



**Lesbian, Gay, Bisexual,  
Questioning, and/or Gender  
Nonconforming and Transgender  
Girls and Boys in the California  
Juvenile Justice System:  
A Practice Guide**

Angela Irvine, Ph.D.  
Shannan Wilber, Esq.  
Aisha Canfield, M.P.P.

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## INTRODUCTION

Impact Justice and the National Center for Lesbian Rights developed this practice guide to support California probation departments in meeting their obligation to promote the safety and well-being of lesbian, gay, bisexual, questioning, and/or gender nonconforming and transgender (LGBQ/GNCT) youth in their care and custody.<sup>1</sup> The guide summarizes research showing that LGBQ/GNCT youth are significantly overrepresented in the state's juvenile justice system, and are at higher risk than their peers for a host of negative outcomes. Based on these findings and emerging legal and professional standards, the guide recommends policies and procedures to prohibit discrimination, prevent harm, and promote fair and equitable treatment of LGBQ/GNCT youth in the state's juvenile justice system.

## WHAT WE KNOW ABOUT LESBIAN, GAY, BISEXUAL, QUESTIONING AND/OR GENDER NONCONFORMING AND TRANSGENDER (LGBQ/GNCT) YOUTH IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM

An emerging body of literature shows that LGBQ/GNCT youth are more likely to be arrested, charged, detained, and incarcerated than straight and/or gender conforming and cisgender (S/GCC) youth (Irvine and Canfield, 2016a; Irvine and Canfield, 2016b; Himmelstein and Brückner, 2011; Garnette et al., 2010; Majd et al, 2009). Research also shows that LGBQ/GNCT youth are overrepresented in the juvenile justice system (Irvine, 2010; Irvine and Canfield, 2016a; Irvine and Canfield, 2016b)

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<sup>1</sup> For the purpose of this practice guide, “lesbian” is defined as a girl or a woman who is emotionally, romantically, or sexually attracted to girls or women. “Gay” is defined as person who is emotionally, romantically, and sexually attracted to individuals of the same sex, typically in reference to boys and men, but is also used to described women. “Bisexual” is defined as a person who is emotionally, romantically, and sexually attracted to both males and females. “Questioning” is defined as someone who is exploring their sexual orientation and/or gender identity. The term “gender nonconforming” refers to people who express their genders in a way that is not consistent with the societal expectations of their birth sex. “Transgender” is defined as a person whose gender identity (their understanding of themselves as male or female) does not correspond with their birth sex. “Cisgender is defined as a person whose gender identity does correspond with their birth sex. “Sexual orientation” is a term for whom someone is romantically or sexually attracted to. “Gender identity” is defined as a person’s internal sense of being a man, boy, woman, or girl. “Gender expression” describes how someone chooses to perform their gender identity, usually through clothing, hair, and chosen name.

Impact Justice partnered with the Chief Probation Officers of California (CPOC) to conduct a one-time survey of detention halls, ranches, and camps across the state to determine how many LGBTQ/GNCT youth are detained or incarcerated at any given time. This study found that 19% of detained youth are LGBTQ/GNCT (See Appendix A for a full description of methods). At the same time, 90% of these youth are of color, so when we discuss the incarcerated LGBTQ/GNCT youth population, we are largely talking about LGBTQ/GNCT youth of color.<sup>2</sup>

We elaborate on the survey findings below, detailing how many LGBTQ/GNCT youth are detained or incarcerated across the state, what risk factors may be driving justice involvement, the reasons LGBTQ/GNCT youth become detained or incarcerated, and how these risk factors may vary across gender.

#### CALIFORNIA DATA FOR BOYS AND GIRLS

The California survey findings shed light on how boys and girls are overrepresented at different rates. When describing the LGBTQ/GNCT population, it is important to distinguish between sexual orientation and gender conformity. Sexual orientation is defined as who you are physically or romantically attracted to. Gender conformity is determined by whether you express your gender in a way that is consistent with society's expectations of how your birth sex is supposed to act and/or dress. Whether one is gender conforming or not does not indicate sexual orientation.

