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CPCS
Committee for Public Counsel Services
Defending the People of Massachusetts

youth law center

Defending Dignity

Effective Advocacy for LGBTQ+ Youth in the Juvenile Legal System

Youth Defender Leadership Summit
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Overview

This presentation provides an introduction to effective advocacy and support strategies for LGBTQ+ youth involved in the juvenile legal system, with a focus on the issues faced by transgender, nonbinary, and gender-diverse (TNGD) youth. Participants will explore three meaningful steps that can help promote safety, dignity, and positive outcomes for young people navigating this system. The presentation highlights key considerations and practical approaches for creating more affirming and responsive support for LGBTQ+ youth. It also serves as a foundation for a more comprehensive guide that will be shared at a later date.

If you are interested in receiving the upcoming Defending Dignity guide, please scan this QR code.



Who is in the room?

What state are you coming from?

Have you had any LGBTQ+ clients (that you know of)?

Do your clients face challenges related to their LGBTQ+ identity?

Step One

Learn what LGBTQ+ Youth Face in the Juvenile Legal System

Although **10.5%** of the United States population identifies as LGBTQ+, **up to 28%** of youth incarcerated in the juvenile legal system identify as lesbian, gay, bisexual, transgender, and/or queer.

Source: Kynn, J., Boyke, H., McCarthy, S., & Gzesh, A. S. (2024). Structural vulnerabilities and over-criminalization of LGBTQ + youth in the California Justice System. *Children and Youth Services Review*, *160*, 107586. https://doi.org/10.1016/j.childyouth.2024.107586

Pathways to System Involvement



LGBTQ youth are disproportionately arrested connected to survival-based behaviors, such as:

- Running away / rejected by parents
- Truancy
- Minor conduct offenses
- Survival sex

LGBTQ youth are also overrepresented in foster care and among youth experiencing homelessness.

Source: The National Council of Juvenile and Family Court Judges

Major Issues Facing Youth



Solitary Confinement



Lack of Affirmation



Harassment, Abuse, and Assault

Solitary Confinement/Segregation



Transgender, nonbinary, and gender-diverse (TNGD) youth are disproportionately subjected to segregation or isolation.

Source: The National Council of Juvenile and Family Court Judges

Lack of Affirmation

- Sexual and gender minority youth in correctional facilities reported a higher prevalence of suicidal ideation (42.2%), suicide attempt (37.5%), and self-harm (57.8%) compared with all other groups.
- Affirming TNGD youth helps to protect their mental and physical health, but young people are rarely affirmed while involved in the juvenile legal system.
- Best practice gender-affirming medical care has been banned in approximately half of all states.



Source: Clark, K. A., Harvey, T. D., Hughto, J. M. W., & Meyer, I. H. (2022). Mental health among sexual and gender minority youth incarcerated in juvenile corrections. Pediatrics, 150(6). https://doi.org/10.1542/peds.2022-058158

Harassment, Abuse, and Assault



10.3% of LGBTQ youth reported peer sexual assault compared with 1.5% of heterosexual cisgender youth.

Source: (2017). (rep.). *UNJUST: LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM*. Retrieved from https://towyouth.newhaven.edu/wp-content/uploads/2020/10/UNJUST-lgbtq-incarcerated-youth.pdf?utm.

Step Two

Building Trust and Asking the Right Questions

Relationship Building

Use a **Client-Centered** Approach, acknowledging the harms your young client may have already experienced based on their gender, sexuality, race, national origin, disability, or other marginalized identity.

- Proactive convo about all aspects of identity connected to rights
- What does your client want?
- How do you build trust with your client?
- How do you prepare youth client for court?
- What are your legal obligations to your client?

Signaling Safety and Respect

Subtle signals can help youth feel comfortable disclosing their identity:

- Share your pronouns during introductions to all clients
- Display a rainbow sticker or flag in your space
- Ask all clients what name and pronouns they use
- If you make a mistake on pronouns, apologize briefly and move on
- Use inclusive language (i.e. “are you dating anyone” vs. “do you have a girlfriend”)

Ask Specific Questions

Many LGBTQ+ youth experience similar issues around the judicial system and the detention system.

Ask if your client…

- **is safe**:
  - Are they being placed in isolation or segregation “for their protection”?
  - Are they feeling respected by court officers, judges, probation officers, or other adults in their life?
  - Are they experiencing harassment from other youth or staff in their facility?
  - Are they feeling physically safe in their current placement?
  - Are they experiencing threats or harm from staff or youth based on their sexual orientation or gender identity, actual or perceived?
  - Are they reporting safety concerns that staff are ignoring?
  - Are they subject to unreasonable discipline from facility staff, including physical and chemical restraints?

