



NATIONAL CENTER FOR LESBIAN RIGHTS

## Transgender and Gender Nonconforming Children in California Foster Care

The purpose of this brief is to support the efforts of California child welfare professionals to promote the safety, permanency, and well-being of transgender and gender nonconforming (TGNC) children\* in foster care. Using a question and answer format, the brief:

- Provides an overview of terms and concepts related to gender identity and expression, and accurate information about gender identity development,
- Provides accurate information on the impact of bias on the health and safety of TGNC children, and
- Describes legal and professional standards governing services to, and treatment of, TGNC children in the child welfare system.

### Gender Basics

#### 1. What does the term “gender identity” mean?

**Gender Identity** is a person’s internal identification as male, female, or something in between or outside of the gender binary. Typically medical personnel “assign” an infant’s sex based primarily on the child’s genitalia. An infant’s **assigned sex** is typically recorded on the birth certificate, and is treated as the child’s legal gender for most purposes. Most people’s gender identity matches their assigned sex. However, some people have a gender that is different from the sex assigned to them at birth.

#### 2. What does the term “transgender” mean?

“**Transgender**” refers to people whose gender identity is different from the sex assigned to them when they were born. For example, a transgender boy is a child who was assigned female

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\* For the purposes of this brief, the word “children” refers to young people in foster care ages 0-21.

at birth, but whose gender identity is male. Likewise, a transgender girl is a child who was assigned male at birth, but whose gender identity is female. Transgender identity is a part of natural human diversity, and should not be viewed or treated as negative or pathological. Although the prevalence of transgender children is unknown, researchers estimate that less than 0.3% of adults in the general population are transgender.<sup>1</sup> The prevalence of transgender children in the foster care system appears to be much higher – up to 5%.<sup>2</sup> Researchers hypothesize that these children are overrepresented in the child welfare system due to high rates of family rejection and social marginalization.

### **3. What does the term “gender expression” mean?**

“**Gender expression**” is the manner in which people communicate their gender to others, through their clothing, mannerisms, and hairstyle, for example. A person’s gender expression may be fluid or even situational, meaning that the person presents their gender differently in different settings. For example, a child may wear stereotypically feminine clothing at home and stereotypically masculine clothing at school. A person’s expression of gender may be neither masculine nor feminine or may combine masculine and feminine elements.

### **4. What does the term “gender nonconforming” mean?**

“**Gender nonconforming**” describes people whose gender expression differs from the cultural norms prescribed for their assigned sex. The terms “gender expansive,” “gender diverse,” and “gender variant” are also used to describe gender nonconforming individuals. Some gender nonconforming people have an identity that is “nonbinary,” meaning their gender identity is neither male nor female. Others identify as some combination of male and female. Still others identify as either male or female, but express their gender in ways that differ from stereotypical presentations. Not all gender nonconforming people identify as transgender. *Regardless of how they identify, gender nonconforming individuals are vulnerable to varying levels of mistreatment and bias simply because they transgress social norms.*

### **5. What does the term “sexual orientation” mean?**

“**Sexual orientation**” describes a person’s emotional, romantic, and/or sexual attraction to people of the same or different sex. Sexual orientation falls on a spectrum that ranges from exclusively attracted to men or women, to attraction to both men and women (“bisexual”), to attraction to people of all genders (“pansexual.”) Children may be aware of their sexual orientation as feelings of attachment or connection to others before they become sexually active. Most children are aware of sexual attraction by about age 10.<sup>3</sup> Sexuality and gender are related but distinct aspects of human identity. For example, a transgender person may identify as lesbian, gay, bisexual, or some other sexual orientation. *Child welfare personnel should not conflate sexual orientation and gender identity, and should not make assumptions about either aspect of a child’s identity based simply on the child’s gender expression.*

## **6. What do we know about the development of gender identity?**

The factors that influence the formation of a person's gender identity are not completely understood. Existing evidence suggests that gender identity is either innate or fixed at an early age, and has a strong biological and genetic component. For this reason, it is misleading to pose a distinction between a person's gender identity and their so-called "biological sex." A person's gender identity is not subject to voluntary control and cannot be changed by therapy or other means.

