Bridging the Language Gap in Child Welfare

Identifying and Supporting LGBTQ Youth who have Experienced Sexual Exploitation
Introduction

Healthy relationships are a key part of the healthy and positive development of children and youth. When the relationships that young people engage in are not healthy – particularly when they are exploitative – it is critical for youth to be connected to supports and services to promote their developmental needs and safety. However, whether or not a close relationship is exploitative can often be difficult for young people to immediately identify. When policy and practice language does not reflect the experiences that young people have, it is a significant barrier to connecting youth involved with exploitative sexual relationships to services. In short, it is critical for the language that systems use to identify youth who have experienced sexual exploitation to resonate with youth.

Children and youth in child welfare systems are more vulnerable to sexual exploitation and trafficking than are their peers outside of foster care. For LGBTQ youth, who are more likely to be involved with the child welfare system in part due to family rejection and who are disproportionately youth of color, it is critical for child welfare systems to be able to support their healthy identity development and ensure their safety. Through Center for the Study of Social Policy (CSSP)-led focus groups, LGBTQ youth of color described the challenges and opportunities for child welfare systems to institute stronger policies and practices to support those who have experienced sexual exploitation. While in some circumstances young people are acutely aware of their exploitation in many others sexual exploitation can be difficult for young people to identify in the moment – many youth report having true feelings of love and appreciation for those who have exploited them while others report not recognizing the exploitative nature of the relationship until after they had moved on and were in a safe, supportive environment. One youth shared that she did not know it was unusual to live and have sex with a 20-year-old woman when she was in 8th grade. She mentioned that she liked to have sex, so why not get some money for it, and that doing so gave her a sense of freedom and control. While she did not recognize it at the time, many years later she was able to identify this as an exploitative relationship that negatively impacted her safety and well-being.

Other youth recognize their relationships as unhealthy but consider them safer than alternative options – for example homelessness. Child welfare systems must be equipped to identify youth who fall across the spectrum of exploitation – particularly when youth do not self-identify as having been exploited – making it critical for the language in policy to be expansive and resonate with youth experiences.

DEFINITIONS

Commercial sexual exploitation: the use of any person for sexual purposes in exchange for cash or in-kind favors; it can occur between a child and a customer, the pimp/trafficker or others (including family members) who profit from children for these purposes.

Survival sex: individuals who have traded sex acts (including prostitution, stripping, pornography, etc.) to meet the basic needs of survival (i.e., food, shelter, etc.) without the overt force, fraud or coercion of a trafficker, but who felt that their circumstances left little or no other option.

Sex trafficking: the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act. Also referred to as severe forms of trafficking in persons when involving a person under the age of 18 or when induced by force, fraud or coercion.

Commercial sex act: any sex act on account of which anything of value is given to or received by any person.
The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183, the Act) requires states to identify, document and determine services for children and youth at risk of or involved with sex trafficking. A common barrier that states have in implementing the Act is accurately identifying young people who have experienced sexual exploitation, particularly LGBTQ youth of color who may be reluctant to self-identify as a victim of trafficking or sexual exploitation. Through CSSP-led focus groups, youth described the challenges and opportunities for child welfare systems to institute stronger policies and practices to support LGBTQ youth of color who have experienced sex trafficking and exploitation. In order for agencies to best support these young people and promote positive outcomes, systems must address each family's unique needs and respond to each child and youth's whole identity, including race, SOGIE and individual history and experiences.

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Background

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LGBTQ youth are more likely to experience family rejection as a result of their sexual orientation or gender identity that can lead to their involvement with child welfare.\(^7\) LGBTQ youth of color are disproportionately represented in child welfare systems – according to a forthcoming study using data from the nationally representative National Survey of Child and Adolescent Well-Being – II (NSCAW-II), 15.5 percent of children in child welfare openly identify as LGB. These data also show that 61.8 percent of openly-identifying LGB children in child welfare are children of color.\(^8,9\) Additionally, LGBTQ youth are more likely to run away from or be removed from their foster care placements,\(^10\) and research shows that as many as 40 percent of homeless youth identify as LGBT\(^11\) – again, with an overrepresentation of youth of color.\(^12\) In addition, a Los Angeles study found that 25.7 percent of LGBTQ youth, mostly youth of color, were currently placed in a group home compared to 10.1 percent of their non-LGBTQ peers.\(^13\)

