

50 State Survey: Licensing regulations in Child Welfare, Juvenile Justice and systems serving runaway and homeless youth relating to sexual orientation, gender identity and gender expression

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Youth who identify as LGBTQ, particularly youth who are transgender or gender nonconforming, who are involved in intervening public systems like child welfare or juvenile justice or who have run away or are homeless are at particular risk for negative outcomes when compared to their cisgendered, non-system-involved peers. In licensing these systems, states have significant opportunities to better support transgender and gender non-conforming youth. Through using licensing regulations that support safe and affirming placement and classification procedures, promote healthy gender identity development and expression, ensure comprehensive non-discrimination policies that are accompanied by clear and ongoing training and competency requirements for staff, and support gender-responsive programming and activities while in care, states can promote inclusive organizational structures that promote the wellbeing of transgender and gender nonconforming youth involved in intervening public systems.

The following research presents a survey of 50 states and the District of Columbia on current state child welfare, juvenile justice¹ and runaway and homeless systems' licensing regulations as they relate to sex, gender identity and gender expression. Our research is divided into several categories:

- Definitions of sex and gender
- Prescribed rights and non-discrimination policies
- Admission procedures and facility licensing
- Training requirements
- Bedrooms, bathrooms and privacy
- Hygiene and clothing
- Supervision
- Body searches

Definitions of sex and gender

Two states, California and New York, provided definitions of sex and gender in their licensing regulations. They are as follows:

California Juvenile Detention Facilities: "Gender expression" means the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, etc.

"Gender identity" means a person's sense of identification with either the male or female self.

"Sexual orientation" means a person's emotional, romantic, and sexual attraction for members of the same, opposite or both sexes.

"Transgender youth" means a youth whose gender identity does not correspond with his or her anatomical sex (15 CCR 1302).

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California Foster Homes: (1) "Gender Identity" means a person's internal identification or self-image as male or female. (3) "Sexual Orientation" means the actual or perceived identification of any person as heterosexual, gay, lesbian, or bisexual (22 CCR 89201).

New York Juvenile Detention Facilities, Child Welfare Services and Runaway and Homeless Youth Services: For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender, identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned

¹Many states' juvenile justice systems are accredited by the American Correctional Association and participate in the Office of Juvenile Justice and Delinquency Prevention Performance-based Standards (PbS). The research presented here highlights where states have expanded upon PbS in state regulation.

to that person at birth. “Gender identity” refers to a person’s internal sense of self as male, female, no gender, or another gender, and “gender expression” refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other like (9 NYCRR § 180.5; 18 NYCRR § 421.3; 18 NYCRR § 441.24; 9 NYCRR § 182-1.5).

Prescribed rights and non-discrimination policies

18 states² contain no protections against sex, sexual orientation, gender identity or gender expression discrimination in their regulations governing the licensing of juvenile justice and child welfare systems or facilities serving runaway and homeless youth.

In their child welfare regulations, 28 states had non-discrimination policies that prohibited discrimination based on sex (n=16) or gender (n=12), seven had policies explicitly forbidding discrimination based on gender identity or gender expression and 20 states had policies forbidding discrimination based on sexual orientation.

In their juvenile justice regulations, 19 states had non-discrimination policies that prohibited discrimination based on sex (n=11) or gender (n=8), four had policies explicitly forbidding discrimination based on gender identity or gender expression and 11 states had policies forbidding discrimination based on sexual orientation.

In their regulations governing systems serving runaway and homeless youth, 11 states had non-discrimination policies that prohibited discrimination based on sex (n=8) or gender (n=3), three had policies explicitly forbidding discrimination based on gender identity or gender expression and six states had policies forbidding discrimination based on sexual orientation.

Admission procedures and facility licensing

18 states license child welfare facilities or foster family homes to serve children and youth by sex; 11 states license by gender; and five states use sex and gender interchangeably.

Nine states license facilities serving runaway and homeless youth to serve children and youth by sex; six states license by gender; and two states use sex and gender interchangeably.

Nine states license juvenile justice facilities to serve children and youth by sex; six states license by gender; and three states license facilities as male or female.

Three states, Florida, Louisiana and Texas, have specific juvenile justice placement and admission procedures related to youth who identify as LGBTQ. Two states, Florida and Texas, require these placement decisions to be made on a case by case basis and in consultation with the youth.

Training requirements

One state, California, requires staff working in child welfare systems or facilities serving runaway and homeless youth to receive training on non-discrimination policies related to sex, sexual orientation and gender identity. Six states (Massachusetts, Minnesota, New Mexico, Rhode Island³, Washington⁴ and West Virginia) include training requirements for those working in with children in the child welfare system related to sexual

²AL, CO, FL, GA, HI, IN, IA, KS, MD, MI, MO, NV, NC, OR, TN, SD, VT, VA

orientation and gender identity. Three states, North Carolina, Ohio and Wisconsin, require workers in child welfare settings to receive training related to human sexuality and sexual development.