Gender identity does not follow a single developmental trajectory, and there is tremendous diversity among TGNC children. Children start to become aware of their gender identity between the ages of 18 months and 3 years.<sup>4</sup> A significant number of young children exhibit gender nonconforming behavior, which may or may not persist beyond early childhood. By adolescence or young adulthood, many of these children develop a gender identity that is consistent with their assigned sex. Some of these children ultimately identify as lesbian, gay, or bisexual. By contrast, transgender children tend to experience cross-gender identification that is "persistent, insistent, and consistent." Some transgender children experience clinically significant distress because their gender is different from their assigned sex. The signs of distress may manifest as depression, anxiety, self-harming behaviors, or suicidality. This serious and unremitting emotional pain is referred to as "gender dysphoria," which is a medical condition with well-established standards of care. Although there is increasing visibility of very young transgender children, many youth first experience gender dysphoria as teenagers or adults.

### **TGNC Children in Foster Care**

## **7. Why is it important for child welfare workers to understand the needs of TGNC children?**

The vulnerability of TGNC children, and the harms they suffer as a consequence of family rejection and social marginalization, are well-documented. Due to pervasive rejection and bias in their homes, schools and communities, TGNC children experience high rates of depression, suicidality, substance use, physical and sexual victimization, and homelessness. Family conflict, verbal harassment, school bullying, and physical assault constitute the harsh daily reality for too many of these young people. Social conditions for transgender girls of color are particularly brutal.

While TGNC children are a particularly vulnerable population with unique developmental tasks, they also have the same inherent capacity for happiness, achievement, and healthy adjustment as other children. Systems that assume the care and custody of TGNC children, and especially the adults with whom they interact daily, can have a significant impact on their outcomes and

prospects. Placing TGNC children in unsafe or hostile settings exacerbates their isolation, instability, and trauma, and significantly compromises their health and opportunities. Placing them with loving, supportive families who provide a safe atmosphere in which they can explore and develop their identities maximizes their potential to thrive and become healthy adults. Supportive families not only nurture TGNC children, but help protect them from negative effects of living in an otherwise unaccepting society. *By adopting and implementing gender affirming policies and practices, child welfare agencies promote the safety, permanency, and well-being of TGNC children.*

## **8. What do we know about the experiences of TGNC children in foster care?**

Existing research and anecdotal evidence indicate that TGNC children are significantly overrepresented in the child welfare system. TGNC children share many of the experiences and characteristics of their peers in the foster care system, and many enter the system for reasons unrelated to their gender expression or identity. The majority are low income children of color who have experienced varying degrees of family abuse or neglect. However, they also confront unique challenges caused by people, institutions, and policies that reject or disparage their core identities.

TGNC children often experience severe trauma before they enter the system, and too often their experiences in care compound previous trauma. Some personnel, caregivers, and providers harbor the same biases and misinformation that jeopardized TGNC children in their families and communities, subjecting these children to unsuitable, unstable placements and fewer opportunities to achieve permanency. Sadly, a common trajectory for TGNC foster youth is multiple group home placements punctuated by periods of homelessness and juvenile detention. Fortunately, some TGNC children have positive experiences in care that provide a model to emulate. These stories feature loving, supportive caregivers who educated themselves, their families, and their communities about gender diversity, and provided a loving home in which their TGNC child flourished.

### **Gender Affirmative Services**

## **9. How should a child welfare worker assess the needs of a TGNC child?**

Although a worker can observe a child's *gender expression*, a worker cannot independently determine the child's *gender identity* through observation alone. The most important source of information about a child's gender identity is the child. Children's capacity and willingness to discuss their gender identity varies. Some TGNC children, including some very young children, may describe their gender identity unequivocally and directly. ("I am a boy" or "I have a girl brain and a boy body.") For other children, the process of discovering and naming their gender may be more nuanced or complex, unfolding over time. The worker's objective is not necessarily to definitively label the child's gender identity, but to listen to the child's experience and to honor and support the child's gender *as that child currently describes and expresses it.*

The worker should also talk to other adults who know the child and can offer insight about the child's experiences, behavior, identity, strengths, and challenges. After talking with the child and knowledgeable adults, if the worker is uncertain about how to support the child's healthy gender development, the worker should consult with a competent clinician who is experienced in working with TGNC children. *Child welfare workers should develop case plans that support the healthy gender development of every child, including children who are gender nonconforming and children whose gender identity is different from their assigned sex.*

**10. What steps can child welfare professionals take to protect TGNC children from mistreatment, and ensure that they have equal access to all programs and services?**

California law prohibits discrimination or harassment against children in foster care on the basis of their actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, mental or physical disability, HIV status, or *gender identity*.<sup>5</sup> The law also requires that *all* children in foster care have equal access to all services, placement, care, treatment, and benefits.<sup>6</sup>

