

Keeping LGBTQ Youth Safe in Juvenile Justice & Delinquency Placements

Many young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (“LGBTQ”) and in the custody of juvenile justice and delinquency systems are unsafe in their placements and are not receiving appropriate rehabilitative services. There is much that professionals working within these systems can do to ensure that LGBTQ young people are protected from harm and supported in their development.

ACKNOWLEDGE THEIR EXISTENCE.

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

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

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

and “morals” regulations. Violations of age-of-consent laws between young people of the same sex are more likely to be criminally charged and to be punished more harshly than violations between different-sex partners. These factors contribute to the over-representation of LGBTQ youth in juvenile justice and delinquency systems.

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

Adopt explicit written policies that provide guidance on how to better meet the needs of LGBTQ youth in juvenile justice settings and that prohibit discrimination and harassment based on actual or perceived sexual orientation, gender identity or HIV status. These policies should also include mandatory training for staff on sexual orientation and gender identity and guidance with regard to rooming assignments, dress codes, requests to be called by names and pronouns that match a youth’s gender identity and access to Gender Identity Disorder treatment for transgender youth.

SEEK OUT SAFE, AFFIRMING PLACEMENTS.

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

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



PROTECT THE RIGHT OF LGBTQ YOUTH TO SAFETY.

All young people in state custody are entitled to state protection from physical and emotional harm from other juveniles or the staff. The federal right to safety while in state custody is grounded in the Fourteenth Amendment of the U.S. Constitution and has been enforced by courts around the country. In fact, juveniles are entitled to greater civil rights protections while in state custody than adult prisoners. The right to safety has been held by courts to include the right to appropriate medical and mental health care services. When a young person in state custody is harassed, harmed or not provided adequate treatment and services, the state officials responsible for ensuring protection can be held personally liable. Courts have awarded sizeable monetary awards for damages in cases involving mistreatment of LGBTQ young people (e.g., *R.G. v. Koller*, District of Hawaii, 2006, and *Rodriguez v. Johnson*, Southern District of New York, 2006). In 2007 and 2008, the Hawaii Youth Correctional Facility and the New York State Office of Children and Family Services implemented policies to protect LGBTQ youth in their care. California's Juvenile Justice Safety and Protection Act prohibits discrimination and harassment based on sexual orientation and gender identity specifically in juvenile facilities. Cal. Welf. & Inst. Code §§ 224.71(i), 224.73 (effective 2008).

ENSURE FREEDOM FROM UNREASONABLY RESTRICTIVE CONDITIONS OF CONFINEMENT.

Unlike adult inmates, young people in the custody of the juvenile justice system have not been “convicted” of crimes. They are entitled to services intended to rehabilitate — not punish — them. The public policy and legislative intent behind the juvenile justice and delinquency systems are to provide services to help a youth adjudicated as a delinquent to become a productive member of society. While some restrictions on the freedom of young people within these institutions are necessary for safety purposes, these restrictions must be “reasonably related” to a legitimate government interest. If not, they are inappropriate punishment. LGBTQ young people in these systems shouldn't be subjected to conditions amounting to punishment or be stigmatized or humiliated as part of their treatment.

PROVIDE APPROPRIATE SERVICES.

Young people confined in institutions have the right to receive adequate medical and mental health services. Ignoring the health care needs of an LGBTQ young person in state custody would violate the young person's right to safety. For example, if a youth diagnosed with gender identity disorder exhibits a need for medical and psychological intervention and nothing is done to address that need — or worse, if the youth is referred to a so-called conversion or reparative therapist to change them — their legal rights have been violated. Furthermore, every institution should have policies governing the supervision and treatment of suicidal youth. Research shows that LGBTQ

young people facing extreme forms of harassment and abuse are at an increased risk for suicidal ideation and behavior. Ensure that anti-LGBTQ harassment is prevented, and that appropriate mental health services are available for victims.

DON'T ASSUME LGBTQ YOUTH ARE POTENTIAL SEX OFFENDERS.

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

PROVIDE A SOUND CLASSIFICATION SYSTEM.

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

NEVER UNNECESSARILY ISOLATE LGBTQ YOUTH FROM THE GENERAL POPULATION.

LGBTQ youth should never be placed in isolation or segregation simply because of their sexual orientation or gender identity, or as punishment for being open with others about their identity. Whether for administrative convenience or out of a well-meaning desire to protect LGBTQ youth from harassment, subjecting LGBTQ youth to isolation for extended periods of time violates their legal rights.

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

To order free copies of the *Getting Down to Basics* tool kit, contact Lambda Legal at 1-866-LGBTTeen (toll free) or 212-809-8585, or download it for free at www.lambdalegal.org or www.cwla.org.

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