

PLEASE NOTE THAT THE RECOMMENDATIONS IN THIS SUBCOMMITTEE REPORT ARE THE FINAL RECOMMENDATIONS APPROVED BY THE FEDERAL ADVISORY COMMITTEE ON JUVENILE JUSTICE ON JANUARY 12th, 2017.

FEDERAL ADVISORY COMMITTEE ON JUVENILE JUSTICE

Recommendations of the LGBT Subcommittee

Advancing the Reform Process for LGBTQ/GNCT
Youth in the Juvenile Justice System

Subcommittee Chair: Andrew Longhi
FACJJ Chair: George Timberlake



INTRODUCTION

In light of the stigma and discrimination experienced by lesbian, gay, bisexual, questioning, gender nonconforming, and transgender (“LGBQ/GNCT”) youth that leads to criminalization and overrepresentation in the juvenile justice system, the Lesbian, Gay, Bisexual and Transgender (“LGBT”) Subcommittee of the Federal Advisory Committee on Juvenile Justice (“FACJJ”) was formed to recommend innovative ideas and strategies to the Department of Justice (“DOJ”) to advance juvenile justice reform for LGBQ/GNCT youth. While the FACJJ’s efforts to support all youth benefit LGBQ/GNCT youth, there are many other steps that the federal government can take to address the unique harms that they experience.

The recommendations were formulated by the members of the LGBT subcommittee, which is comprised of 3 members of the FACJJ and 18 leaders from across the country with a diverse array of experience. They include policy professionals, social science researchers, public defenders, probation officers, advocates, and state and local civil servants – all of whom work with and/or identify as LGBQ/GNCT youth.

The recommendations focus on actions that the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) can take to support state and local juvenile justice reform through federal action and by providing a roadmap for how a model juvenile justice system would address the needs of LGBQ/GNCT youth. They have been crafted thoughtfully and cooperatively through a series of calls with the full subcommittee, as well as smaller group meetings based on individual member’s area of expertise. They are grouped into four broad categories for ease of reference:

1. Policy and Program Development
2. Training and Technical Assistance
3. Data Collection and Research
4. Federal LGBT Juvenile Justice Coordination

Recognizing that family rejection, homelessness, failed safety nets, school discipline policies, and discriminatory policing serve as gateways through which LGBQ/GNCT youth enter the juvenile justice system, these recommendations will also improve other systems that serve LGBQ/GNCT youth, including child welfare and education systems. Many of these recommendations can be developed and implemented through policy development or adjustment of existing programs, without the need for additional resources. Some will require additional investment.

Finally, the LGBT subcommittee makes the following requests of OJJDP:

1. Create internal accountability measures to ensure progress is made;
2. Provide opportunities for this subcommittee to follow-up with Department officials. This may include establishing a plan to brief the next OJJDP Administrator and Assistant Attorney General of the Office of Justice Programs on LGBT juvenile justice policy and steps being taken to implement these recommendations; and
3. Schedule a meeting between the new leadership and LGBQ/GNCT stakeholders.

This subcommittee appreciates the opportunity to provide these recommendations. OJJDP has demonstrated the drive to continue making progress in regard to this population, and we look forward to working together on our shared goal of addressing the very real problems faced by LGBQ/GNCT youth.

SUBCOMMITTEE MEMBERS

- **Andrew Longhi**, Chair, LGBT Subcommittee, Federal Advisory Committee on Juvenile Justice (FACJJ member)
- **Andrea Ritchie**, Federal LGBT Criminal Justice Working Group
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- **Jay Miller**, Assistant Professor, College of Social Work at the University of Kentucky / Chair, KY Children's Justice Act Taskforce (FACJJ member)
- **Jody Marksamer**, Parent's Attorney in Dependency Court, Los Angeles Dependency Lawyers
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- **Marna Goodman**, Director of Professional Development and Training, Illinois Department of Juvenile Justice
- **Meghan Maury**, Senior Policy Counsel and Criminal and Economic Justice Project Director, National LGBTQ Task Force
- **Rob Woronoff**, former Director of LGBTQ Services with the Child Welfare League of America
- **Shaena Johnson**, Co-Director, BreakOUT!
- **Shannan Wilber**, Youth Project Director, National Center for Lesbian Rights
- **Starcia Ague**, Legislative Assistant, Washington State Senate (FACJJ member)