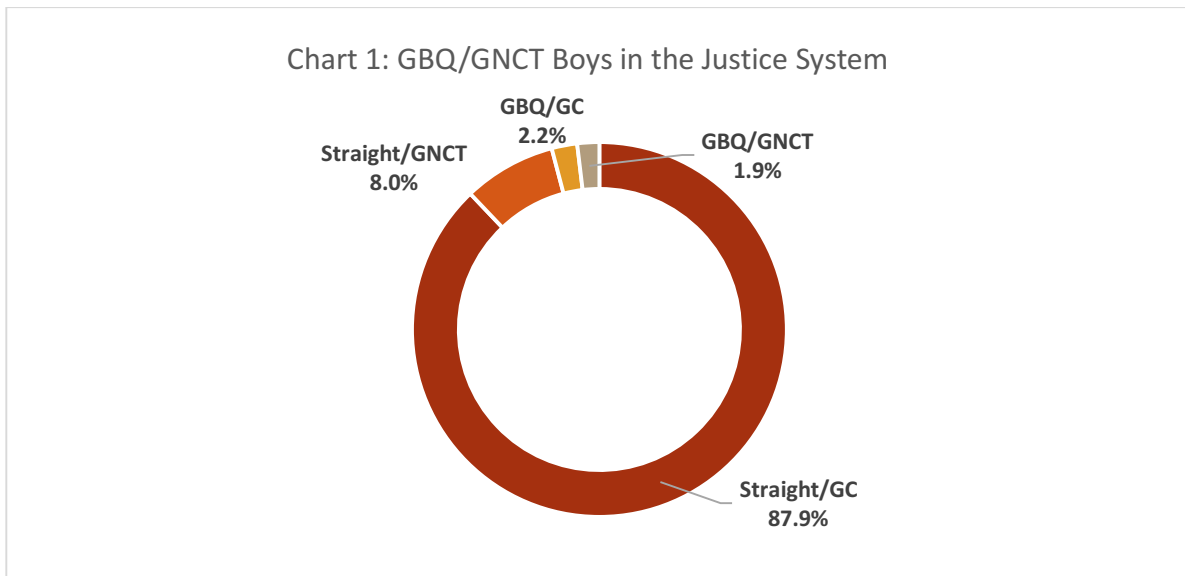
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<sup>2</sup> Research shows that 4.1-5.6% of the general youth population across the United States are lesbian, gay, or bisexual (LGB) (Gates, 2014). Since 12.5% of detained youth are LGB, this means that the LGB population is two to three times overrepresented within the detained population. When you compare boys to girls, this overrepresentation is particularly pronounced for girls. Unfortunately, there is not accurate data on gender nonconforming or transgender youth to make the same comparison.

## BOYS

Disaggregating sexual orientation from gender identity provides a more detailed description of incarcerated youth. Chart 1 (page 4) splits boys into four groups:

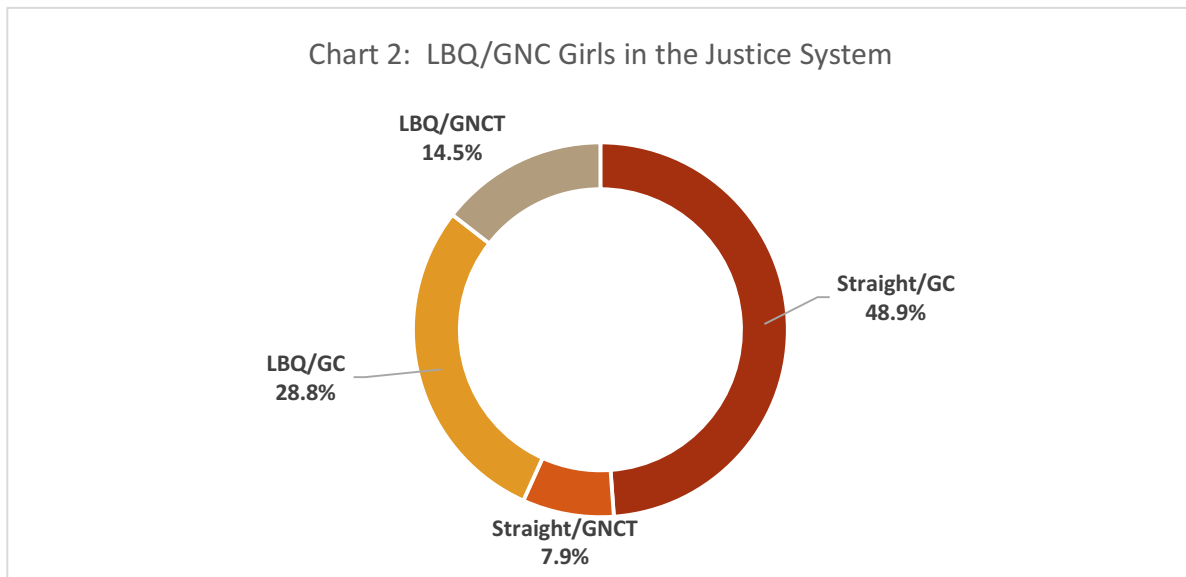
- **87.9%** of boys are heterosexual and gender conforming (these are straight boys who behave and/or dress in the way that society expects them to);
- **8%** of boys are heterosexual and gender nonconforming or transgender (these are straight boys who behave and/or dress in a way that is more feminine than society expects them to);
- **2.2%** of boys are gay, bisexual, and questioning and gender conforming (these are gay boys who behave and/or dress in the way society expects them to); and
- **1.9%** of boys are gay, bisexual, and questioning and gender nonconforming or transgender (these are gay boys who behave and/or dress in a way that is more feminine than society expects them to);
- Added up, **12.1%** of boys in California are GBQ/GNCT.



## GIRLS

Chart 2 uses the same methodology for girls:

- **48.9%** of girls in California are straight and gender conforming;
- **7.9%** of girls are straight and gender nonconforming or transgender;
- **28.8%** of girls are lesbian, bisexual, and questioning and gender conforming and;
- **14.5%** of girls are lesbian, bisexual, questioning, and gender nonconforming or transgender;
- Added together, **51.1%** of girls in California are LBQ/GNCT.





## REGIONAL DIFFERENCES

Impact Justice analyzed the statewide data to determine if there were any differences across the five CPOC regions: North, Sacramento, Bay, Central, and South. We found that there were statistically significantly higher rates of LGBQ/GNCT identification for the north, and lower rates of identification for the Bay, when compared with the rest of the state (see Chart 3).

