

Policy Considerations: LGBTQI – Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex

The intent of this policy consideration is to evoke discussion within your jurisdiction regarding best practices and key elements to include in policies and procedures. Jurisdictions should consider these policies in the context of their unique juvenile justice system structure; state and local mandates; risk tolerance level; and other individual needs.

Throughout the policy consideration the acronym “PP” is used. This stands for “policy and/or procedure.”

General

- The PP clearly states the purpose/intent of the policy and/or procedure and how it links to the agency mission
- The PP includes basic information such:
 - Name of the policy and/or procedure owner (department, position, title)
 - Clear definitions of all key concepts related and that appear in the policy and/or procedure (i.e. gender non-conforming, gender identity, gender expression, gay, transgender, intersex, etc.)
 - References to other relevant agency policies, state administrative rules, federal mandates, and agency forms related to the specific policy and/or procedure
- The PP will be available to staff for review.
- The PP reviewed for revision/modifications at least annually.

Fair Treatment/Zero Tolerance

- The PP statement includes creating an affirming culture for all gender identify and expression, and promoting the health, safety and wellbeing of LGBTQI youth
- The PP upholds Lesbian, Gay, Bisexual, Transgender, Questioning, Intersex (LGBTQI) and gender non-conforming (GNC) youth will be free from discrimination and harassment and will be treated fairly and equitably.
- The PP provides youth multiple ways to report any incidents of harassment, discrimination, abuse, retaliation and/or mistreatment.
- The PP requires staff to protect youth from discrimination by intervening when witnessing anti-LGBTQI threats of violence, actual violence, or derogatory or suggestive comments or gestures.
- The PP requires staff to report and document incidents of discrimination and/or harassment to specific designated parties (as determined by the agency), in a timely manner.
- The PP describes youth’s ability to file a grievance and how management will respond promptly to grievances involving discrimination and/or harassment of LGBTQI youth (*Note*: This Policy and/or procedure may instead reference another agency policy that addresses the agency’s formal grievance process).
- The PP clearly states that personnel shall affirm gender identity/expression of youth. Staff shall not punish nor prohibit behavior that defies gender norms. Additionally, PP

shall state that staff shall not attempt to censor, suppress or change youth's self-proclaimed gender identify/expression.

Communication and Information Sharing

- The PP requires youth be provided information at intake about agency policies on non-discrimination and zero tolerance for harassment, bullying, and violence.
- The PP requires youth be asked about their sexual orientation as part of a vulnerability risk assessment at intake (PREA standard 115.341).
- The PP does not require youth to disclose information about sexual orientation or gender identity.
- The PP requires staff to provide (or refer to the appropriate staff member) accurate information about sexual orientation and gender identity if requested by youth.
- The PP requires staff to maintain confidentiality of LGBTQI youth (i.e. not discussing youth's sexual orientation with other youth, family members, etc. and discussing this information with other staff members only as it relates to the youth's treatment and safety needs).
- The PP directs staff to refer to transgender and intersex youth by their preferred name and the pronoun that reflects the youth's gender identity (even if their name has not been legally changed).
- The PP describes how to address transgender and intersex youth in written documents – for example, using the youth's preferred name and noting youth's legal name in parentheses.
- The PP requires case management staff to assist youth identify supportive resources and professionals in their community prior to youth transitioning from the facility, and to disclose those resources to youth's caretakers to the extent that the youth wants.

Training

- The PP requires all part-time and full-time staff volunteers, contractors, and interns to be trained on how to recognize, prevent, and respond to harassment against LGBTQI and gender nonconforming youth.
- The PP requires staff initial and annual training on basic terms and concepts related to LBGTQI, gender identity and expression.
- The PP requires staff training on how to obtain information about youth's sexual orientation, gender identity and gender expression in an effective, professional, and supportive manner.
- The PP requires staff have formal training on how to effectively interact with LGBTQI youth (PREA Standard 115.331) and gender non-conforming youth for new employees and on an annual basis.
- The PP requires mental health and medical providers be trained on the needs of and risks for LGBTQI youth (i.e. increased risk of suicide) as well as effectively communicating with LGBTQI youth.
- The PP requires staff be formally trained on how to conduct cross-gender pat searches in order to accommodate the search preference of transgender and intersex youth.

