroy physical evidence including washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating;

    d. Ensure the transport of the alleged victim to a designated Sexual Assault Nurse Examiner (SANE) Hospital where he or she can be examined by medical personnel not employed by DYS, by either:

        1. Emergency medical transport; or

        2. DYS staff in accordance with the DYS Transportation Policy; or

        3. For alternative lock up programs, by the referring police department.

        4. Employees shall ensure that the client feels safe with the employee chosen to accompany him or her during transport.

        5. Employees shall seek supervisory and regional support if the youth refuses a transport in this circumstance.

    e. Preserve and protect any alleged crime scene by not allowing anyone to go in or out of the alleged area, altering the area, or removing anything until investigators arrive and preserve any electronic monitoring data for the time period when the abuse may have occurred;

    f. Keep all witnesses apart from one another until law enforcement authorities have an opportunity to speak with them.

    g. Follow additional steps outlined below in Section D.4.

4. For any and all other <u>allegations of Sexual Abuse alleged to have occurred within the last 5 days **or at any other time**</u>: Location Manager and/or designee(s) shall:

    g. Make all efforts to have the alleged victim remain in a separate and secure area away from the alleged perpetrator;

a. Call the required regional manager if during regular business hours or On Call Manager for after regular business hours;

b. Call CIC and complete a Serious Incident Report in accordance with the Serious Incident Policy;

c. Call the law enforcement agency for that location who will conduct any resulting criminal investigation and cooperate fully with responding law enforcement personnel;

d. If law enforcement is responding, ensure employees do not question either individual about the specific events while waiting for law enforcement;

e. Call the parent or guardian of the youth, unless there is documentation that the parent or guardian should not be called, notifying them that there has been an allegation of sexual abuse and where the youth is being transported, if applicable.

f. File a 51A report with the Department of Children and Families (DCF), as set forth in DYS Legal Advisory on the 51A and 51B Reports.

g. Offer to transport the alleged victim to a SANE hospital if youth has not already been transported ensuring the client feels safe with the employee chosen to accompany him or her during transport

h. Consider moving youth to other programs to separate the alleged victim and abuser with assistance from the Regional Director of Operations or designee, minimizing any additional impact on the alleged victim.

i. In consultation with the Regional Clinical Coordinator or Crisis Screening Team, if RCC not available, determine if the youth requires one-to-one observation in accordance with DYS Suicide Assessment Policies.

j. Ensure the completion of a mental health evaluation within 72 hours for both the alleged victim and alleged perpetrator after any allegation of sexual abuse that is alleged to have occurred in residential placement. Such evaluation must be completed by a licensed clinician to assess a youth's current emotional state and current mental health needs, and not to investigate the alleged incident.

k. In consultation with the Regional Clinical Coordinator, make available to the alleged victim a victim advocate from a local rape crisis center to provide support services to the youth and document that such services were offered in the clinical progress notes. For youth in an ALP, the location manager may contact such advocates and note such services in the youth's file.

l. Monitor the conduct or treatment of the youth or employee(s) who reported the sexual abuse and the alleged victim of sexual abuse for possible retaliation for at least 90 days following the report of sexual abuse and follow the DYS Serious Incident Policy to report such information.

m. Upon receiving an allegation that a youth was sexually abused at any other non DYS residential location, the Location Manager shall, in addition to the above, notify the supervisor of that location of the alleged incident.

n. If the alleged victim has an open case, the Location Manager shall report the allegation of sexual abuse to the youth's attorney or other legal representative of record, if known, and supervising court within 14 days of receiving the allegation.

o. If the alleged victim has an open case, the Location Manager shall report the allegation of sexual abuse to the youth's attorney or other legal representative of record, if known, and supervising court within 14 days of receiving the allegation.

5. Allegations of Sexual Boundary Violations and Sexual Harassment: Location Manager and/or designee(s) shall:

    a. Call the required regional manager if during regular business hours or On Call Manager for after regular business hours;

    b. Contact CIC, and complete a Serious Incident Report in accordance with the Serious Incident Policy;

    c. Consider if a 51A report shall be filed with the Department of Children and Families, as set forth in DYS Legal Advisory on the filing of 51A and 51B;

    d. Monitor the conduct or treatment of youth or employee for possible retaliation. Remedy any such retaliation and follow the DYS Serious Incident Policy to report any retaliation.