Chart 3: Regional Differences in Identification Rates of Sexual Orientation, Gender Identity, and Gender Expression

Region	% of Youth Disclosing LGBQ Sexual Orientation or Gender Nonconforming or Transgender Gender Identity/Expression
North	30%
Sacramento	20%
Bay	15%
Central	20%
South	20%

These regional differences are worth noting. The most rural and geographically isolated region has the highest identification rate while the region known for having the most institutional supports for the LGBQ/GNCT community has the lowest identification rate. More research is needed in order to draw clear conclusions about why these trends exist and whether they hold in other states.

## CYCLING THROUGH CHILD WELFARE, HOMELESSNESS, SURVIVAL CRIMES, AND THE JUSTICE SYSTEM

Research shows that LGBQ/GNCT youth are more likely than their straight, gender conforming, and cisgender peers to experience a cycle of family rejection, child welfare involvement, running away, homelessness, engagement in survival crimes, and entry into the justice system. We elaborate on this pattern in more detail below by reviewing national research and then elaborating on what we know about youth in the California justice system.

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## CHILD WELFARE INVOLVEMENT

LGBQ/GNCT youth experience high rates of neglect, abuse, and rejection from family members (Valentine, 2008; Saewyc et. al., 2006; Witbeck et. al., 2004; Savin-Williams, 2004; Earls, 2002; Cochran et. al., 2002).

Outside of the home, LGBQ/GNCT youth are more likely than straight, gender nonconforming, and cisgender (GCC) youth to have been removed by the child welfare system from their home for abuse and neglect (Garnette et al, 2011; Irvine and Canfield, 2014; Irvine, 2010; Majd et al 2009).

The California survey asked detained and incarcerated youth two questions related to child welfare. We list each of the questions and how the answers varied across sexual orientation and gender conformity below:

- Have you ever been removed from your home because someone was hurting you?
  - Straight and GCC=17%
  - LGBQ/GNCT=35%
  
- Have you ever been placed in a group home or foster home because someone was hurting you?
  - Straight and GCC=6%
  - LGBQ/GNCT=23%

As such, LGBQ/GNCT youth are over *twice* as likely to have been removed from their home and almost *four* times as likely to have been placed in a group or foster home because someone was hurting them. These numbers don't include county youth who were removed from their homes or placed in congregate care because they got in trouble with the police or the juvenile court.

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## HOMELESSNESS

Rejection of youths' sexual orientation, gender identity, and gender expression (SOGIE) by parents, guardians, or placements in the foster care system leads to high rates of running away from home and homelessness among LGBQ/GNCT youth. Once youth are on the street, they may engage in sex work or other informal economies for survival (Majd et. al., 2009; Jones et. al., 2014, Dank et. al., 2015).

The California survey asked detained and incarcerated youth about previous experiences running away and being homeless. We list each of the questions and how the answers varied across sexual orientation and gender conformity below:

- Have you been detained for running away?
  - Straight and GCC=15%
  - LGBQ/GNCT=31%
  
- Have you ever been homeless after being kicked out or running away?
  - Straight and GCC=24%
  - LGBQ/GNCT=44%

As such, LGBQ/GNCT youth are approximately *twice* as likely to have a history of running away and homelessness—prior to entering the justice system—compared with their straight, gender conforming and cisgender peers.

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## SURVIVAL CRIMES

Once youth are on the street, they engage in a series of behaviors or activities to secure housing, food, and clothing. These activities vary from shoplifting to selling drugs to sex work. While there isn't a formal definition of a "survival crime", we have identified these activities as such in this guide.

Unfortunately, LGBQ/GNCT youth are more likely to be arrested and charged for crimes than their straight and gender conforming peers. Researchers have found that youth who experience same-sex attraction and youth who self-identify as lesbian, gay or bisexual are more likely to be stopped by the police, arrested, and convicted of crimes when engaging in the same behaviors as straight youth (Himmelstein and Brückner, 2011).

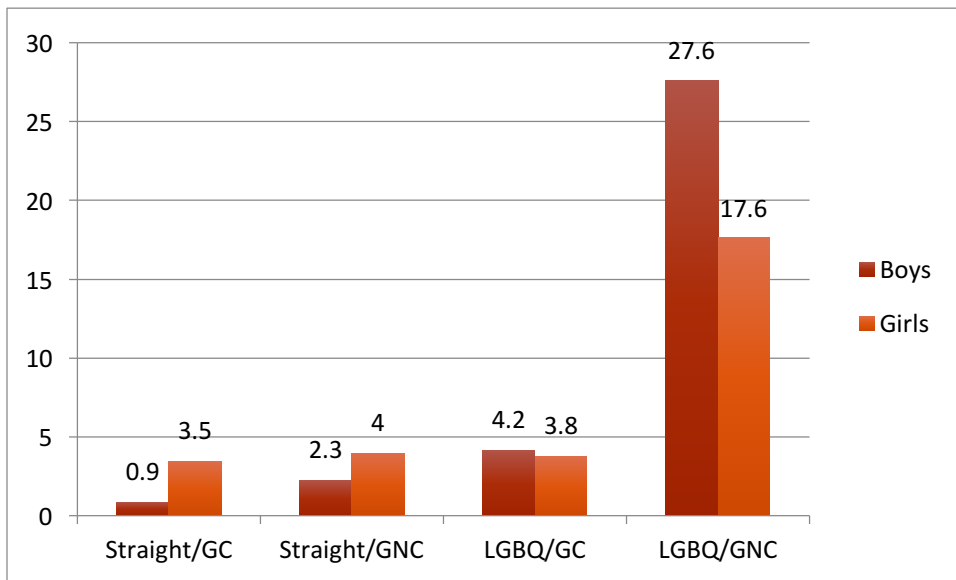
The one survey question related to survival crimes was, "Are you currently detained for prostitution?" Answers varied by sexual orientation and gender conformity as described below:

- Are you currently detained for prostitution?
  - Straight and GCC=1%
  - LGBQ/GNCT=7%

This shows that LGBQ/GNCT youth are *seven* times more likely to be detained or incarcerated for prostitution than straight and gender conforming youth.

