

# Ensuring the Safety of LGBT Youths in the Juvenile Justice System

By Rachel Bosley and Caleb Asbridge

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Juvenile correctional agencies across the country work to create safe and healthy environments for the gay, lesbian and bisexual youths they supervise and, increasingly, juvenile agencies are faced with the challenge of doing the same for transgender youths. Agencies have some clear responsibilities with regard to these youths from both a moral and a legal perspective, as evidenced in such cases as *R.G. v. Keller*, 415 F. Supp. 2d 1129 (D. Haw. 2006) and *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003) and settlements such as *Rodriguez v. Johnson, et al.*, and *L.P. v. Philadelphia, et al.* Now is the time for agencies to take a deliberate, proactive approach to the supervision of lesbian, gay, bisexual and transgender (LGBT) youths to maximize each youth's chances for success in life, and to minimize agency liability in the future.<sup>2</sup>

LGBT youths are often perceived by society — their family, friends, teachers and classmates, as well as strangers on the street — as being different from other youths. Therefore, they are often treated differently and have different experiences. These experiences impact development, and not always in positive ways. As a result, LGBT youths are overrepresented in the juvenile justice system; although LGBT youths represent two to 10 percent of the general population, they may represent up to 15 percent of the detained population.<sup>3</sup> Regardless of whether they verbalize their feelings and identity, it is likely that corrections professionals work with LGBT youths on a daily basis.

## Operational Implications

Many juvenile justice agencies and facilities express a sincere desire to treat LGBT youths in a fair and respectful way and to promote positive interactions between youths and between youths and staff. At the same time, many agencies are unsure of the appropriate steps to take in addressing this issue. This article provides some broad guidance for agency leadership in this area.<sup>4</sup>

**Policy development.** Sound policy ensures consistency across the agency which, in this case, will guide the culture of the agency around its supervision and treatment of LGBT youths. Issues to consider include:

- Developing a new policy specific to the supervision and treatment of LGBT youths (versus modifying existing policies) — what areas would a new policy cover that are not addressed in existing policies?;
- Ensuring the inclusion of appropriate and accurate definitions of the various terms (sexual orientation, gender identity, biological sex, transgender, intersex, etc.) in policy;
- Adding sexual orientation and gender identity as protected classes to any agency policies regarding discrimination and harassment;
- Adding content to policy on professional conduct addressing the role that personal beliefs concerning sexual orientation and gender identity should play in an employee or volunteer's interactions with each youth; and
- Establishing appropriate name and pronoun usage: agencies must decide whether a transgender youth<sup>5</sup> will have the option of going by a (self-selected) name that corresponds with his or her self-identified gender, or if agency staff will call them by his or her legal name. Additionally, the agency must decide whether staff, when referring to a transgender youth, should use the pronoun matching his or her anatomy or his or her gender-identity. In advance of making this decision (and all decisions related to the supervision and treatment of LGBT youths), it is recommended that agencies research both the potential mental health impact of the decision, and relevant court verdicts.

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**Intake screening.** Does your youth screening process ask a youth for his or her sexual orientation or gender identity?<sup>6</sup> Additionally, if a youth states that he or she is transgender or staff have reason to believe a youth is transgender, are there procedures in place to determine whether an examination to establish biological sex is warranted?<sup>7</sup> When is the youth referred for medical or mental health services?

**Housing.** Agencies and facilities should consider making a policy decision regarding whether transgender youths are housed according to biological sex or gender identity, or if placement is determined on a case-by-case basis.<sup>8</sup> Many adult agencies' policies addressing the custody of transgender inmates dictate the creation of a committee to make appropriate decisions around housing placement, clothing, programming, etc. Juvenile agencies may want to consider making use of youth multidisciplinary teams to perform a similar function for transgender youths. Additionally, the extent to which the agency allows for involuntary, nonpunitive youth segregation or isolation for the purpose of protection should be revisited in this context.<sup>9</sup>

Once the placement decision is made, agencies will want to consider whether a transgender youth will be given the option of clothing or grooming himself or herself in a way that is appropriate to his or her gender identity. Finally, the agency may want to first consider whether youths in the general population should be educated or provided with material regarding LGBT issues, and then once a particular housing unit has been selected for a transgender youth, whether working with or further educating staff and/or youths in that housing unit would contribute to a safe and healthy environment.

**Searches and supervision.** Agencies should consider whether there are decisions to be made around LGBT youths showering separately or with different levels of supervision; what constitutes cross-gender supervision when supervising a transgender youth in an agency? Additionally, there may be decisions to be made around pat-down searches — such as what constitutes a cross-gender search when searching a transgender youth.<sup>10</sup> Finally, agencies may want to reexamine any policy that restricts communication between youths (regardless of sexual orientation) and demonstrations of physical affection between youths (regardless of sexual orientation) to ensure that the enforcement of policy and the consequences assigned for violations of policy are consistent and nondiscriminatory.

**Medical and mental health.** When considering the medical and mental health of the agency LGBT population, generally, the agency should consider whether to provide any particular support services to youths who come to identify as LGBT while in custody, or to youths who experience significant family distress as a result of their self-identification as LGBT.