In juvenile justice settings, three states (Florida, Idaho and Rhode Island) require workers to be trained to provide gender-specific programming. Three states, Louisiana, Minnesota and Texas, require workers to receive cultural competency training that includes sexual orientation and gender identity and expression.

Bedrooms, bathrooms and privacy

In child welfare licensing regulations, one state (California) specifically places children in bedrooms in accordance with their gender identity. 26 states place children and youth in bedrooms according to their sex; six make placement determinations by gender, three use boy/girl or male/female in their placement language, seven use gender and sex interchangeably and eight use male/female, boy/girl and gender/sex interchangeably.

In juvenile justice licensing regulations, two states, Florida and Texas, use individualized classification procedures to place children and youth in bedrooms that take into account the youth's preference. Five states place children and youth in bedrooms according to their sex; three make placement determinations by gender, nine use boy/girl or male/female in their placement language and seven use male/female, boy/girl and gender/sex interchangeably.

In states where explicit language was found for bedroom placement procedures in facilities serving runaway and homeless youth, 12 states place children and youth in bedrooms according to their sex; six make placement determinations by gender, three use boy/girl or male/female in their placement language, two use gender and sex interchangeably and four use male/female, boy/girl and gender/sex interchangeably.

Hygiene and clothing

In child welfare licensing regulations, two states (California and Ohio) require children and youth to be provided clothing in accordance with their gender identity. 24 states require children to be provided clothing in accordance with their sex (n=14), gender (n=8) or use sex and gender interchangeably (n=2). 24 states do not explicitly mention sex or gender in their licensing regulations for clothing.

One state, Tennessee, requires children and youth in juvenile justice settings to be provided with gender neutral clothing. Three states use male/female language in their requirements; three states require children and youth to be provided clothing in accordance with their sex and four states in accordance with their gender. Only 17 states explicitly mentioned clothing in their licensing of systems serving runaway and homeless youth. Of those states, 10 provided clothing to children in accordance with their sex and six states provided clothing to children in accordance with their gender. One state, Ohio, requires children and youth to be provided with clothing in accordance with their gender identity.

³In Rhode Island, "sexual orientation and expression" is included in a list of potential training subjects to fulfill 8 of the minimum 16 required continuing education hours for direct care staff working in residential child care facilities (CRIR 03-000-014).

⁴Washington requires foster parents to connect a child with resources that meet their needs regarding sexual orientation and gender identity, including cultural, education and spiritual activities in their home or community and provides assistance through their licensor, the child's social worker or case manager to connect foster families with those resources (WAC § 388-148-1520).

Supervision

Seven states require staff in juvenile justice settings to be of the same gender as the youth they supervise or oversee during sleeping hours; five states require staff to be of the same sex as the youth population and six states use male/female language in their licensing regulations. Four states explicitly prohibit opposite sex supervision during times of personal hygiene, like bathing, showering or using the restroom while three states prohibit cross-gender supervision during these times. One state, Minnesota, permits male/female cross-gender supervision.

In licensing regulations for facilities serving runaway and homeless youth, two states prohibit opposite-sex supervision of youth and four states use male/female language.

Body searches

In juvenile justice settings, six states prohibit cross-gender body pat-down searches; seven states prohibit body and pat down searches by staff of the opposite sex as youth served. Five states prohibit cross-gender strip or body cavity searches; 13 states prohibit these to be conducted by staff of the opposite sex as youth served. One state, Alaska, permits body searches for the purpose of ascertaining a youth's true identity. Two states, Idaho and Texas, prohibit the searching of transgender or intersex youths for the purposes of ascertaining their "genital status."

In licensing regulations for child welfare systems and facilities serving runaway and homeless youth, two states prohibit cross-gender pat down or body searches and two states prohibit the conduction of these searches by staff of the opposite sex. One state prohibits strip searches from being conducted by staff members of the opposite sex as youth served.

Methodology, limitations and opportunities for further research

The attached research presents the findings of a 50 state scan of licensing regulations using Lexis Advance. Regulations are organized alphabetically by state, including the District of Columbia, and are arranged in the categories listed above. This research is limited in scope in that it was conducted as a single point in time survey that reflects only codified state regulations and is not a complete survey of state-, county- and local-level practice or statements of Administrative policy. Additionally, many states rely on local or county-administered systems that may or may not build upon existing state regulatory frameworks. Opportunities to further this research may investigate local- and county-level practices and policies, state administrative policies, and the work of nongovernmental organizations that have proven promising in improving outcomes for transgender and gender nonconforming youth involved in intervening public systems.