Breaking down these findings even further, we ran descriptive statistics tests to see what percentage of each group of youth reported prostitution charges. Chart 4 shows that .9% of straight and gender conforming boys are detained for prostitution compared with 2.3% of straight and gender nonconforming boys, 4.2% of gender conforming gay, bisexual, and questioning boys, and 27.6% of gender nonconforming gay, bisexual, and questioning boys. It also shows that 3.5% of straight and gender conforming girls are detained for prostitution compared with 4% of straight and gender nonconforming girls, 3.8% of gender conforming lesbian, bisexual, and questioning girls and 17.6% of gender nonconforming lesbian, bisexual, and questioning girls. Put together, gender nonconforming LGBTQ youth are at the highest risk of being arrested and detained for prostitution related charges, with gender nonconforming GBQ boys at the highest risk.<sup>3</sup>

Chart 4: Percentage of Youth Reporting Prostitution Charges by Sexual Orientation and Gender Conformity



<sup>3</sup> These findings are reinforced by binary logistic regression analyses that find that both sexual orientation and gender identity are statistically significant predictors of being detained or incarcerated for prostitution in California (Irvine, Canfield, and Sherman, upcoming, 2017).

## PRACTICE RECOMMENDATIONS

The data documenting the disparate treatment and outcomes of LGBQ/GNCT youth in the juvenile justice system have supported new laws, professional standards and policies aimed at ensuring their safety and promoting their health and well-being. Appendix B summarizes federal and state laws, statutes, and regulations that govern the treatment of LGBQ/GNCT youth in the justice system.

These changes have created new expectations of juvenile justice personnel, which are summarized in the following practice recommendations.

### COLLECTING SOGIE DATA

One of the most important practice changes linked to improving outcomes for LGBQ/GNCT youth is collecting SOGIE data.

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### BACKGROUND

A large body of research has been developed on racial and ethnic disparities (RED). There are more research papers, blogs, policy briefs, infographics and other pieces of information on RED because more of that data exists. The vast majority of police departments, probation departments, juvenile courts, public defenders, and district attorneys keep track of the race or ethnicity of the youth they serve. In contrast, most *don't* keep track of sexual orientation, gender identity, and gender expression (SOGIE) within their case management systems.

Notably, jurisdictions around the country are beginning to change their practices around the collection of SOGIE.<sup>4</sup> This change is largely driven by the requirement under the Prison Rape Elimination Act to keep track of the SOGIE of prisoners and detainees.

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<sup>4</sup> Please note: there is a difference between collecting anonymous survey data as described in the research summary above and the ongoing collection of SOGIE data within case management systems. This subsection is devoted to the latter.

One geographic area that has some of the most experience in this area is the central region of California. The Chief Probation Officers of California is a professional organization that includes all chief probation officers in the state. They are split into five regions. The central region encompasses the counties east of the coastal range from Stanislaus County down through Kern County. These are rural counties and predominantly Republican.

Interested in serving the needs of LGBTQ/GNCT youth, the chiefs of this region partnered with Impact Justice and the Prison Law Office to complete a three phase project. The first phase was providing training for all intake officers on the factors that drive LGBTQ/GNCT youth into the justice system and how to ask youth about their SOGIE. These officers were trained to ask the following six questions<sup>5</sup>:

1. What was your sex at birth?
  - Male
  - Female
  - Intersex
  
2. What is your sexual orientation?
  - Bisexual
  - Gay
  - Heterosexual/straight
  - Lesbian
  - Questioning
  - Other
  
3. What is your gender?
  - Girl/Woman
  - Boy/Man
  - Transgender
  - Other
  
4. What is your gender expression?
  - Masculine
  - Feminine
  - Other

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<sup>5</sup> There are counties that do not ask all six questions. Some do not ask question number five.

5. Who are you sexually attracted to?

- Boys/men
- Girls/women
- Both

6. (For Staff) Does the youth's gender expression match cultural and societal expectations?

- Yes
- No
- Unknown

These questions have been specially designed to get the most accurate data on SOGIE without requiring vast restructuring of data management systems. Questions #2 and #3 are straightforward ways of asking about sexual orientation and current gender identity. Combining the answers from #1 and #3 also allow departments and researchers to determine if a young person is transgender—someone with a different gender identity than the gender assigned at birth. Finally, combining questions #3, #4 and #5 allow departments and researchers to measure whether someone expresses themselves in a way that matches their current gender identity. Question #4 relies on youth self-perception and question #5 allows an adult to assess whether a young person may be interpreted as being gender nonconforming. These questions on gender nonconformity are crucial to ensuring the safety of young people as they enter a secure facility because gender nonconforming people are at greatest risk of physical and sexual abuse (Beck et al, 2013).