To prevent discrimination based on gender identity, and to ensure equal treatment of TGNC children, child welfare agencies should:

- Adopt written policies protecting TGNC foster children from discrimination or mistreatment, and requiring that *all* child welfare personnel, providers, contractors, and caregivers provide gender affirming care to the foster children whom they serve.
- Provide initial and ongoing training and coaching to all child welfare personnel on gender identity development, gender inclusive practices, and gender affirming care and services.
- Adopt gender inclusive practices that create a welcoming environment for all children, families, and personnel, including people who are TGNC.
- Adopt written policies prohibiting workers or caregivers from subjecting children to interventions aimed at changing their gender identity or expression.

To promote the safety, permanency, and well-being of individual TGNC children, child welfare professionals should:

- Learn and stay up to date on the basics of gender, including fundamental concepts and terminology, best practices for promoting healthy gender development, and the impact of intersecting identities (such as race, ethnicity, religion, and socioeconomic status) on the experiences of TGNC children.
- Adopt an individualized, gender affirmative approach that promotes each child's emotional and physical health by reducing distress and supporting self-discovery in an atmosphere of acceptance and support.
- Intervene to protect TGNC children from any intervention, by licensed or unlicensed practitioners, aimed at "converting" or changing their gender identity or expression.

- Stay in close touch with TGNC foster children, engage them in developmentally appropriate discussions about their experiences in their homes, communities, and schools, ensure their safety, and respect their autonomy.
- Promptly intervene to remedy mistreatment or discrimination directed at children on the basis of their gender identity or expression.

### **11. How can child welfare professionals ensure that TGNC children receive appropriate health and behavioral health services?**

California law requires county child welfare agencies to assess the health and behavioral health needs of children in foster care, and to ensure that children receive appropriate and timely care to address the needs identified by qualified professionals.<sup>7</sup> To meet this obligation for TGNC children, child welfare agencies should contract with clinicians that provide gender-related care that follows established standards of care. In particular, health and behavioral health care providers must be competent to diagnose and treat gender dysphoria.

Gender affirmative treatment protocols support an individualized approach that permits TGNC children to explore and develop their gender identity at their own pace and on their own terms. For children experiencing gender dysphoria, treatment is focused on alleviating distress by facilitating their gender transition. The term “transition” refers to the process by which transgender people align their gender appearance more closely with their gender identity. Transgender people may choose to transition as children, teenagers, or adults. The process is unique for each individual and may include:

- Social transition: living in alignment with one’s gender identity, which may include changing one’s name, hairstyle, clothing, identity documents, and the pronouns used to describe oneself. Social transition may also include participation in sports and other activities, or accessing restrooms and changing rooms consistent with one’s gender identity.
- Pubertal suppression: temporarily and reversibly suppressing puberty by using gonadotropin-releasing hormone analogs or “hormone blockers.” Delaying puberty prevents the increased dysphoria associated with puberty and avoids the development of permanent secondary-sex characteristics. Pausing puberty allows TGNC children additional time to work with health and behavioral health providers to determine the next steps in their transition, if any.
- Cross sex hormone therapy: using cross-sex hormones (testosterone or estrogen) to induce masculinizing or feminizing physical changes consistent with one’s gender identity.
- Gender confirmation surgery: undergoing surgical procedures that change the appearance and/or function of one’s physical body to align it with one’s gender identity.

*Social workers are not responsible for determining the appropriate treatment protocols for TGNC children. The worker’s role is to ensure that TGNC children have access to competent*

health and behavioral health clinicians who are experienced in providing gender-affirming care, and who work with children and their caregivers to determine the appropriate treatment.

### **12. How should child welfare professionals respond to interventions aimed at changing a child's gender identity or expression?**

Practices or interventions aimed at changing a person's sexual orientation, gender identity, or gender expression are known as "conversion therapy." These interventions range from behavioral, cognitive, or psychoanalytic therapy provided by individuals who identify themselves as professional clinicians, to less formal interventions administered by unlicensed organizations, facilities, or individuals, such as pastors or counselors. The nation's leading professional health and behavioral health associations have rejected conversion therapy as unnecessary, ineffective, and harmful. For this reason, California prohibits licensed therapists from using any intervention aimed at changing the sexual orientation or gender identity of people under the age of 18.<sup>8</sup> *Child welfare personnel should intervene to protect children from any form of conversion therapy, regardless of the nature of the intervention or the credentials of the person administering it. Workers should be alert to any approach or intervention that treats gender diversity as a defect, or suggests that a person's gender identity can or should be changed. If necessary, agencies should seek a protective order from the juvenile court to stop these practices.*

