











BENCH REFERENCE GUIDE

What Do I Need to Know About Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) Youth in Juvenile Court?

-  **Learn LGBTQ terminology and become comfortable using it (see reverse).**
-  **Know federal and state laws protecting LGBTQ youth (see reverse).**
-  **Consider whether a youth in your courtroom is LGBTQ and who else in the youth's life knows of his or her gender identity.**
 - ▶ Do not make assumptions that a youth is LGBTQ based on how the youth looks or acts. Ask the youth at side bar if he or she is LGBTQ if you think it's relevant.
 - ▶ Be careful not to "out" a youth unnecessarily.
 - ▶ Do not discuss a youth's sexual orientation or gender identity in open court without his or her permission.
-  **Use the name and pronoun a transgender youth prefers.**

If the youth's attorney does not tell you, ask, or ask at side bar, what name and pronoun the youth would like you to use.
-  **Determine the level of support an LGBTQ youth has from family and other adults.**
 - ▶ If the youth is experiencing family rejection, what is being done to support the family's acceptance and reconciliation?
 - ▶ Encourage the family to participate in counseling and support groups if they need help in supporting their LGBTQ youth.
-  **Determine if an LGBTQ youth is safe and respected in his or her placement.**
 - ▶ The placement should allow youth to dress in clothing appropriate for his or her gender identity.
 - ▶ If a gender-specific placement is recommended, a transgender youth should be placed according to his or her gender identity, rather than birth gender.
 - ▶ The placement should explicitly prohibit discrimination and mistreatment of youth on the basis of actual or perceived sexual orientation or gender identity.
 - ▶ If necessary, issue orders to prohibit detention facilities and other services from treating LGBTQ youth differently than their heterosexual peers.
 - ▶ Ensure that placement facilities that are less restrictive are not refusing to accept an LGBTQ youth because of his or her sexual orientation or gender identity.
 - ▶ If an LGBTQ youth has a history of running away or is often truant, explore whether lack of safety or harassment may be contributing to those behaviors.
- ▶ Ensure that the LGBTQ youth is encouraged and permitted to participate in activities consistent with the youth's interests and identified communities. (Welf. & Inst. Code, §§ 362.05, 16001.9.)
-  **Determine if the LGBTQ youth is safe at school and is not facing harassment, violence, or discrimination.**
 - ▶ Is the youth safe in the school and en route to and from school? If not, what is the school doing to provide or ensure safety? What is the youth's placement doing?
 - ▶ Is lack of safety or harassment contributing to truancy?
-  **Determine whether a transgender youth has medical needs related to the youth's gender transition.**

Some transgender youth may be undergoing hormone or other medical treatment. Issue any necessary orders to allow transgender youth to receive medically necessary treatment recommended by qualified health-care practitioners knowledgeable about gender identity disorder and transgender youth. Denial of these services could be physically and emotionally harmful.
-  **Determine whether services proposed in an LGBTQ youth's case plan are appropriate and delivered by staff knowledgeable about LGBTQ issues and supportive of these youth. Services should:**
 - ▶ Provide training on issues related to sexual orientation and gender identity.
 - ▶ Not pressure a youth to change his or her sexual orientation or gender identity.
 - ▶ Adopt and enforce nondiscrimination policies.
 - ▶ Help LGBTQ youth address family rejection, school harassment, and societal stigma.
-  **Ensure that attorneys, social workers, probation officers, and court personnel are respectful to LGBTQ youth in your courtroom.**
 - ▶ Ensure that all persons working on an LGBTQ youth's case refrain from engaging in conduct that exhibits bias based on gender or sexual orientation. (Cal. Stds. Jud. Admin. 10.20(a)(2); Cal. Code Jud. Ethics, canon 3B(6).)
 - ▶ Immediately respond to any homophobic or inappropriate comments made in your presence.
 - ▶ Determine whether an LGBTQ youth's attorney is supportive of the youth's needs.
 - ▶ Encourage continuing education among courtroom staff and court personnel about LGBTQ youth issues.