6. Individuals shall not disclose information about the youth's allegation to anyone who is not directly involved in the treatment, investigation or any other security or management decisions.

7. Staff may privately report sexual abuse, sexual harassment and/or sexual boundary violations as required by policy and procedures outside of their chain of command and/or request their name not be used in the DYS reporting documents.

8. Failure of a state or contract provider employee to report or to make intentional false allegations of sexual boundary violations, sexual abuse or sexual harassment by youth or employees may result in disciplinary action, up to and including termination. Termination shall be the presumptive disciplinary sanction for staff found to have engaged in sexual abuse.

9. Employees who are covered by a Collective Bargaining Agreement shall be entitled to their rights in accordance with NLRB v. Weingarten, Inc., 420 U.S. 251 (1975), under which employees may refuse to be interviewed without union representation if they (a) are the target of an investigation or if (b) they reasonably believe that an investigation will result in disciplinary action being taken against them.

10. All employees are entitled to their rights in accordance with *Carney v. City of Springfield*, 403 Mass. 604 (1988). Such rights state that an employee cannot be asked during a DYS interview about potentially criminal conduct unless the proper law enforcement authority (generally, state or local police, or Attorney General's Office and/or local District Attorney) has offered the employee transactional immunity.

11. Disciplinary sanctions for violations of this policy by employees shall take into consideration nature and circumstances of the acts committed, employee's disciplinary history and sanctions imposed for comparable offenses by others with similar histories.

E. DYS Investigation Requirements

1. The DYS Director of Investigations or his/her designee shall investigate all allegations of alleged sexual boundary violations, sexual abuse and/or sexual harassment and retaliation for reporting such allegations or cooperating with an investigation. The investigation will include an effort to determine whether employees' actions or omissions contributed to the allegations.

2. Substantiated allegations of conduct that appear criminal in nature, including alleged sexual abuse, shall be referred to the appropriate state or local law enforcement agency. In such cases, the Director of Investigations or his/her designee shall:

    e. Cooperate and consult with law enforcement and the District Attorney's Office conducting the criminal investigation and ensure that the criminal investigation is completed;

    f. Conduct any additional investigation deemed necessary;

    g. Issue a final agency decision on the merits of any portion of a client grievance alleging sexual abuse within 60 days of the initial filing of the grievance. The DYS Director of Investigations or his/her designee may claim a reasonable extension if 60 days is insufficient to make an appropriate decision due to the needs of concurrent law enforcement or other outside agency investigations.

    h. Notify the youth who is the subject of the allegations of decisions on the merits of the allegations being investigated by the DYS Investigations Unit and law enforcement and any time extensions for the completion of the decision and document such notifications in the JJEMS progress notes. Such notifications shall include whether the:

        i. allegation has been determined to be substantiated, unsubstantiated, or unfounded;

        ii. employee or youth alleged to have committed the sexual abuse is no longer within the youth's program or facility; and

        iii. employee or youth alleged to have committed the sexual abuse is indicted and/or convicted on a charge related to sexual abuse due to the youth's allegation.

3. Upon receipt of a Serious Incident that constitutes an emergency grievance, CIC shall contact the Director of Investigations immediately upon receiving the verbal and/or written report. The Director of Investigations or his or her designee shall provide an initial response within 48 hours and a final decision within 5 calendar days documenting whether or not the youth is subject to a substantial risk of imminent sexual abuse and what action should be taken in response to the emergency grievance.

4. All DYS investigations shall be documented in written reports that include a description of the physical, documentary, and testimonial evidence, facts and findings. The reports shall also contain the reasoning behind credibility assessments. No standard higher than preponderance of the evidence in determining whether or not such allegations occurred may be used. Reports will make formal investigative findings, and also detail any corrective action necessary, and will note whether management employee acts or omissions contributed to the abuse if abuse is found.

5. Investigative reports shall be retained for as long as the alleged abuser is within DYS custody, if a youth, or employed by the agency, plus five years.

6. After investigation, if it is determined that a youth intentionally made false allegations and did not act in good faith based upon a reasonable belief, program behavior management systems should be utilized to address the youth's behavior.

7. The following shall not be grounds to terminate an investigation:

   a. Withdrawal of the complaint;

   b. Failure of the youth to continue with an allegation of sexual abuse, sexual harassment, boundary violation or retaliation;

   c. Departure of the abuser or victim from employment or DYS custody or supervision.