PROPOSED RECOMMENDATIONS

The Federal Advisory Committee on Juvenile Justice recommends that OJJDP:

I. Policy and Program Development

- A. Issue federal practice guidelines for how a model juvenile justice system would address the needs of LGBTQ/GNCT youth grounded in federal law, social science research, and relevant professional standards, that recommend states and localities:
 1. Adopt comprehensive policies explicitly protecting systems-involved youth from discrimination and mistreatment on the basis of actual or perceived sexual orientation, gender identity or gender expression (“SOGIE”), complete with clear accountability mechanisms;
 2. Require that all personnel, contractors, and volunteers, as well as systems involved youth and their families, are informed of the policies outlined in section I.A.1 of these recommendations, understand, and comply with their provisions;
 3. Provide mandatory pre-service or employment and ongoing geographically culturally competent training to all juvenile justice stakeholders that includes:
 - a. accurate information about SOGIE based on updated peer-reviewed social science literature and the standards of credible professional associations,
 - b. the specific risks encountered by LGBTQ/GNCT youth in their homes, schools, communities, and public systems of care,
 - c. factors that drive the over-representation of LGBTQ/GNCT youth in the juvenile justice system compared to their non- LGBTQ/GNCT peers,
 - d. how explicit or structural bias subject LGBTQ/GNCT youth to disparate outcomes, particularly youth of color, undocumented youth and youth with disabilities,
 - e. the responsibility and role of each juvenile justice professional in promoting the health and well-being of LGBTQ/GNCT youth in the system,
 - f. the ethical and professional duty of judges, prosecutors, juvenile defenders, court administrators, probation personnel, facility staff, contractors, and community-based providers to protect the safety and promote the well-being of LGBTQ/GNCT youth, and
 - g. how to eliminate gender expectations and/or stereotypes about youth throughout their experience from arrest to completion of service;
 4. Ensure that all youth, including LGBTQ/GNCT youth, have access to trained and well-resourced juvenile defense counsel at the earliest possible stage after arrest and continuously through post-disposition and re-entry;
 5. Adopt best practices and protocols for collecting SOGIE information from all youth served in the system, and for protecting the information from inappropriate dissemination;

6. Ensure that diversion efforts address and include the unique experiences of all LGBTQ/GNCT youth, regardless of race or economic background;
 7. Ensure that all stakeholders treat LGBTQ/GNCT youth with dignity and respect by:
 - a. Affirming the identity of transgender and gender nonconforming youth in all aspects, including proactively offering appropriate housing and honoring housing requests, providing affirming medical and behavioral health care, permitting freedom of expression and using the name and gender pronouns of the youth's choosing, regardless of the name listed on their identity documents or court records,
 - b. Avoiding assumptions about the SOGIE of youth, heteronormative language, or gender binary systems,
 - c. Ensuring young people are housed based on their gender identity and self-identified housing preference and never subject to isolation,
 - d. Providing referrals to gender specific programming based on gender identity rather than birth sex,
 - e. Signaling openness and inclusivity through nonverbal and environmental cues, and
 - f. Cultivating awareness of cultural and generational differences in language related to SOGIE, and deferring to youth about the language they use to describe their identity;
 8. Adopt a policy protecting system involved youth from formal or informal "conversion" therapy, or any intervention or attempt to change their SOGIE, with regular judicial oversight of programming to monitor adherence to the policy to ensure that the programming is appropriate for rehabilitation;
 9. Ensure culturally competent interaction with the families of LGBTQ/GNCT youth to assist them in learning how to promote their child's health and well-being by reducing rejection and increasing support;
 10. Provide all youth with information regarding supportive age-appropriate materials and information regarding SOGIE, and referrals to supportive services and pro-social opportunities within the community;
 11. Establish working relationships with LGBTQ/GNCT-affirming organizations and providers within the community, including faith communities; and
 12. Ensure that efforts to reduce the over-representation of youth of color address the experiences and needs of LGBTQ/GNCT youth of color, LGBTQ/GNCT undocumented youth, and LGBTQ/GNCT youth with disabilities;
- B. Serve as a clearinghouse and resource for jurisdictions seeking to increase system-wide competency to serve LGBTQ/GNCT youth by providing in one central place:
1. Model nondiscrimination policies and comprehensive practice guidelines for all system stakeholders,