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## RECOMMENDATIONS

Prior to implementing data collection protocols, probation departments should:

- Adopt and implement nondiscrimination and grievance policies to protect youth who disclose their SOGIE from adverse consequences and provide a means to redress violations.
- Locate or develop services to which LGBTQ/GNCT youth may be referred, if needed, to assist them with family, school, and peer relationships, and to support their healthy development.
- Provide training to relevant personnel about how to sensitively and effectively communicate with LGBTQ/GNCT youth about SOGIE.

- Develop standardized SOGIE questions and policies making disclosure optional for youth.
- Implement appropriate controls on the dissemination of SOGIE information.

As you are asking SOGIE questions, you will gather more accurate data if you:

- Create private settings for youth to respond to questions. These settings are most comfortable when there are posters and other signs that signal to youth that the department affirms youth across all sexual orientations, gender identities, and expressions.
- Explain to youth that you will be asking a standard set of intake questions that you ask everyone. Some of these questions include sexual orientation, gender identity, and gender expression because we want to know about all of the layers of their identity and we can't tell someone's SOGIE from looking at them.
- Ask SOGIE questions woven together with other demographic questions such as age, race, and zip code.



## DEVELOPING POLICY

Developing anti-discrimination policies is an equally important change for probation departments interested in improving outcomes for LGBQ/GNCT youth.

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### BACKGROUND

Several California probation departments have adopted comprehensive policies governing services to LGBQ/GNCT youth.<sup>6</sup> These policies typically guarantee to all youth fair and equal access to all services, placements, care, treatment, and benefits, and prohibit harassment or discrimination on the basis of actual or perceived SOGIE. Written nondiscrimination policies also reflect the department's commitment to ensuring equitable and respectful treatment of LGBQ/GNCT youth.

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### RECOMMENDATIONS

Nondiscrimination policies should apply to all probation and facility personnel, as well as contractors and volunteers, in all California probation departments.

In addition to protections against discrimination, probation policies should also provide guidance to personnel on a broad range of practice issues. These may include:

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### RESPECTFUL COMMUNICATION

Departments should set expectations of all personnel, contractors, and volunteers in both custodial and noncustodial settings that include the following guidelines:

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<sup>6</sup> The Equity Project has a library of anti-discrimination policies that have been adopted across the country. <http://www.equityprojects.org/type/policy/>

- Personnel are prohibited from using language that demeans, ridicules, or condemns LGBTQ/GNCT individuals, and should also avoid words that convey common misconceptions about SOGIE, such as referring to LGBTQ/GNCT status as a “lifestyle” or “preference.” These terms are inappropriate because they imply that SOGIE is a matter of personal choice rather than an innate and immutable part of human identity.
- Personnel should use the preferred name and gender pronoun of transgender or gender nonconforming youth, regardless of the name on the youth’s identity documents or court records.
- Personnel should avoid making assumptions about the SOGIE of youth or using heteronormative language – meaning language that assumes that everyone is heterosexual or that heterosexuality is preferable or superior to any other identity. An example is asking a boy, “Do you have a girlfriend?” A neutral alternative is, “Are you dating anyone?”
- Personnel should signal openness and acceptance through nonverbal and environmental cues. An example is displaying LGBTQ-affirming images, symbols, or quotations, such as the equal sign or rainbow flag.
- Personnel should be aware of cultural and generational differences in language related to SOGIE, and should defer to youth about the language they use to describe their identity.

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#### ENSURING SAFETY IN JUVENILE HALLS, CAMPS AND RANCHES

All youth in secure confinement have a constitutional right to safety. In addition, regulations implementing the federal Prison Rape Elimination Act (“PREA”), California Title 15 regulations, and professional standards extend specific protections to LGBTQ/GNCT and intersex youth to address their documented vulnerability in confinement facilities. Consistent with these requirements, written policies should clarify that:

- Facilities must have an accessible grievance procedure that permits youth to confidentially report harassment, discrimination, retaliation, or abuse.
- Intake staff must ask youth about their SOGIE as part of the initial safety assessment and must not make assumptions based on appearance or stereotypes.

- Staff must make classification and housing decisions on a case-by-case basis and must not automatically house youth solely on the basis of their actual or perceived LGBQ/GNCT status.
- Staff may not isolate LGBQ/GNCT youth to protect their safety.
- Staff may not automatically house transgender or intersex youth according to their sex assigned at birth. They should determine the appropriate housing unit after consideration of the youth's health and safety, potential management or security problems, the youth's perception of which housing assignment will be safe, and any recommendations from the youth's health care provider.
- Staff may not punish or prohibit behavior that is perceived to depart from gender norms.
- Staff must respect the gender identity of all youth, including transgender youth, refer to them by their preferred name and pronoun, and provide them with clothing and hygiene items consistent with their gender identity.
- Staff must conduct searches of transgender and intersex youth professionally and respectfully, and in the least intrusive manner possible, consistent with security needs.
- Staff must accommodate any youth, including transgender or intersex youth, whose physical or emotional condition justifies privacy while showering, performing bodily functions, or changing clothing.
- Facility staff must ensure that transgender youth receive a full medical assessment by qualified medical personnel who adhere to the relevant medical standards of care.
- Facilities must arrange for provision of medically necessary transition related health care to transgender youth, as determined by qualified medical personnel familiar with the relevant standards of care.
- Facilities must not employ or contract with medical or behavioral health providers that attempt to change a youth's sexual orientation or gender identity.