Ask Specific Questions

Many LGBTQ+ youth experience similar issues around the judicial system and the detention system.

Ask if your client…

- **is receiving necessary services:**
  - Are they being denied access to mental health care that respects their identity and responds to their needs?
  - Are they able to access to appropriate clothing or grooming supplies?
  - Are they able to access medical care they might want, need, or have questions about?

If you have to ask a body parts/medical question

REASON + **CONSENT** +



Disclosure and Confidentiality

Explain Privacy

Clarify that you represent **your client**, not the facility or court. Be explicit about what information stays between you and the client. Explain any limits on privacy clearly, especially when it concerns LGBTQ+ status.

Informed Consent

Never document a youth's LGBTQ+ identity in filings or disclose their LGBTQ+ identity during court proceedings without permission. Disclosure must always be voluntary and client-centered.

A new client, Jay, discloses to you that he is a trans boy. He is experiencing severe anxiety related to his gender dysphoria, but he is afraid that if he tells his therapist that he is transgender his father will find out and disown him. His father might be at a routine hearing in two weeks. How would you navigate keeping confidentiality while ensuring your client gets the care he needs?

Courtroom Standards & Ethics

Counsel must model ethical behavior by addressing homophobic and/or transphobic conduct in the courtroom and protecting clients from unnecessary disclosure or stigma. This might include filing motions, or even just conspicuously using a client's name and pronouns in court.

In preparation for court, attorneys should discuss in advance with clients the realities of courtroom procedure and the possibility of bias, invasive questioning, or improper conduct. This gives attorneys and clients the chance to work together to decide upon the best strategy to navigate a potentially hostile courtroom.



Step Three

Take Action for your Client

Legal & Constitutional Obligations

- **Constitutional and Statutory obligations:** States must protect all youth in custody, including LGBTQ+ youth, by preventing discrimination, isolation, foreseeable harm, and denial of needed mental health care.
- **PREA Standards:** Requires juvenile facilities to prevent sexual abuse through zero-tolerance policies, staff training, vulnerability screening, reporting systems, and access to medical and mental health care.

Trump 2.0 Attacks on Prison Rape Elimination Act

- January 2025-**Executive Order 14168 (“Gender Ideology”)**
- April 2025-**DOJ defunds the PREA Resource Center**
  - Zeroing out funding for investigations and audits
- May 2025-**DOJ removes gender identity data requirements**
  - Justice Department removed questions about gender identity from the National Crime Victimization Survey, the Survey on Sexual Victimization, and the Survey of Inmates in Local Jails.
- December 2025-**DOJ Memo – facilities no longer inspected re LGBTQ+ standards**
  - Ordered prison inspectors to ignore PREA provisions that specifically apply to “transgender, intersex, and gender nonconforming” prisoners while auditing facilities, includes juvenile detention, immigration detention
  - Auditors are not employed by the DOJ, but DOJ certifies the auditors and can decertify them

PREA Juvenile Standards

- 28 C.F.R. Part 115 (states have incorporated PREA requirements into state law, reg, and policy)
- Rumors Trump administration planning regulatory changes that will gut PREA regs, unclear exactly what
- OJJDP PREA page: https://ojjdp.ojp.gov/programs/prea