8. Unless the allegation is unfounded, the Administrative Team and PREA Compliance Manager will conduct an incident review within thirty (30) days of the conclusion of the investigation. At the conclusion of the incident review a report shall be prepared of its findings, including but not limited to the determinations identified in 8. (i)-(v) and any recommendations for improvement and submitted to the Location Manager, PREA Compliance Manager and PREA Coordinator. The incident review shall include input from shift administrators, investigators, health services and clinical employees, as appropriate and consider the following:

   i. Whether the allegation or investigation indicates a need to change a policy or practice to better prevent, detect, or respond to sexual abuse;

   ii. Whether the incident or allegation was motivated by the victim's race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status or gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility;

   iii. Whether a physical examination of the area in the facility where the incident allegedly occurred reveals any physical barriers in the area that may enable abuse;

   iv. The adequacy of staffing levels in the area during different shifts;

   v. Whether monitoring technology should be deployed or improved to supplement supervision by staff; and

9. On an annual basis, the Director of Investigations in coordination with the PREA Coordinator shall aggregate sexual abuse data from the serious incident database and incident reviews submitted pursuant to section E.8. in order to prepare an annual report. Such annual report shall:

   i. Identify any problem areas;

   ii. include corrective action plans of each facility and agency as a whole; and

   iii. Compare the current year's data and corrective action plans to the prior year's with an assessment of progress made in addressing sexual abuse.

   iv. Upon approval by the Commissioner, the annual report shall be posted through the DYS website for public review. Information may be redacted if it presents a clear and specific threat to the safety and security of a facility as long as the nature of such redacted information is indicated. Personal identifiers shall be redacted from the public report.

F. Practices under PREA

1. When necessary, but no later than once each year, the PREA Coordinator shall assess, determine and document whether adjustments are needed to staffing plans, staffing patterns or video monitoring systems resources.

2. Supervisory employees in all programs shall be proactive in the prevention of sexual abuse and harassment when making roommate and bedroom selections for youth. Factors staff should consider include compatibility of youths' chronological age, maturity, gang affiliation, level of sophistication, functioning level, size, strength, disabilities, infirmities, behavioral history, and the detaining or committing offenses.

3. Employees shall consider every request by a youth for a room change and discretely inquire whether the youth is feeling unsafe. If the youth reports feeling unsafe, the employee should bring this to the attention of a supervisor and clinician for further review.

4. Employees should also consider whether there are any witnesses who should be relocated to insure their safety and protect them from intimidation or retaliation.

G. Training Requirements

1. All new employees with direct care responsibilities shall receive training in this policy through DYS Basic Training. Such training will take into consideration the ages and gender of the youth in DYS locations and will include:

   a. Responsibilities under PREA and this policy;

   b. Youth's right to be free from sexual boundary violations, sexual abuse and sexual harassment; and youth and employees' right to be free from retaliation for reporting violations of this policy;

   c. Common reactions of juvenile victims of sexual abuse and sexual harassment;

   d. How to detect and respond to signs of threatened and actual sexual abuse, how to distinguish between boundary violations and sexual abuse between youth and how to avoid inappropriate relationships with residents;

   e. How to communicate effectively and professionally with residents; and

   f. How to comply with mandatory reporting of sexual abuse to outside agencies and laws regarding applicable age of consent.

2. DYS Training Unit shall provide, at minimum, a refresher training every year to current employees.

3. Volunteers and interns who may have contact with youth shall receive training on this policy either through Basic Training or the Volunteer Orientation Training.

4. DYS shall ensure its investigators receive specialized training in conducting sexual abuse investigations to the extent such investigations are done by these investigators. Such training includes:

   g. techniques for interviewing juvenile sexual abuse victims;

   h. proper use of Miranda and Garrity warnings;

   i. criteria and evidence required to substantiate a case for administrative action or prosecutorial referral.

5. DYS contracted providers shall attend the trainings detailed above in section 1-3 or as otherwise determined by the Director of the DYS Training Academy.

6. DYS shall ensure that the contracted health services employees receive training detailed in the above section G. 1 and 2 and have training in detecting and assessing sexual abuse and sexual harassment, preserving physical evidence of sexual abuse, and responding to juvenile victims of sexual abuse and sexual harassment.

7. Those attending the trainings listed above shall sign an acknowledgment after such trainings that they understand and will follow the training received.

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