Some probation departments have included a broad range of stakeholders in the

development of their LGBQ/GNCT youth policies, including probation services and custody staff, prosecutors, defenders, judges, community partners, and LGBQ/GNCT youth and their families. An inclusive process that permits diverse participants to anticipate how the policy will impact daily practice results in a more thoughtful and comprehensive policy and creates broad awareness and buy-in. The agency's attorney should also review the policy to make sure that it complies with federal and state laws. Finally, the department should take steps to ensure that all relevant professional stakeholders, youth, and families are aware of the policy and understand its provisions.

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## DEVELOPING STAFF TRAINING

Probation departments should require all employees, contractors and volunteers to receive initial and ongoing training on agency policies governing services to LGBQ/GNCT youth. Along with a comprehensive nondiscrimination policy, training is critical to developing system-wide competence to treat LGBQ/GNCT youth fairly and respectfully, and to promote their health and well-being. Many people are not familiar with basic concepts related to SOGIE, and too many subscribe to myths and misconceptions about LGBQ/GNCT individuals that lead to biased and harmful practices, and undermine policies designed to support LGBQ/GNCT youth. Training is necessary, at the outset, to convey the foundational social science related to SOGIE, so that all juvenile justice stakeholders share a common vocabulary and understanding of relevant concepts. Training is also necessary to apply the agency's nondiscrimination policy to the questions that arise in daily practice—in the courts, probation services, institutions, and community services—and to ensure that participants understand their role in creating a safe and affirming system for all youth, irrespective of their SOGIE. Participants need a safe environment in which to ask questions, pose challenges, and make suggestions. Training also provides an important opportunity to convey the agency's commitment to promoting the well-being of LGBQ/GNCT youth and to reinforce the values that support its policies.

Probation departments should provide pre-service and ongoing training that includes:

- Basic SOGIE concepts and terminology, including common myths and misconceptions about development of gender and sexuality.
- How to collect SOGIE data.
- Research on the impact of stigma and bias on the health and well-being of LGBQ/GNCT youth and the drivers contributing to their disproportionate involvement in the justice system.

- How to work with LGBTQ/GNCT youth in a respectful and non-discriminatory manner, irrespective of one’s political or religious views.
- How to recognize, respond to, and prevent harassment of LGBTQ/GNCT youth.
- How to assess the safety and needs of LGBTQ/GNCT youth, and make appropriate decisions based on the assessment.
- How to communicate with youth about SOGIE.
- Confidentiality of information related to SOGIE and limitations on its disclosure.
- How to distinguish between consensual sexual contact and sexual abuse between youth in custody or placement.
- How to conduct respectful and professional searches of transgender and intersex youth when searches are necessary.
- How to create a professional environment in which youth and staff treat one another respectfully, irrespective of differences.
- How to identify and vet services and resources serving LGBTQ/GNCT system-involved youth.

## CONCLUSION

The research conducted by Impact Justice, the National Center for Lesbian Rights, and the Chief Probation Officers of California show that there is an overrepresentation of LGBTQ/GNCT youth—who are mostly of color—across the state. Nonetheless, the field of probation has learned that data-driven policy and practice change can reduce race and ethnic disparities in arrests, dispositions, out-of-home placements, and probation completion rates. These same lessons can and should be applied to LGBTQ/GNCT youth: SOGIE data collection, non-discrimination policies, and staff training will lead to more equitable outcomes.

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## APPENDIX A: METHODOLOGY

Impact Justice conducted a survey in detention halls, ranches, and camps across the state of California,<sup>7</sup> with the purpose of determining whether or not race, gender identity, gender expression, and sexual orientation play a part in the decision to detain a young person.

Probation departments administered surveys within their own facilities. Probation chiefs were tasked with identifying staff members to serve as research liaisons for their departments. Each liaison participated in training that provided context for the need to conduct this research, the history of LGBTQ/GNCT youth, the intersection of identities, particularly race, and LGBTQ/GNCT youths' experiences in the juvenile justice system.

Following the trainings, each site determined when to survey each youth in their facilities according to their size, programming and staff availability. Survey data was collected in one to five days, depending on the size of the county. The research liaisons sent all completed surveys back to the authors for data entry and analysis.

The one-page survey instrument and a one-page informed consent sheet were written at a fifth-grade reading level and were offered in both English and Spanish. The consent forms were read aloud by the research liaisons and only required youth to mark an "X" in a box in lieu of their signatures to maintain anonymity and ensure protection. Youth were not required to complete the survey at all or in its entirety, and were not required to disclose their decision to participate to the research liaisons. Once the youth completed the surveys, they folded them up and sealed them in envelopes, which were mailed back to the authors.

Research sites were all but two counties in California that have detention halls, ranches, and camps. There was one county in the far north of the state and one county east of Los Angeles that refused to participate.

Respondents varied across gender, race/ethnicity, and sexual orientation:

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<sup>7</sup> Juvenile detention facilities generally hold youth charged with crime while they wait to go to court. Some counties also hold youth in juvenile detention facilities if their parents refuse to pick them up or if a jurisdiction is having a difficult time finding a post-court placement. Depending on the reason for detention, stays can vary from one to two hours to several years.