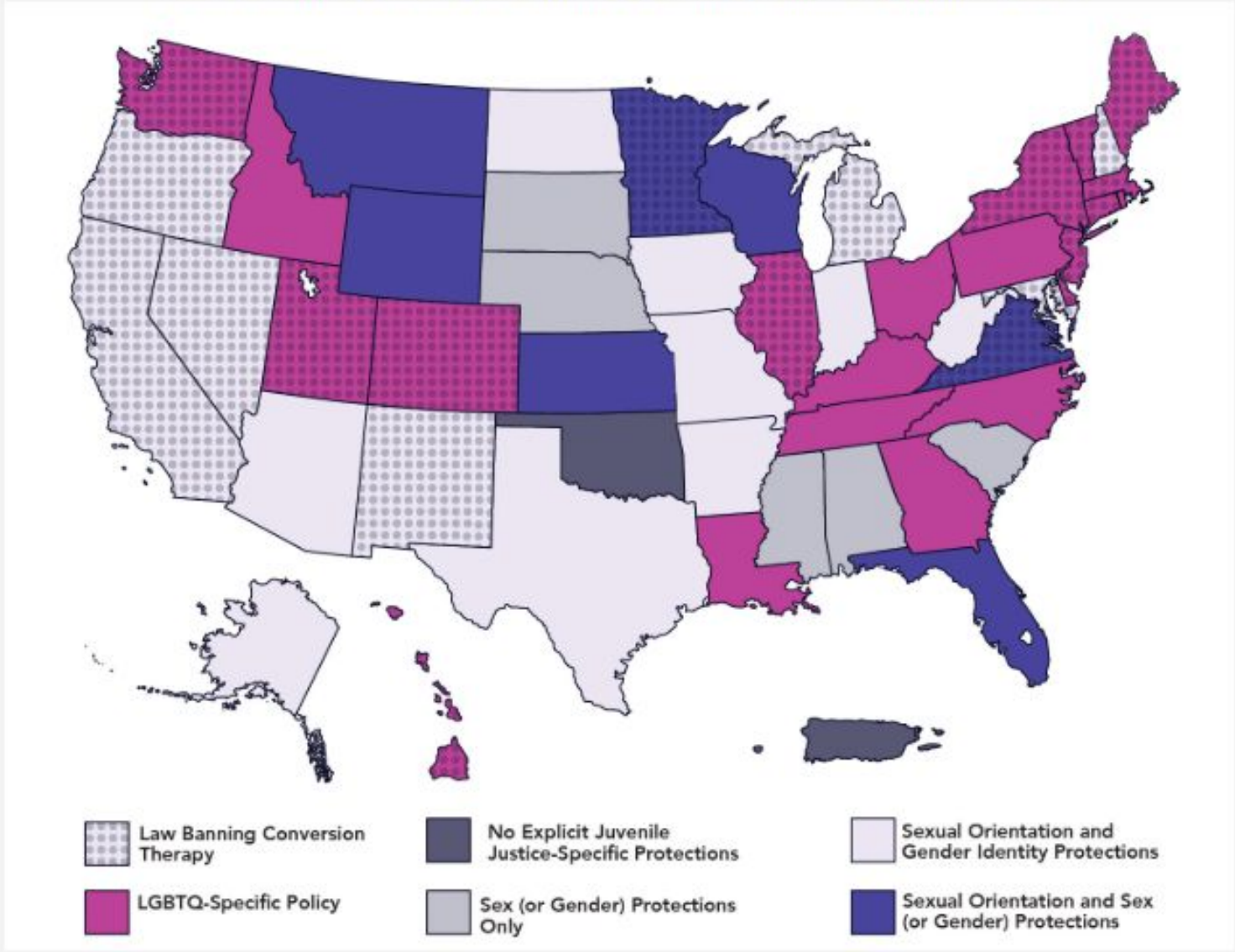
Juvenile Legal System

SOGIE Nondiscrimination Protections in State Law and Policy

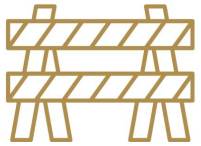
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State-by-State Analysis of Juvenile Legal Systems

This map and summary outlines state protections in the nation's juvenile legal system.
Scroll down to select your state and find it's specific information.



Issue: Harassment



Barriers

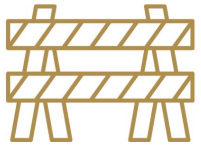
- Staff may not adequately protect LGBTQ+ youth. Staff training on supporting LGBTQ+ youth may be minimal or nonexistent
- Weakened PREA requirements



Advocacy Strategies

- Advocate for alternative, less-restrictive placements where youth will be safer
- Advocate for individual rooms, individual showers, and other accommodations that will improve safety for an LGBTQ+ young person

Issue: Harassment



Barriers

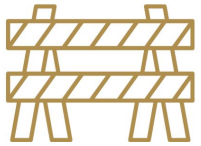
- Staff may have biased attitudes and/or act in homophobic or transphobic ways.
- Staff may lack training on bystander intervention when they witness other staff harass youth.



Advocacy Strategies

- Advocate for alternate, less restrictive placements as quickly as possible.
- Pursue grievances against staff members where possible.
- Consider reaching out to impact litigation organizations that may have capacity to assist with, consult on, or litigate the constitutional rights of young LGBTQ+ people.

Issue: Affirming TNGD Youth



Barriers

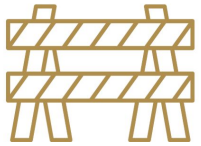
- Decisionmakers, including judges, may believe popular disinformation or misinformation about TNGD youth and their needs
- Names and pronouns are often not respected in court or in detention
- Youth may not be able to access appropriate restrooms in courthouses, depending on the state



Advocacy Strategies

- Use statistics, data, and scientific research to refute harmful stereotypes and misinformation about TNGD youth
- If possible, file a motion to respect names and pronouns; if not possible, conspicuously use names and pronouns
- Research gender-neutral restroom spaces before TNGD youth go to court

Issue: Affirming TNGD Youth



Barriers

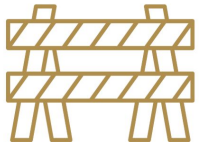
- TNGD youth are often placed in single-gender facilities that are unsafe for them
- Probation officers may not be respectful or affirming



Advocacy Strategies

- Use PREA standards to insist that youth be placed where they feel safest
- If a young person is having issues with their probation officer, advocate for a switch to a different officer or request a community support program.