Researchers have found LGBTQ homeless youth to be at heightened risk of exploitation due to experiences including rejection\(^14\) and desperate need of shelter, food and other necessities.\(^15\) Other studies have shown that the majority of youth who participate in survival sex are youth of color.\(^16\) Once on the streets, these youth are increasingly at risk of sexual exploitation and trafficking, with one study indicating that LGBTQ youth are as much as five times more likely than their peers to be victims of trafficking\(^17\) and other research demonstrating that LGBT youth are more likely than their peers to have traded sex for a place to stay.\(^18\) Many of these youth have prior experience with the child welfare system – a recent study of homeless youth, the majority of whom were youth of color and many of whom identified as LGBTQ, found that 27 percent of all youth engaged in the sex trade had a history of foster care.\(^19\)

Another systemic barrier that exists in identifying LGBTQ youth of color who have experienced exploitation is the impact of implicit bias, which appears within all service providers and systems – not just within child welfare. Implicit bias, or attitudes or stereotypes that unconsciously affect an individual’s understanding, actions and decisions – including perceived age and sexual orientation – permeates all levels of service provision and plays a role at every decision point across the continuum of system involvement.\(^20\) This type of predisposition then plays into how a provider or agency might interpret and respond to a youth involved in an exploitative relationship, potentially incorrectly viewing a young person’s actions as volitional and out of the worker’s jurisdiction. Especially when a youth may not identify as part of an exploitative relationship, child welfare systems must be able to actively counter any underlying biases in order to recognize unhealthy relationships and provide the youth with the necessary supports and services.

It is important to note that current data likely underrepresent the prevalence of youth involved with trafficking and exploitation. Common challenges to accurate data collection for this population include underreporting, inconsistent definitions and labels and low rates of self-identification. Youth report being reluctant to self-identify as being involved with sex trafficking or commercial sexual exploitation due to fear, stigma, manipulation, trauma bonds and other reasons. Furthermore, some youth do not recognize or perceive themselves as victims of exploitation, rather they consider their actions to be taken by choice and/or an accomplishment of independence, for example, being able to secure housing on their own without the support of the child welfare system or a parent. As discussed above, this discrepancy in self-identification often occurs when language used by case or intake workers to describe sexual exploitation does not align with language used by young people to describe and understand their experiences. Often, workers miss signs of trafficking for LGBTQ youth of color though they might see comparable red flags present
for other youth. To ensure that child welfare systems and service providers are accurately identifying and supporting these youth, they need better skills to engage youth, acknowledge how system failures may have contributed to the youth’s lack of choices or other options and ultimately support them.

Recommendations

The recommendations below are grounded in the first hand experiences of LGBTQ youth of color and suggest ways that jurisdictions can meet some of the requirements of the Preventing Sex Trafficking and Strengthening Families Act, particularly as they relate to identifying an invisible population. To better support the identification of LGBTQ youth of color who have been or are at risk of being sexually exploited, states should:

1. **Increase capacity for child welfare systems to identify youth involved with sexual exploitation and trafficking through youth engagement and improved screening tools.**

Youth in focus groups reported that they struggle to identify with the term “commercial sexual exploitation” or did not answer affirmatively when asked if they had ever traded sex for resources or a place to stay because that was not how they understood their life experiences. The language barrier has the potential to lead to missed opportunities for systems to identify and provide needed resources.

Group homes and congregate care facilities should make efforts to identify youth at risk or involved with sex trafficking. These types of residential placements can serve as recruitment locations, both by traffickers themselves as well as other youth, to take advantage of youth with trauma histories and a lack of strong social supports. Given that LGBTQ youth of color are often overrepresented in these placements and experience higher levels of sexual exploitation, staff and providers must be made aware of these risk factors and have clear policies, procedures for assessing, engaging and serving these youth.

If the child welfare system wants to best serve LGBTQ youth of color who have experienced sex trafficking and exploitation, the identification process must be conducted in ways that are comfortable and accessible for the youth. Agencies should engage youth to craft language that is youth-friendly and non-pathologizing, which then should be used in all interactions with youth including during screenings and assessments. These interactions must also be genuine and authentic – youth know when they are being patronized and, as a result, become less willing to share personal information.