- The majority of respondents were boys. 83.1% percent of respondents have a male gender identity, 16.4% of respondents have a female gender identity, and .5% of respondents have a different gender identity.
- 90.2% of respondents were youth of color. Broken down, 18.6% of respondents are African American or Black, 1.8% of respondents are Asian, 50.4% of respondents are Latino, 1.5% of respondents were Native American, 9.8% of respondents are white, 17.1% of respondents had a mixed race or ethnic identity, and .7% of respondents had another race or ethnic identity.
- 19% of respondents were either lesbian, gay, bisexual, questioning, gender nonconforming or transgender. Broken down, 8.1% of respondents are straight and gender nonconforming or transgender, 4.3% of respondents are lesbian, gay, or bisexual and gender nonconforming or transgender, and 6.6% of respondents are lesbian, gay, or bisexual and gender conforming.
- 51.1% percent of girls are lesbian, bisexual, or gender nonconforming and transgender.
- Youth of color disclosed being LGBTQ/GNCT at the same rate as white youth.
- Youth of color are overrepresented within the incarcerated LGBTQ/GNCT population: 90% of LGBTQ/GNCT youth in the juvenile justice system statewide are of color.

Data was analyzed using analysis of variance tests. We used these tests to determine if the identified subgroups have statistically different responses to survey questions. All of the findings reported in this paper were significant to  $p < .000$ .

## APPENDIX B: LEGAL AND PROFESSIONAL STANDARDS

The following sources provide an overview of the legal obligations of California probation department personnel to treat LGBQ/GNCT youth equitably and with dignity and respect, and to protect their safety and well-being. This list is limited to state and federal laws and regulations that apply specifically to LGBQ/GNCT youth, and is *not* intended as an exhaustive list of general legal requirements that apply to all youth in the system.

### FEDERAL CASE LAW

*R.G. v Kohler*, 415 F.Supp. 2d 1129 (2006).

In 2005, the American Civil Liberties Union of Hawaii sued the Hawaii Youth Correctional Facility (HYCF) in federal court on behalf of R.G., an 18-year-old lesbian, J.D, a 17-year-old boy perceived to be gay, and C.P., a 17-year-old transgender girl. The plaintiffs alleged that the HYCF staff failed to intervene to protect them from relentless emotional, physical and sexual abuse by other youth, and that the staff also verbally harassed and demeaned them. The court issued a preliminary injunction, finding that the plaintiffs were likely to prevail at trial by showing that the facility violated their constitutional rights. The court found that HYCF was deliberately indifferent to the health and safety of the plaintiffs by failing to have policies and staff training necessary to protect LGBT youth, adequate staffing and supervision, a functioning grievance system and a classification system to protect vulnerable youth. The court also held that placing youth in isolation as a means of protecting them from abuse amounted to punishment and violated the 14th Amendment of the Constitution.

### FEDERAL STATUTES

The Prison Rape Elimination Act (*Prison Rape Elimination Act*, 42 U.S.C. §§ 15601 *et seq.*) is the most comprehensive and relevant federal statute governing the treatment of LGBQ/GNCT youth in secure facilities.

Congress enacted the Prison Rape Elimination Act of 2003 (PREA) to respond to “the epidemic character of prison rape.” PREA required the U.S. Department of Justice (DOJ) to collect data on the prevalence of sexual assault in adult and juvenile facilities. The data produced through this investigation documented that youth who identify as lesbian, gay, bisexual or “other” are at significantly higher risk of sexual assault in custodial settings than

their heterosexual peers. As a result, the regulations adopted by the DOJ contain explicit protections of lesbian, gay, bisexual, transgender and intersex (LGBTI) youth.

- Facility personnel who have contact with youth must receive training in a broad range of topics, including how to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents, how to communicate effectively and professionally with LGBTI and gender nonconforming residents, and relevant laws regarding the applicable age of consent. (28 C.F.R. § 115.331)
- Within 72 hours of a resident's arrival and periodically thereafter, facility staff must screen residents to ascertain information that would identify and reduce the risk of sexual assault, including any gender nonconforming appearance or identification as LGBTI and whether the resident may therefore be vulnerable to sexual abuse. The Department of Justice (DOJ) has clarified that the person conducting the risk assessment must affirmatively ask whether the youth identifies as LGBTI. The facility may not compel youth to disclose this information, nor threaten a youth with discipline or other punishment for refusing to disclose such information. Staff should consider LGBTI status and gender nonconformity along with many other factors in evaluating the youth's safety. The facility must implement appropriate controls on the dissemination of responses to questions asked during this assessment in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents. (28 C.F.R. § 115.341)
- Facilities must make housing and programming assignments of transgender or intersex youth based on an individualized assessment that balances the resident's safety with potential management or security problems. Intake staff must give "serious consideration" to a transgender or intersex resident's own views with respect to his or her safety. Facilities may not assign LGBTI residents to specific housing or programs solely based upon their identity or status, nor consider LGBTI status or identification as an indicator of a propensity for sexual predation. The DOJ has clarified that a policy or practice of housing transgender or intersex youth based exclusively on external genitalia violates this regulation. Facilities must also permit transgender and intersex residents to shower separately from other residents. (28 C.F.R. § 115.342)
- Facilities may not automatically resort to isolation as a means of protecting LGBTI youth. Instead, agencies may only isolate youth as a last resort when other less restrictive measures are inadequate to ensure their safety, and then only until an alternative can be arranged. Facilities must also document the basis for concern

about the resident's safety, and the reason no alternative measure can be arranged. During any period of isolation, facilities may not deny youth daily large-muscle exercise or any legally required educational programming or special education services. Youth in isolation must receive daily visits from a medical or mental health care clinician, and must have access to other programs and work opportunities to the extent possible. If a youth is placed in protective isolation, the facility must document the basis for concern about the youth's safety and the reason why no alternative means of separation can be arranged. (28 C.F.R. § 115.342)