2. Information regarding successful models and strategies used by jurisdictions to implement recommended reforms, including a peer-to-peer network of agency administrators who have adopted and implemented LGBQ/GNCT policies, and
 3. Links to existing LGBQ/GNCT policies created in states or localities, and access to technical assistance in local areas;
- C. Ensure OJJDP's grants, requests for proposals, and funding sources promote system reform and service delivery by ensuring:
1. Civil rights assurances for formula and discretionary grants prohibit discrimination on the basis of sexual orientation, gender identity and expression,
 2. Requests for proposals require grantees to identify and address the experiences of LGBQ/GNCT youth in their programs and services,
 3. Grants incentivize stakeholders to better serve system-involved youth through collaboration and partnership between community organizations and system stakeholders, and
 4. Funding, through formula or discretionary grants, is provided for the following:
 - a. Dedicated agency staff charged with developing and implementing these recommended policy and practice reforms,
 - b. "System of care" initiatives that involve collaboration across agencies, organizations, and families (e.g. a community school program that provides mental health services to LGBQ/GNCT youth, or providing better access to groups or centers that support families of LGBQ/GNCT youth),
 - c. Creation of independent, state-based Juvenile Ombudsman positions to investigate complaints of civil rights violations,
 - d. Creation of model practices for receiving, investigating and resolving discrimination and mistreatment complaints from youth, including grievance and appeal templates and a system for tracking and analyzing complaints of civil rights violations by LGBQ/GNCT youth nationwide,
 - e. Creation and dissemination of a SOGIE-inclusive training module for state formula and discretionary grant recipients, including faith-based providers, regarding civil rights assurances, a model civil rights compliance checklist and other technical assistance to ensure compliance,
 - f. Collaborative models for supportive re-entry programs for LGBQ/GNCT youth,
 - g. Creation of state level juvenile defender resource attorneys to address the need for a "go to" person on LGBQ/GNCT juvenile defense issues, especially outside of urban areas where there may be less local expertise,
 - h. Training for judges, prosecutors, juvenile defenders, court administrators, probation personnel, facility staff, contractors, and community-based providers on how to better serve and represent LGBQ/GNCT youth and/or understand the causes of and their role in overrepresentation of LGBQ/GNCT youth,

- i. Development of self-assessment mechanisms for juvenile justice systems to evaluate their policy and programming for LGBQ/GNCT youth, with a specific focus on LGBQ/GNCT youth of color, and
 - j. Support and promotion of LGBQ/GNCT attorneys, probation personnel, and community-based providers of color in serving, representing, and advocating on behalf of LGBQ/GNCT youth;
- D. Update OJJDP Model Programs Guide to include programs that are competently serving LGBQ/GNCT youth as well as LGBQ/GNCT specific youth programs;
- E. Ensure the National Criminal Justice Reference Service abstracts database includes all relevant LGBQ/GNCT juvenile justice materials written by experts in the field that are currently available;

II. Training and Technical Assistance

- A. Conduct training curricula mapping to identify existing training curricula, including webinars, pre-and post-test models, and other resources that can be used in training and supporting jurisdictions' ongoing work with regard to understanding:
 - 1. Sexual orientation, gender identity and expression,
 - 2. Specific issues facing system-involved LGBQ/GNCT youth,
 - 3. Conditions that contribute to and maintain the overrepresentation of LGBQ/GNCT youth in the juvenile justice system, and
 - 4. The intersection of oppression based on but not limited to race, ethnicity, class, physical and mental status, immigration status, and other characteristics as they relate to a young person's SOGIE;
- B. Develop an online Trainers' Resource Hub that serves as a clearinghouse of information and resources for identified subject matter experts, agencies, facilities and trainers to support their ongoing work with LGBQ/GNCT youth and provide training to interested sites, including creating:
 - 1. A list of subject matter experts who can provide training or technical assistance,
 - 2. A process for requesting training or technical assistance from OJJDP,
 - 3. A state-by-state guide to statutes, regulations and state and local policies that provide protection from discrimination, and
 - 4. A state-by-state resource guide, including LGBQ/GNCT-competent behavioral health and medical providers;
- C. Provide training tailored to judges, prosecutors, juvenile defenders, court administrators, probation personnel, facility staff, contractors, and community-based providers on how to better serve and represent LGBQ/GNCT youth, including:
 - 1. The Prison Rape Elimination Act (PREA) Standards that support effective communication with LGBQ/GNCT youth as well as classification and housing determinations and limits to cross-gender searches, and
 - 2. The specific placement needs of transgender and gender non-conforming youth;