Under the Act, states have the flexibility to choose screening tools, assessments and other resources that meet their particular needs in order to identify youth at risk of or involved with sex trafficking and exploitation and to determine the necessary services to support youth safety and well-being. The Child Welfare Capacity Building Collaborative within the Children’s Bureau released a guide for child welfare agencies that includes recommendations for implementation, guidelines for interactions with youth and a list of screening tools and assessments. While none of the screening tools have been validated...
for use with LGBTQ youth, the Vera Institute’s Trafficking Victim Identification Tool specifically recommends that interviewers working with this population should tailor the tool as needed.\textsuperscript{23} Many screening and assessment tools emphasize the importance of building trust and being non-judgmental, and this approach is particularly applicable when addressing questions related to SOGIE. Moving forward, screening and assessment tools should include demographic questions regarding a youth’s SOGIE in order to identify gaps in supports and services for these youth.

- **New York City**’s Administration for Children’s Services developed a document of best practices and recommendations for respectfully asking questions about sexual orientation and gender identity.\textsuperscript{24} These principles should be incorporated into screening and assessments for children and youth who have experienced sex trafficking and exploitation.

- **Covenant House**’s Human Trafficking Interview and Assessment Measure (HTIAM-14)\textsuperscript{25} was one of the sources to inform Florida’s Human Trafficking Screening Tool (HTST)\textsuperscript{26}, both of which incorporate efforts to build trust and ask questions in a non-judgmental way. These tools include introductory comments from the interviewers to assure the youth that the information is voluntary and confidential and that honest responses will allow the agency to help the youth and others with similar experiences. Additional questions in the tool contain lead-in explanations about common situations before asking the youth about their individual experiences.

### Utilize multidisciplinary teams to ensure consistent language and definitions across systems.

The Act requires state child welfare agencies to consult with state and local law enforcement, juvenile justice systems, health care providers, education agencies and other organizations with experience working with at risk children and youth for the purpose of identification and determining services. Children and youth involved with sex trafficking and exploitation are often involved in multiple systems, and research demonstrates that multidisciplinary teams are more likely to identify trafficking victims through improved collaborative structures and processes.\textsuperscript{27} Establishing consistent language and using uniform identification and assessment tools across systems can further help to strengthen the identification process. Additionally, the development of shared protocols can enable systems to better identify these youth, ultimately improving the ability to connect them with appropriate services.\textsuperscript{28}

- **Connecticut** passed legislation to create multidisciplinary teams that have served a variety of purposes, including the development of the Human Anti-Trafficking Response Team (HART).\textsuperscript{29} HART uses a multidisciplinary protocol and practice guide\textsuperscript{30} for use with the Connecticut Department of Children and Families’ (DCF) Policy 31-10-6.1\textsuperscript{31} that specifies clear definitions of terms and promotes cross-system collaboration. The state also passed a law to trigger automatic referrals to DCF when law enforcement becomes involved with a child or youth who may be experiencing commercial sexual exploitation.\textsuperscript{32}

### Eliminate barriers to accessing child welfare services by updating and clarifying key definitions and terminology.

As the Trafficking Victims Protection Reauthorization Act (TVPRA) previously defined children under the age of 18 who participate in commercial sexual activity as victims of sex trafficking, states should clarify that if a child is identified as a victim of sex trafficking, they should also be considered a victim of child abuse and neglect. This clarification will ensure that state statute
aligns with the JVTA-amended federal definition in CAPTA, effective May 2017, and enables child welfare agencies to respond to these allegations both ensuring that youth are safe and provided supportive services even if the perpetrator is not the parent or caregiver.

When removing barriers to identifications and receipt of services, states should pay particular attention to the definitions for “abuse and neglect,” “caregiver” and “commercial sexual activity.” As of August 2016, 31 state definitions of child abuse and neglect included sex trafficking and 32 states had broader caregiver definitions to protect victims of non-familial trafficking.

- Kentucky law requires that the relevant agencies report incidents of suspected trafficking “regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.”
- Massachusetts defines a “sexually exploited child” as one who “engages, agrees to engage, or offers to engage in sexual conduct with another person in return for a fee or in exchange for food, shelter, clothing, education, or care.”

Though removing language barriers is a first step in identifying youth to connect them with supports and services, child welfare systems simultaneously need to be organized to receive these referrals when a case is not already open, and should do so in a way that provides services without requiring an ongoing open case, court involvement or a substantiation of findings against non-perpetrating parents or caregivers. Best practice for child welfare systems connects youth to necessary services without entering into foster care, opening a court case against a non-perpetrator parent or caregiver or substantiating an allegation of abuse or neglect against a non-perpetrator parent or caregiver. Requiring a child welfare system to enter a substantiated finding of abuse or neglect has a significant, negative impact on non-offending parents and caregivers, creating unnecessary barriers to employment, such as with organizations serving children and youth.