- Facilities must implement policies and procedures that enable youth to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. (28 C.F.R. § 115.315)
- Staff may not conduct cross-gender strip searches or visual body cavity searches, except in exigent circumstances or when performed by medical practitioners. Nor may staff conduct cross-gender pat down searches, except in exigent circumstances. Staff must document and justify any cross-gender searches. The DOJ offers two options for applying this standard to transgender or intersex youth in juvenile facilities: either use medical staff to perform searches, or ask youth to identify the gender of the staff with whom they would feel most comfortable conducting the search. PREA also prohibits staff from searching or physically examining transgender or intersex youth for the purpose of determining the youth's genital status. If the youth's genital status is unknown – and is somehow relevant – it may be determined during conversations with the youth, by reviewing medical records, or by obtaining that information as part of a broader medical examination conducted in private by a medical practitioner. The facility should train staff to conduct all searches professionally and respectfully, and in the least intrusive manner possible, consistent with security needs. (28 C.F.R. § 115.315)
- PREA requires the facility to provide at least one way for youth to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward reports of sexual abuse and sexual harassment to agency officials, allowing the youth to remain anonymous upon request. (28 C.F.R. § 115.351)

## CALIFORNIA LAWS

The following list identifies the California laws that are most relevant to probation departments serving LGBQ/GNCT youth:

- Sexual Orientation Change Efforts (SB 1172, Business & Professions Code § 865 *et seq*) SB 1172 prohibits licensed mental health providers, broadly defined, from engaging in sexual orientation change efforts (also known as conversion or reparative therapy) with a patient under 18 years of age. Probation agencies and juvenile facilities must ensure that licensed mental health providers who serve youth in probation custody do not engage in these practices.
- School Success and Opportunity Act (AB 1266, Education Code § 221.5) California schools (including schools operated in Title 15 facilities) must permit students to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student's records.
- California School Safety and Violence Prevention Act (AB 537, Education Code § 200) Protects students and employees in California public schools (including schools operated in Title 15 facilities) against harassment or discrimination on the basis of actual or perceived sexual orientation or gender identity.
- LGBT Inclusive Instructional Materials (AB 48, Education Code § 51204.5) Requires school boards to adopt instructional materials that include the contribution and roles of several categories of individuals, including lesbian, gay, bisexual and transgender Americans.
- Placement Consistent with Gender Identity (SB 731, Welfare and Institutions Code § 1601.9) Youth who are placed in settings licensed by Community Care Licensing (foster homes or group homes) are entitled to be placed according to their gender identity, regardless of the gender listed in their court records.

## CALIFORNIA REGULATIONS

This section lists the Title 15 regulations that govern the treatment of LGBTQ/GNCT youth in California juvenile facilities. The *Title 15 Minimum Standards for Juvenile Facilities*, most recently revised in April 2014, apply to all California juvenile halls, ranches, camps, forestry camps and boot camps. Several of the Title 15 regulations apply specifically to LGBTQ youth.

- Each facility must have a written non-discrimination policy that requires that all youth within the facility have fair and equal access to all available services, placement, care, treatment, and benefits, and provides that no person shall be subject to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, gender, sexual orientation, gender identity, gender expression, mental or physical disability, or HIV status, including restrictive housing or classification decisions based solely on any of the above mentioned categories. (15 CCR § 1324)
- Facilities must inform all support staff, contract employees, school and medical staff, program providers and volunteers of the facility's non-discrimination policy as part of their initial orientation. (15 CCR § 1324) Facilities must also inform youth of the nondiscrimination policy as part of their initial orientation. (15 CCR § 1353)
- Facilities must have written policies and procedures governing classification that prohibit staff from separating youth from the general population or assigning youth to a single occupancy room based solely on the youth's actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, gender, sexual orientation, gender identity, gender expression, mental or physical disability, or HIV status This section does not prohibit staff from placing youth in a single occupancy room at the youth's specific request or in accordance with Title 15 regulations regarding separation. (15 CCR § 1352)
- Searches of youth must, to the extent possible, be conducted in a manner that preserves the privacy and dignity of the person being searched, and may not be conducted for harassment or as a form of discipline or punishment. Facilities must have a written policy governing cross-gender searches and searches of transgender youth. (15 CCR § 1360)
- Each facility must have a written procedure permitting youth to file grievances related to any condition of confinement, including but not limited to health care

services, classification decisions, program participation, telephone, mail or visiting procedures, and food, clothing, or bedding, mistreatment, or harassment or violations of the nondiscrimination policy. (15 CCR § 1361)

- Facilities must provide Social Awareness programs that include, among other topics, tolerance and diversity. (15 CCR § 1378)
- In cooperation with the facility administrator, the health administrator in each facility must develop policies and procedures to accommodate youth who may have special needs when using showers and toilets and dressing/undressing. (15 CCR § 1413)  
This regulation is similar, though broader, than the PREA regulation requiring private showers for transgender and intersex youth.