III. Data Collection and Researchⁱ

- A. Issue a guidance to ensure stakeholders understand that in order to formulate effective strategies to address the overrepresentation of LGBQ/GNCT youth, the collection of data is essential to documenting:
 - 1. The extent to which LGBQ/ LGBQ/GNCT youth are overrepresented,
 - 2. The offense patterns and pathways that lead LGBQ/GNCT youth into the system, and
 - 3. Treatment by law enforcement, probation personnel, courts, and institutions;

- B. Provide funding and support to state and local jurisdictions to expand data collection to include SOGIE, ensuring that:
 - 1. National reporting requirements on SOGIE are developed and disseminated across the field in a similar fashion as the DMC reporting requirement, and
 - 2. These data requirements match the guidance from the PREA Resource Center (“PRC”) so that the DOJ is releasing consistent messages about SOGIE data collectionⁱⁱ;

- C. Fund research and disseminate data with the support of other federal agencies and resource centers on the following topics in order to develop a thorough data-driven data collection process across the field:
 - 1. Quantitative Data Points
 - a. The overrepresentation of LGBQ/GNCT youth in the justice systemⁱⁱⁱ,
 - b. The incidence of all offenses specific to LGBQ/GNCT youth^{iv},
 - c. Incidence of sex abuse in secure confinement^v,
 - d. Documenting prevalence of risk factors^{vi}, and
 - e. Discrimination^{vii};

 - 2. Juvenile defense system gaps specifically related to LGBQ/GNCT youth from the youths’ perspectives;

 - 3. Implicit bias that causes racial and ethnic disparities in the system and the cultural gap between juvenile justice stakeholders and LGBQ/GNCT youth, as well as how this gap affects the involvement and outcomes of LGBQ/GNCT youth in the system;

 - 4. Expectations about gender roles and the impact of gender-specific programs on gender nonconforming youth, as well as how they intersect with perceptions of race and how they can be mediated to reduce justice involvement^{viii};

 - 5. Best practices for how to refer gender nonconforming youth to gender-specific alternatives to detention, treatment, out-of-home placements, and youth programs^{ix};

 - 6. Develop a comprehensive practice guide for the field on how to collect SOGIE data as well as the risk factors outlined above and a practice guide on pathways to

delinquency for LGBQ/GNCT youth, particularly youth of color as was done for girls in the juvenile justice system;

- D. Support the creation of a national LGBT Data Committee that would establish best practices for monitoring and collecting data on LGBQ/GNCT youth nationwide. Considerations for this committee may include:
1. Privacy, including when and how sexual orientation and gender identity information can be shared and what privacy concerns should be considered when asking questions about sexual orientation and gender identity,
 2. Messenger, including what role the in an organization or agency is the most appropriate for collecting data (e.g., medical staff, intake staff), and
 3. Timing, including when in the process of working with young people it would be most effective to collect data about sexual orientation;
- E. Offer technical assistance to grantees who want to integrate what they have learned from data collection efforts into their policies and improve their sexual orientation and gender identity and expression data collection efforts, including how subtle changes in language or process can impact the efficacy of such efforts;