When considering the medical and mental health of the transgender population specifically, there are more considerations. For example, agencies may want to consider establishing procedures in preparation for a youth entering the agency who has been diagnosed with gender identity disorder (GID). Will the agency refer the youth to an agency-selected medical practitioner for a second opinion? What qualifications are necessary to make this diagnosis? If the agency cannot immediately find an appropriate



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practitioner to treat the youth, are there procedures in place to ensure the youth receives appropriate care while a practitioner is found?

Regarding treatment in circumstances where the youth was diagnosed with GID prior to entering agency custody, the agency may want to consider establishing procedures to determine whether a youth who was undergoing hormone therapy before entering the agency will be given the opportunity to continue the hormone therapy, and on what basis that decision will be made. In circumstances where the youth was not diagnosed with GID previously but demonstrates symptoms of GID while in custody, the agency will want to consider procedures to ensure that the youth receives appropriate assessment and treatment, if necessary, to include circumstances in which a youth who was not undergoing hormone therapy previously wishes to begin hormone therapy while in agency custody. Regardless of when the youth was diagnosed with GID, the agency will want to consider the role that the youth's parents will play in assessment, diagnosis and treatment.

Finally, one of the most important issues an agency will have to consider about transgender youths is the role that a diagnosis of GID will play in the decisions the agency makes with regard to a youth; will a youth who self-identifies as transgender who is not diagnosed with GID receive different treatment (medical or otherwise)? Also, if a youth demonstrates some uncertainty in his or her gender identity, is there a maximum number of times determined by the agency that the youth may change his or her gender identity (i.e., every six months) to deter abuse of the system?

**Staff training.** There are areas of training that should be added or augmented to increase staff knowledge and capacity to safely supervise LGBT youths. Areas to consider include: staff ethics/appropriate role of personal beliefs; adolescent development, specifically related to sexual orientation and gender identity; language usage and assumptions of heterosexuality; and youth privacy rights and confidentiality issues.

**Family services.** An agency should consider whether it should initiate any educational or outreach services to families of LGBT youths to enhance youth-family relationships, or other family reunification or reintegration services to assist LGBT youths reenter into the community (should that be applicable to the agency). Additionally, an agency should consider whether it could provide LGBT youths with LGBT-specific aftercare or transitional services in the event that the youth does not have a supportive family to which he or she can return.

The issues for consideration mentioned above are broad; an article of this length cannot do justice to such a complex subject. However, the rights of LGBT individuals in confinement have been debated both in and out of courts for more than a decade. Now is the time for agencies to proactively work to ensure that any decisions made on this issue are made in a thoughtful and purposeful manner to ensure the dignity and safety of all youths.

## ENDNOTES

<sup>1</sup> Much work has been done in this area in the advocacy community by such organizations as the National Center for Lesbian Rights, Legal Services for Children, National Juvenile Defender Center (see also The Equity Project), the Child Welfare League of America, the Legal Aid Society Juvenile Rights Practice, Just Detention International and Lambda Legal. The Project on Addressing Prison Rape at the American University Washington College of Law has also done work in this realm, and anticipates releasing a policy guide for correctional agencies in the near future through the National Institute of Corrections.

<sup>2</sup> See Estrada, R. and J. Marksamer. 2006. *The legal rights of LGBT youth in state custody: What child welfare and juvenile justice professionals need to know*. Washington, D.C.: Child Welfare League of America; and a 2006 National Center for Lesbian Rights fact sheet titled *The Legal Rights of Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System* for a thorough overview of relevant court decisions on the topic.

<sup>3</sup> Ware, W. 2010. *Locked up and out: LGBT youth in Louisiana's juvenile justice system*. New Orleans: Juvenile Justice Project of Louisiana.

<sup>4</sup> See [nclc.org/lgbti](http://nclc.org/lgbti) or [www.mossgroup.us/LGBTI.html](http://www.mossgroup.us/LGBTI.html) for further resources on the subject of LGBT youths in custody.

<sup>5</sup> A transgender male is an anatomically female individual who self-identifies as male. A transgender female is an anatomically male individual who self-identifies as female.

<sup>6</sup> Youths with sexual orientations other than heterosexual reported an incidence of youth-on-youth sexual abuse of almost 12 times the rate of that of heterosexual youths in the Bureau of Justice Statistics Special Report, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*. See the Prison Rape Elimination Act (PREA) draft standard 115.341 for agency requirements on intake questions and draft standard 115.342 for requirements on placement decisions.

<sup>7</sup> See PREA standard 115.315 for agency requirements on examinations of transgender youths. The PREA standards can be found at <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>.

<sup>8</sup> See PREA standard 115.342 for agency requirements on LGBT youth housing placement. The PREA standards can be found at <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>.

<sup>9</sup> See PREA standard 115.342 for agency requirements on protective youth isolation. The PREA standards can be found at <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>.

<sup>10</sup> See PREA standard 115.315 for agency requirements on cross-gender pat-down searches. The PREA standards can be found at <http://www.prearesourcecenter.org/sites/default/files/library/2012-12427.pdf>.

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