In addition, specific changes in the definition and use of “anything of value” is critical. The language “anything of value” is included in most definitions of commercial sexual activity. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) recommends that this term include the exchange of both monetary and non-monetary benefits, such as food and housing. This interpretation is also consistent with information from the LGBTQ youth of color in the focus groups, who were more likely to receive things like shelter as a result of their participation in survival sex.

### 4 Raise the minimum age from 18 to 21 years old for instances of sex trafficking that must demonstrate force, fraud or coercion.

The vast majority of states require that, in order to classify youth over the age of 18 as a victim of sex trafficking, there must be evidence of force, fraud or coercion. However, current knowledge of adolescent brain science shows that youth’s brains do not fully develop until age 26. Adolescents pass through a period of emerging adulthood starting at around age 18 during which their brains are still maturing as they continue to build their resiliency, self-determination and other skills and traits necessary for adulthood. In addition, research has shown that young people who age out of the foster care system at 18 (who are statistically more likely to be young people of color and young people who identify as LGBTQ) are more likely to have trauma histories, access to fewer social supports and a higher risk of housing instability,
exposing them to greater risk of sexual exploitation. Raising the application of the “force, fraud and coercion” threshold in sex trafficking laws to age 21 recognizes this sensitive stage in a young person’s life, removes barriers to identification for sexually exploited youth and aligns with state systems that have extended foster care beyond age 18. This change has the potential to positively impact many youth involved with survival sex – for example, in a study conducted by Covenant House, many youth over the age of 18 noted that “due to their life circumstances, they felt like they had no other choice” but to participate in the sex trade.41

- Louisiana changed the state’s requirement from 18 to 21, acknowledging the burden that agencies experienced when needing to prove elements of force, fraud or coercion for youth in this age bracket who might otherwise not be able to access services.42

**Conclusion**

LGBTQ youth of color involved with sex trafficking and exploitation experience compounding barriers to identification. Without proper identification, connection to the necessary supports and services can elude this population of youth who are often the most in need. As states continue to implement the identification requirements of the Preventing Sex Trafficking and Strengthening Families Act, agencies should increase their capacity to identify and serve youth, utilize multidisciplinary teams to ensure consistency, eliminate barriers to accessing services and expand the population of youth eligible for services. Engagement with community organizations will also help increase improved identification. These strategies will help ensure that LGBTQ youth of color are increasingly made visible within child welfare systems so that their needs can be fully recognized and met.

*This issue brief is part of a series of publications on LGBTQ youth of color in child welfare. Please visit our website, cssp.org, for more information about our getR.E.A.L initiative and future opportunities for peer-to-peer technical assistance and to subscribe to our monthly getR.E.A.L messenger.*

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Endnotes


2. For the purpose of this issue brief we use the term LGBTQ in a way meant to be expansive and inclusive. There are many other acronyms that reflect the diverse range of sexual orientations, gender identities and gender expressions. However, we use LGBTQ to be uniform and to be brief. Language is constantly evolving, and so is this acronym. Through our work with youth and families we know that these categories are not always the most welcoming or appropriate terms. For example, youth may identify as gender queer or gender fluid and some youth with tribal affiliation identify as two-spirited. The term gender expansive is also frequently used in the field.


4. Individuals who identify as “cisgender” identify as a gender that corresponds with their sex assigned at birth.


6. Section 101 of the Act includes the requirement that states must develop policies and procedures to identify, document and determine appropriate services for children who are victims, or are at risk of becoming a victim, of sex trafficking. The Act amends Title IV-E of the Social Security Administration Act, and states must comply with the requirements in order to be eligible to receive federal foster care funds under Title IV-E.


9. These data are likely an underestimate of the total percentage of LGBTQ youth in child welfare due to the exclusion of “transgender” and “questioning” as well as underreporting.


29. C.G.S. § 17a-106a.


34. These states are: Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine,
Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, North Carolina, North Dakota, Oregon, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

35. These states are: Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.


37. KY KRS 620.030(3)

38. Ann. Laws. Ch. 119, § 21


42. Act 269, R.S. 14:46.2(A)(1)