### **13. What should child welfare agencies do to ensure appropriate placement of TGNC children?**

Like all children in the child welfare system, TGNC children have the right to be safe, loved, and nurtured, to live with their families whenever possible, and when that is not possible, to live in a permanent, loving, and nurturing family home with caring adults who make a lifetime commitment to them. Thus, child welfare agencies must ensure that each TGNC child lives with a family that affirms the child's gender. This obligation is reflected in California law, which limits the use of congregate care to short term, intensive treatment,<sup>9</sup> and gives all children in foster care the right to a placement that matches their gender identity.<sup>10</sup>

To meet this obligation, child welfare agencies should:

- Develop services to prevent unnecessary removal of TGNC children from their families, or to safely reunify them, by helping families adopt supportive behaviors that promote their children's health and well-being, and minimize rejecting behaviors that subject their children to harm.
- Provide accurate information about gender identity development to the families and caregivers of TGNC children, and help them develop strategies to maximize their child's health and well-being.
- Adopt policies and procedures to identify and support relatives and other adults when TGNC children are not able to remain with their families of origin.

- Recruit, train, and support adequate numbers of resource families who are able and willing to provide gender-affirming care to TGNC children.
- Adopt policies requiring placement personnel to ensure that resource families and other placement resources affirm each child’s gender, as that child defines and expresses it.
- Adopt policies prohibiting the placement of TGNC children in congregate care unless a specific child requires short term, intensive treatment and that need is documented in the case plan.

To make placement decisions for individual TGNC children, child welfare workers should:

- Provide services or supports to maintain TGNC children with their families, or reunite them as soon as safely possible, by helping families adopt supportive behaviors that promote their child’s health and well-being, and minimize rejecting behaviors that subject their child to harm.
- Engage in aggressive efforts to locate relatives when families are not able to care for their TGNC children.
- Work closely with TGNC children who are developmentally able to talk about their needs to identify a placement in which they feel most comfortable to live safely and authentically, and which is most consistent with their gender identity as they currently understand and describe it.
- Ask TGNC children, including non-binary children, whether they feel more comfortable sharing a room with male- or female-identified children, or occupying their own room, and accommodate their wishes whenever feasible.
- Consult with TGNC children, their families, other knowledgeable adults, and experienced, competent clinicians to assess the strengths and needs of TGNC children, and identify placements and services that ensure their physical and emotional safety and affirm their gender identity and expression.
- Closely monitor the placements of TGNC children, and periodically reassess the child’s comfort and perception of safety in the placement.
- Ensure that the caregivers of TGNC children have sufficient support and resources to meet the needs of the children in their care, and that they affirm and respect the gender identity of every child in their custody.
- Ensure that all TGNC children are supported to live safely and openly as their authentic selves in every part of their lives, including their homes, schools, faith communities, and peer activities.

#### **14. What can child welfare workers do to ensure that TGNC children are supported at school?**

California law protects students from discrimination and harassment on the basis of their gender identity or expression,<sup>11</sup> and extends to all students the right to participate in sex-segregated programs, activities, and facilities consistent with their gender identity.<sup>12</sup> Child



welfare workers should make sure that TGNC students are safe at school, and intervene with school officials to address any incidents of harassment or mistreatment by other students, faculty, or staff. Beyond protecting TGNC students from harm, child welfare workers should work with caregivers and school officials to ensure that TGNC students are welcomed and affirmed in their schools, and permitted to live openly as their authentic selves. If necessary, workers should identify organizations or advocates that can work with schools and caregivers to accommodate the needs of TGNC students.

### **15. Should child welfare workers tell other people about a TGNC child's gender identity?**

Information about a foster child's gender identity is private and confidential. Social workers should treat this information like other highly personal and sensitive information, and should not "out" a TGNC child without the child's knowledge and consent. Disclosure could subject the child to a range of physical and emotional harms. Once this information is shared with one person, there is no way to prevent it from being shared with others. On the other hand, it may be helpful to share the information with trusted third parties who can support and protect the child. The worker's job is to work with the child to weigh the pros and cons of sharing the information. Workers should focus on how the specific disclosure would help or harm the child, and not on the concerns or interests of third parties. Although it may be helpful in some situations to talk with third parties about a child's gender identity, no one -- including teachers, friends, roommates, relatives, or caregivers -- is *entitled* to the information. The key is to respect the child's autonomy and to prioritize the child's welfare.