The Administrative Office of the Courts (AOC), in consultation with the Judicial Council's Access and Fairness Advisory Committee, developed this guide for judicial officers with juvenile calendars to help them address issues relating to lesbian, gay, bisexual, transgender, and questioning youth in the court system.

ADDITIONAL INFORMATION ON STATE LAWS AND LGBTQ YOUTH

California Department of Social Services Ombudsman's Website for LGBTQ Youth

www.fosteryouthhelp.ca.gov/LGBTQ.html

Foster Care Nondiscrimination Act (Assem. Bill 458)

www.nclrights.org/site

- ▶ All foster children and all adults engaged in the provision of care and services to foster children have a right to fair and equal access to all available services, placement, care, treatment, and benefits.¹
- ▶ All foster children and all adults engaged in the provision of care and services to foster children have a right not to be subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity.²
- ▶ These rights and protections are included in the California Foster Child List of Rights.
- ▶ All group home administrators, foster parents, and department licensing personnel must receive initial and ongoing training on the right of a foster child to have fair and equal access to all available services and to not be subjected to harassment or discrimination based on their actual or perceived sexual orientation or gender identity.³

California Student Safety and Violence Prevention Act ⁴

This act protects students and school employees against discrimination and harassment based on their actual or perceived sexual orientation or gender identity at all California public schools and any school receiving state funding except religious schools. The protections cover any program or activity in a school, including extracurricular activities and student clubs.

California Juvenile Justice Safety and Protection Act ⁵

- ▶ This act prohibits harassment and discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status in all California Department of Juvenile Justice (DJJ) facilities.
- ▶ DJJ facilities must ensure the safety and dignity of every youth in their care and must provide care, placement, and services to youth without discriminating on these bases.
- ▶ SB 518 establishes a Youth Bill of Rights that explains the many rights that youth confined in DJJ facilities have under state law and the U.S. Constitution. The Youth Bill of Rights lists 17 basic fundamental rights for youth, including the right to live in a safe, healthy, and clean environment that is conducive to treatment and rehabilitation and where they are treated with dignity and respect.⁶

KEY TERMS ⁷

BISEXUAL: *A person who is emotionally, romantically, and sexually attracted to both males and females.*

GAY: *A person who is emotionally, romantically, and sexually attracted to persons of the same sex. May be used to refer to gay males only. Preferred over the term "homosexual," which has clinical overtones.*

GENDER IDENTITY: *A person's internal, deeply felt sense of being male or female.*

GENDER IDENTITY DISORDER (GID): *A disorder in a person whose gender identity conflicts with the sex designated at birth.*

LESBIAN: *A female who is emotionally, romantically, and sexually attracted to other females. Preferred over the term "homosexual," which has clinical overtones.*

LGBTQ: *An acronym commonly used to refer to lesbian, gay, bisexual, transgender, and questioning individuals.*

QUESTIONING: *Refers to a person, often an adolescent, who is exploring issues of his or her sexual orientation or gender identity.*

SEXUAL ORIENTATION: *A person's emotional, romantic, and sexual attraction to persons of the same or different sex. More appropriate than "sexual preference."*

TRANSGENDER: *Used as a general term to include all persons whose gender identity or expression do not match traditional expectations of how a person of that sex behaves in relation to his or her gender.*

TRANSSEXUAL: *A person who seeks to live in a gender opposite of that designated at birth and who usually has or wants medical intervention (through hormones or surgery) to live comfortably in that gender. Many transsexual people refer to themselves as "transgender."*

¹Welf. & Inst. Code, § 16001.9(a)(23); Welf. & Inst. Code, § 16013(a).

²*Ibid.*

³Health & Saf. Code, §§ 1522.41(c)(i)(H), 1529.2(b)(3)(F), 1529.2(b)(4)(E), 1563(c)(5).

⁴Educ. Code, §§ 220, 210.7, 212.6, 32228, 51500.

⁵Welf. & Inst. Code, §§ 224.71(i), 224.73.

⁶Welf. & Inst. Code, § 224.71.

⁷Based on information provided by Judicial Education and Training Program, Williams Institute on Sexual Orientation Law and Public Policy, University of California, Los Angeles School of Law.



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