

Getting Down to Basics

Tools to Support LGBTQ Youth in Care

Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth

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

BE A VISIBLE ADVOCATE FOR LGBTQ YOUTH.

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

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

Research shows that young people facing family rejection, harassment and school failure are more likely to enter the child welfare and juvenile justice systems. At home, LGBTQ youth and those perceived to be LGBTQ are more likely to face disapproval, abuse and neglect—including being thrown out of their homes—than their non-LGBTQ peers. It may be harder to find supportive permanent placements for LGBTQ youth once they are in the foster care system, extending their length of time in care. On the streets, LGBTQ teens may be forced into illegal activities, including sex work, to support themselves. LGBTQ youth of color congregating in public places may face selective enforcement of “quality of life” offenses and “morals” regulations. Violations of age-of-consent laws among young people of the same sex are more likely to be criminally charged and punished more harshly

than violations among young people of the opposite sex. These factors contribute to the disproportionate numbers of LGBTQ youth in out-of-home care.

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

While of course parents have the right to inculcate their values in their children, this doesn't extend to a right to subject children to harm and abuse. You should be prepared to advocate on behalf of a child who is not safe at home because of parental intolerance. Often misunderstood within the child welfare and juvenile justice systems as well, many LGBTQ youth face abuse, harassment and isolation once in care. In foster family homes and group care facilities, LGBTQ youth are often mistreated and even harmed by staff, caregivers and other young people. Some are forced to convert to anti-LGBTQ religions and practices. In the delinquency system, LGBTQ youth may be placed in more restrictive and punitive settings than their offenses warrant, or isolated or segregated from the general population for their own protection or based on the misguided notion that others need to be protected from them. There currently is a serious dearth of LGBTQ-sensitive child welfare and juvenile justice services and placements. Your LGBTQ clients need your help to ensure they receive safe and appropriate treatment. Canvass the available resources in your community. Develop and maintain a network of LGBTQ-sensitive youth service providers to whom you can refer LGBTQ clients.

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
Joint Initiative



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

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

PROTECT THE PRIVACY OF YOUR CLIENTS.

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

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

The federally mandated State Plan for Foster Care and Adoption Assistance requires that there be a case plan for each child placed in the child welfare system.¹ While it is important to ensure that the service plan addresses the unique needs of your LGBTQ clients, there should be careful consideration as to whether the plan should include confidential information regarding your client’s sexual orientation or gender identity that could later be used against him or her by those harboring anti-LGBTQ bias. Under the Fourteenth Amendment to the U.S. Constitution, all young people in state custody have the affirmative right to protection from harm. This right—the substantive due process liberty interest in safety—includes the right to appropriate services, medical care and safe placements. LGBTQ young people harmed or discriminated against while in state custody have brought successful civil rights lawsuits against state officials, some resulting in sizeable monetary damage awards (e.g. *R.G. v. Koller*, 415 F. Supp.2d 1129 (D. Haw. 2006) and *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006)).

Some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply to those diagnosed with gender dysphoria, and that denying transgender youth the right to dress in ways that are consistent with their gender identities in group homes is discrimination based on disability (e.g., *Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003)). Be aware of state nondiscrimination

¹ The plan must be designed such that “the child’s health and safety shall be the paramount concern[.]” 42 U.S.C. § 671(a)(15)(A). The plan must include “a discussion of the safety and appropriateness of the placement” and “address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.” §§ 675(1)(A),(B). Additionally, a procedure must be in place for review of the case plan on a regular basis, to ensure that the plan remains “consistent with the best interest and special needs of the child[.]” § 675(5)(A).

laws, particularly those that are LGBTQ-inclusive, and seek their enforcement on behalf of your clients in out-of-home care.

PROTECT LGBTQ YOUTH FROM SEXUAL ABUSE.

LGBTQ youth are often vulnerable and at increased risk for sexual abuse in juvenile justice and congregate care settings. In 2012 the U.S. Department of Justice released national standards in accordance with the Prison Rape Elimination Act of 2003 (PREA), aimed at protecting inmates and detained juveniles from sexual abuse. For more information about how the PREA standards protect LGBTQ people, please read the National Center for Transgender Equality fact sheet found here: www.transequality.org/Resources/PREA_July2012.pdf.

CONNECT WITH ADDITIONAL RESOURCES.

The Equity Project is an initiative to ensure that LGBT youth in juvenile delinquency courts are treated with dignity, respect and fairness. The Equity Project examines issues that impact LGBT youth during the entire delinquency process, ranging from arrest through post-disposition. For more information, visit their website at www.equityproject.org. The Equity Project offers an excellent resource in a report examining the experiences of LGBT youth in juvenile courts across the country. The report, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), is based on information collected from surveys and interviews with juvenile justice professionals, focus groups and interviews of youth who possess relevant firsthand experience and an extensive review of relevant social science and legal research findings. Download it free of charge at www.equityproject.org/pdfs/hidden_injustice.pdf.

The National Juvenile Defender Center (NJDC) provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination. For more information, visit their website at www.njdc.info.

The American Bar Association Center on Children and the Law: Opening Doors for LGBTQ Youth in Foster Care Project offers an excellent resource in their publication *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* by *Mimi Laver and Andrea Khoury* (2008). For more information, see www.americanbar.org/groups/child_law/projects_initiatives/openingdoors.html or www.thekidsarelistening.org.

For sample LGBTQ policies adopted by out-of-home care agencies, contact Lambda Legal at 212-809-8585 or toll-free at 1-866-LGBTEEN (1-866-542-8336).

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