IV. Federal LGBT Juvenile Justice Coordination

- A. Intra-Office Coordination of OJJDP/DOJ
1. Establish a formal internal OJJDP LGBT working group that includes senior leadership and is responsible for carrying out this subcommittee's recommendations;
 2. Create an LGBT Study Group (similar to a Girls Study Group) that would examine pathways to delinquency for LGBQ/GNCT youth and publish its findings;
 3. Encourage DOJ civil rights attorneys to interview LGBQ/GNCT youth currently and formerly on probation or in detention to understand the types of civil rights violations they experienced;
 4. Convene a brainstorming meeting within the Special Litigation Section of the DOJ Civil Rights Division, juvenile defense attorneys, and LGBQ/GNCT organizations to identify ways to address egregious civil rights violations of LGBQ/GNCT youth;
- B. Inter-Agency LGBQ/GNCT Juvenile Justice Coordination
1. Advocate for the creation of a formal cross-agency working group (including Departments of Education, Health and Human Services, and Justice) that would collaborate on LGBQ/GNCT youth policy and outreach to stakeholders; and
 2. Establish a full time staff position within OJJDP to facilitate this cross-agency coordination and oversee LGBQ/GNCT policy.

ⁱ As with all groups of youth, stakeholders should use data-driven decision making to track outcomes across a full spectrum of entry and exit points in the justice system. The Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys recently released a series of reports outlining and evaluation sexual orientation and gender identity survey measures currently in use in federal surveys and creating an overarching research agenda for the federal government:

https://fcsf.sites.usa.gov/files/2014/04/WorkingGroupPaper1_CurrentMeasures_08-16.pdf,
https://sites.usa.gov/fcsf/files/2014/04/Evaluations_of_SOGI_Questions_20160923.pdf, and
https://sites.usa.gov/fcsf/files/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf.

The Working Group noted a number of distinctions in question efficacy between younger and older respondents, but did not make youth-specific recommendations in its final reports.

ⁱⁱ The Prison Rape Elimination Act Resource Center (PRC), governed as a cooperative agreement with the Bureau of Justice Assistance, requires that data on SOGIE be collected by secure facilities. The position of the PRC is summarized here:

<https://www.prearesourcecenter.org/node/3250>.

ⁱⁱⁱ In order to document the number and proportion of LGBQ/GNCT youth in the juvenile justice system, sites should collect and report SOGIE data that is consistent with PRC requirements. As other federal agencies similarly collect SOGIE data, justice population data could be compared to school and health data to determine the degree that LGBQ/GNCT youth are overrepresented.

^{iv} In addition to the number and proportion of LGBQ/GNCT youth, jurisdictions should track which offenses LGBQ/GNCT youth are charged with and the degree to which LGBQ/GNCT youth are likely to enter the justice system for these charges compared with straight and gender conforming youth. Ideally, these comparisons would be reported as relative rate indices.

^v The Bureau of Justice Statistics, which has consistently collected and disseminated information about the incidence of sex abuse for LGBQ/GNCT youth, should adopt questions that measure gender nonconformity so that they can report incidence of sex abuse in a way that is consistent with PREA.

^{vi} Support efforts to have researchers specializing in the pathways that drive LGBQ/GNCT youth in to the juvenile justice system begin consistently tracking whether youth have a history with the following risk factors and whether this history varies across SOGIE, including:

- Have youth experienced conflict at home?
- Have youth been bullied at school?
- Have youth been previously involved with the child welfare system?
- Have youth been previously homeless?
- Is the current charge related to a crime that was committed in order to survive while homeless? Examples might include drug dealing or sex work in order to buy or trade for clothing, shelter, or food.

^{vii} LGBQ/GNCT youth are at high risk of discriminatory treatment by professionals who work with LGBQ/GNCT youth, including court administrators and judges, and public defenders. The committee recommends that the field adopt consistent mechanisms for reporting and responding to incidents of discriminatory treatment. The committee further recommends that these incident reports be aggregated and reported annually.

^{viii} The field of juvenile justice has funded the development of gender-specific programs as well as the evaluation of those programs. The existing paradigm for these gender-specific programs does not address the existence or needs of gender nonconforming youth. Yet many questions remain. For example, are gender nonconforming girls of color expected to act in masculine or

feminine ways? How does this vary across family, schools, the police, and the justice system? And how do these expectations drive justice involvement?

^{ix} Many youth in the juvenile justice system are gender nonconforming, identifying or expressing themselves in a way that is not consistent with their birth sex. While the PREA standards may provide guidance with regard to placement and treatment of gender nonconforming and transgender youth in secure facilities, there is scant research on placement in community-based services.