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<sup>1</sup> Gates, G., (2011) How many people are lesbian, gay, bisexual, and transgender?, The Williams Institute.

<sup>2</sup> *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, The Williams Institute, Los Angeles LGBT Center, et al. (August 2014), [http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf).

<sup>3</sup> Ryan, C. (2003). LGBT youth: Health concerns, services, and care. *Clinical Research and Regulatory Affairs*, 20(141).

<sup>4</sup> Leibowitz, S.F., & Spack, N.P. (2011). The development of a gender identity psychosocial clinic: Treatment issues, logistical considerations, interdisciplinary cooperation, and future initiatives. *Child and adolescent psychiatric clinics of North America*, 20(4), 701-724.

<sup>5</sup> Welfare & Institutions Code section 16001.9(23).

<sup>6</sup> Welfare & Institutions Code section 16001.9(23).

<sup>7</sup> The Health Care Rights of Children in Foster Care, The Health Consumer Alliance, April 2006.

<sup>8</sup> Business & Professions Code section 865.1.

<sup>9</sup> Welfare & Institutions Code section 361.2.

<sup>10</sup> Welfare & Institutions Code section 16001.9(24).

<sup>11</sup> Education Code sections 200 and 210.7.

<sup>12</sup> Education Code section 221.5(f).

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## Resources

### Written resources

Asaf Orr & Joel Baum, *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools*, American Civil Liberties Union, Gender Spectrum, Human Rights Campaign, National Center for Lesbian Rights & National Education Association (2015), <http://www.nclrights.org/legal-help-resources/resource/schools-in-transition/>

Diane Ehrensaft, *Gender Born, Gender Made: Raising Healthy Gender Non-Conforming Children* (New York: The Experiment, 2011).

*Guidelines for Managing Information Related to the Sexual Orientation, Gender Identity and Expression of Children in Child Welfare Settings*, Family Builders, Legal Services for Children, National Center for Lesbian Rights, Center for the Study of Social Policy (2013): <http://www.nclrights.org/legal-help-resources/resource/guidelines-for-managing-information-related-to-the-sexual-orientation-gender-identity-and-expression-of-children-in-child-welfare-settings-2013/>

Jody Marksamer, *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth*, National Center for Lesbian Rights & Sylvia Rivera Law Project (Spring 2011), [http://www.nclrights.org/wp-content/uploads/2013/07/A\\_Place\\_Of\\_Respect.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/A_Place_Of_Respect.pdf)

Shannan Wilber, Caitlin Ryan, & Jody Marksamer, *Child Welfare League of America Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care*, Child Welfare League of America (2006), <http://www.lsc-sf.org/wp-content/uploads/2010/06/Best-Practice-Guidelines.pdf>.

Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* (New York: Cleis Press, 2008).

*Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey*, Human Rights Campaign Foundation and Gender Spectrum, <https://www.scribd.com/doc/240595076/Supporting-and-Caring-for-Our-Gender-expansive-Youth>.

*Supporting Your LGBTQ Youth: A Guide for Foster Parents*, Children's Bureau/ACYF/ACF/HHS (May 2013), <https://www.childwelfare.gov/pubs/LGBTQyouth.pdf>

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### **Organizational resources**

Gender Spectrum: [www.genderspectrum.org](http://www.genderspectrum.org)

Lambda Legal Education and Defense Fund, Youth in Out-of-Home Care Project:  
<http://www.lambdalegal.org/issues/youth-in-out-of-home-care>

National Center for Lesbian Rights, Transgender Youth Project:  
<http://www.nclrights.org/transgender-youth-project/>

Trans Youth Family Allies: <http://www.imatyfa.org/>

### **Health care resources**

Child and Adolescent Gender Center, University of California San Francisco, Benioff Children's Hospital, [https://www.ucsfbenioffchildrens.org/clinics/child\\_and\\_adolescent\\_gender\\_center/](https://www.ucsfbenioffchildrens.org/clinics/child_and_adolescent_gender_center/)

The Center for Transyouth Health and Development, Children's Hospital Los Angeles,  
<http://www.chla.org/the-center-transyouth-health-and-development>

Gender Management Clinic at Rady Children's Hospital, San Diego,  
<http://www.rchsd.org/programs-services/gender-management-clinic/>