Issue: Affirming TNGD Youth



Barriers

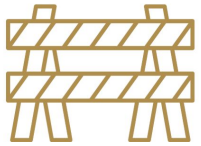
- State and federal limitations on gender-affirming care (GAC)
- Decisionmakers may believe disinformation or misinformation about GAC for youth



Advocacy Strategies

- In states that allow GAC
  - Ensure continuity of existing GAC
  - Advocate for initiation of GAC when clinically indicated
- In states that do not allow GAC
  - Reframe advocacy around securing affirming mental health services and other harm reduction
  - Review the law to evaluate options
  - Refute harmful narratives

Issue: Solitary Confinement and Isolation



Barriers

- Youth may be subjected to solitary confinement or “protective” isolation. This practice is profoundly harmful to all human beings, but especially youth.



Advocacy Strategies

- Request documentation when solitary is used, including information on why less restrictive alternatives were not used
- Advocate for initial placement in facilities where youth believe they will be safest
- Argue that isolation based on LGBTQ+ status directly violates PREA standards

Structuring Legal Arguments

Law: Legal Principle

Facts: Relevant Case Facts

Common Sense: Common Knowledge/ agreed upon statement

Science: Study/Report

Connect: Tie to your Case

Law

- Statutory purpose of the Juvenile Court
- PREA
- State law nondiscrimination protections
- Agency policy
- Caselaw:
  - Bostock v. Clayton County, GA
  - Grimm v. Gloucester County School Board
  - Talbott v. United States



Common Sense

- All children brought before the court should be treated with respect and kindness.

- A child should not be held in detention if it means that they will be subject to solitary confinement and the irreparable harm it causes

- Safety is a vital concern when making decisions about placing a young person in detention.

Science

- Russell ST, Pollitt AM, Li G, Grossman AH. Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth. J Adolesc Health. 2018 Oct;63(4):503-505. doi: 10.1016/j.jadohealth.2018.02.003. Epub 2018 Mar 30. PMID: 29609917; PMCID: PMC6165713.
- Olson KR, Durwood L, DeMeules M, McLaughlin KA. Mental Health of Transgender Children Who Are Supported in Their Identities. Pediatrics. 2016 Mar;137(3):e20153223. doi: 10.1542/peds.2015-3223. Epub 2016 Feb 26. Erratum in: Pediatrics. 2018 Aug;142(2):e20181436. doi: 10.1542/peds.2018-1436. PMID: 26921285; PMCID: PMC4771131.
- How solitary confinement hurts the teenage brain - the Atlantic; https://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/ , 2014.

Structuring Legal Arguments

Law: Client should be referred to by (name)/(pronoun).
The Juvenile Court must facilitate the care of children within its jurisdiction.

Facts: The child before the court uses he/him pronouns in accordance with his gender identity.

Common Sense: Ignoring or denying a child's right to express their identity is harmful.

Science: The use of name/pronouns aligned with gender identity leads to better mental health for children. Reduced depression; increased self esteem.

Connect: In accordance with the court's purpose & mission, the use of this child's correct pronouns/name is essential for his mental health, safety, and personal growth.

Zealous Advocate Checklist

- Centered client wishes in all actions
- Shared personal pronouns
- Clarified confidentiality policy
- Obtained consent before disclosure
- Verified access to affirming healthcare
- Documented all rights violations
- Challenged unnecessary isolation
- Checked facility licensing compliance

Every young person deserves to thrive and be safe, respected, and protected while in state custody.

DISCUSSION

What does advocacy for LGBTQ+ youth look like in practice?

In addition to what we've shared today, what other information or resources would you find helpful in a guide?

If you are interested in receiving the upcoming Defending Dignity guide, please scan this QR code.



The Gault Center invites you to a bi-monthly **2SLGBTQIA+ Youth Justice Workgroup** focused on support, education, and assistance for youth defenders working with LGBTQ+ clients. Email lfloyd@ylc.org to register!

Join us for the **Advancing LGBTQ+ Youth Rights Breakfast** on Friday, 10/30 at 7:45am by registering here: tinyurl.com/LGBTQBreakfastSignup



Join us for breakfast tomorrow!

Thank you!

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