Housing and Placement

- The PP requires housing decisions for LGBTQI youth be made on a case-to-case basis (PREA Standard 115.342).
- The PP explains housing decisions be made based on information gathered from the vulnerability risk assessment; youth's own perception of emotional and physical safety; and discussions with medical staff, clinicians, and/or specific members of the youth's care/treatment team (PREA Standard 115.342).
- The PP explains how the information from the vulnerability risk assessment will be used to keep LGBTQI youth safe (PREA Standard 115.342).
- The PP informs which staff is responsible for documenting housing decisions and the rationale for these decisions (based on vulnerability information gathered) and where staff are required to document this information.
- The PP requires placement and programming assignments for transgender and intersex youth be reassessed a minimum of twice a year to identify any safety threats (PREA Standard 115.342). The placement and programming reassessment can be more frequent (JDAI standards recommend every 60 days).
- The PP prohibits LGBTQI youth from being placed in particular housing, bed or other assignments based solely on their identified or perceived sexual orientation or gender identity (PREA Standard 115.342).
- The PP prohibits LGBTQI youth from being placed in isolation solely for the purpose of keeping them safe from discrimination, harassment, or abuse.

Programming

- The PP directs that the LGBTQI status will not be viewed as an indicator of the likelihood for sexual perpetration (PREA Standard 115.342).
- The PP states that staff do not consider LGBTQI identification/status or a youth's gender non-conformity as an indicator of whether a youth is or is likely to be sexually abusive.
- The PP states that LGBTQI youth will not be excluded from activities and jobs for which they qualify and show interest because of their sexual orientation or gender identity.
- The PP requires transgender and intersex youth to have privacy when showering, toileting, and undressing – i.e. policy prohibits youth from undressing or showering in front of other youth (PREA Standard 115.342).
- The PP requires when a staff member must observe a transgender or intersex youth submit a urine sample for a drug test, the youth chooses the gender of the staff member whom they are most comfortable being observed.
- The PP instructs staff where to document any deviations from the youth's preferred staff (gender) when undergoing a pat search, strip search, and/or a drug test.
- The PP prohibits transgender or intersex youth from being searched or physically examined for the sole purpose of determining the youth's anatomical sex (PREA Standard 115.315)
- The PP allows transgender and intersex youth the option to request that either a male or female staff member conduct a pat-down or strip search (PREA Standard 115.315)

- The PP requires transgender and intersex youth to have institutional approved clothing or uniforms, including undergarments, that reflect the youth's gender identity and gender expression.
- The PP requires youth be provided personal hygiene and grooming products consistent with youth's gender expression and/or gender identity.
- The PP prohibits mental health providers from engaging in "reparative" or "conversion" therapy, or otherwise attempt to suppress or change a youth's gender identity or expression.
- The PP requires that medical personnel consult with youth's existing medical provider for transgender youth who are currently on hormone treatment at the time of placement in the custody in order to continue to provide the youth with transition-related therapies and treatments that are medically necessary according to the youth's existing provider and accepted professional standards. If youth was receiving hormone therapy with or without a prescription prior to placement, medical personnel shall continue that therapy without interruption pending an evaluation by a specialist, absent urgent medical reasons to the contrary.
- The PP states that all youth receive standardized mental health screening upon admission to identify youth who require further mental health assessment or services. Screening, includes but is not limited to, identifying youth who are exploring their gender and youth who exhibit psychological distress related to their gender identity, gender expression or sexual orientation.
- The PP permits youth to submit confidential requests for consultation or counseling related to gender identity, gender expression, intersex status or gender transition from mental health and medical personnel.
- The PP guides the creation of a supportive and affirming culture through partnership with community-based organizations or individuals to provide information to youth about gender and sexuality through programming/groups with volunteer activities and educational curriculum.
- The PP requires facilities to provide reading materials and programming to reflect interests and needs of LGBTQI and gender non-conforming youth.
- The PP requires facilities to post visual images throughout the facility that portray positive images of LGBTQI and gender non-conforming youth.