



THE PRIDE JUSTICE RESOURCE CENTER
The National Resource Center on Justice-Involved LGBTQ2S+ Youth



Frequently Asked Questions About Collecting Sexual Orientation and Gender Identity Data in Juvenile Placements and Juvenile Detention Facilities

Juvenile justice systems are serving large populations of lesbian, gay, bisexual, transgender, questioning, queer, and Two-Spirit (LGBTQ2S+) youth. LGBTQ2S+ youth, particularly LGBTQ2S+ youth of color, face discrimination and stigma that lead to criminalization and increased interactions with law enforcement and the criminal justice system. Family rejection, family instability, and poverty may result in homelessness or time spent in the child welfare system, where LGBTQ2S+ youth frequently face stigma and discrimination[1]. Within facilities, we know that LGBTQ2S+ young people are overrepresented. An analysis of the federal National Survey of Youth in Custody by the Williams Institute found that 39% of girls and 3.2% of boys in juvenile detention and correctional facilities self-identified as lesbian, gay, or bisexual compared to the estimated 7-9% of youth who identify as LGBTQ+ nationally[2]. Likewise, the number of transgender youth in juvenile detention has been reported at higher rates compared to the general population[3].

Research has also shown that this population is at increased risk of suicide, depression, increased anxiety, and other adverse mental health outcomes. For example, The Trevor Project has found that more than half of transgender and nonbinary youth have considered suicide[4]. While in care, this population is also at higher risk of violence and harassment. The Prison Rape Elimination Act (PREA) helped set some basic standards for the treatment of incarcerated LGBTQ2S+ youth. For example, PREA standards established that transgender and intersex youth should be involved in determining the best placement given their safety concerns and vulnerability. Further, in 2022, the Department of Justice's Civil Rights Division clarified that statutes that prohibit discrimination include protections on the basis of sex, sexual orientation, gender identity, and intersex traits based on the Supreme Court's holding in *Bostock v. Clayton County*. Agencies need to ensure that the collection of all demographic data, including sexual orientation and gender identity (SOGI), is reflected in policy and practices.

By collecting SOGI information, facilities and staff will be better able to make appropriate decisions about placements, resource allocation, case planning, and programming for this population. Collecting SOGI data can help staff provide appropriate services to youth. This document offers answers to frequently asked questions related to asking about SOGI and how to collect the information safely to inform placement and services.

Frequently Asked Questions

Why should staff ask questions about SOGI? Isn't that personal information?

Collecting SOGI data is important because it will assist staff in identifying and promoting services for youth and enhance case planning. SOGI data collection is a core component of collecting demographic data that will inform the needs of the facility. By collecting SOGI data, staff will be better equipped to help youth navigate the facility. Youth should not be forced or required to share their SOGI with staff. However, by talking to youth and families about SOGI, staff can help youth feel affirmed and safe.

How do I ask someone how they identify?

Questions about sexual orientation, gender identity, and pronouns should be asked along with other demographic questions. Questions could be asked as literally: as “What is your sexual orientation; what is your gender identity; what pronouns do you use?” Alternative ways to ask these questions could be:

1. I have that your name is _____. Is that what you'd like me to call you, or do you have a different name you'd like me to use?
2. Do you use the gender pronouns “he/him,” “she/her”, “they/them,” or another pronoun? A pronoun is the word someone uses instead of your name. For example, “He has a nice sweater.” If someone was talking about your sweater, would you want the person to say he, she, they, or something different?
3. Do you feel more like a girl or a boy (or something else)?
4. Do you have crushes on boys, girls, or other kinds of people?

How do I ask someone about their pronouns?

Pronouns can be asked at intake along with other demographic information. It is also recommended that you offer the opportunity to provide pronouns when you meet people. Either individually or in large meetings, introductions can be something like, “Hi, my name is Sophie and I use she and her pronouns. What do you go by?” In the moment, the person may choose to share or not, but at least the opportunity was given, and you have identified yourself as a competent and safe person should they need you.



What do you do when someone uses a term or identity that you are not familiar with?

Always ask the person what the word means to them. Document their identity as they describe it, not as you think it should be. Also, take some time to educate yourself on the term or concept. For an updated glossary of terms, visit: <https://pjrc.ncjfcj.org/publications/glossary-of-terms/>.

What do you do when someone asks you a question about SOGI that you don't know the answer to?

Respond positively and tell them that you don't know the answer and that you will look into it and get back to them. For example, "That's a good question. I don't know but let me ask around and get back to you." Make sure to follow up to find out and get them a timely response.

What if the youth or parent gets mad that I am asking about SOGI?

Ideally, these questions are asked in conjunction with other demographic questions. It is best practice to inform people that you are going to ask them questions about their demographics and identities that are asked of everyone and that they can decline to answer questions if they wish. Individuals may respond defensively if they feel you are targeting them for some reason. If you ask all people these questions, responding to this becomes easier because you can share that you ask this of everyone. You could respond by saying: "I ask these questions of everyone. I want to make sure you, and the other individuals I interact with, feel respected and supported, so it's important to ask everyone these questions rather than just making assumptions. I want to learn more about you from you."

You also might say: "You may not identify as LGBTQ2S+ but you may know someone who does and if so, you may have seen that they have a harder time at school, home, and/or in the community due to being treated differently or mistreated about their identity. We recognize that LGBTQ2S+ young people are more likely to be rejected or targeted. We ask this question so that we know what services and placements best meet their needs."

What do I say if they don't know what gender identity means?

You can respond by saying: "We all have a gender identity. It's our internal sense of being a boy/man, girl/woman, both, or something else. We want to make sure everyone is getting the right placement and services, so we ask everyone how they identify. Do you have any questions about this?"



What about the youth's privacy?

Ensure that there are protocols in place to collect SOGI data that also safeguard the confidentiality of the young person. For example, the SOGI information can only be seen by the current caseworker and their supervisor and must be updated when a new caseworker is assigned.

Always ask the young person if they are comfortable with their SOGI being documented in the system. Let them know how the information is used, who has access to the information, and how they can make updates to the information.

What if their name and pronouns change frequently?

You should begin to use the name someone is currently asking you to use as soon as they ask, even if you do not understand the change or trust that the change in their identity is real. Understand that every individual has a SOGI and their identity may naturally evolve as they develop language or discover more about their identity. Staff should revisit conversations about how the youth is feeling on a regular basis, asking young people about any changes with their pronouns, name, and significant other/crushes/someone who is more than a friend.

What do I do if an individual's parent or other relative wants me to call their family member by their legal name, against the individual's wishes?

When there is conflict, ask the person you are working with how they would like you to refer to them around their family, etc. If they would like you to use their chosen name and pronouns, then it is appropriate to continue to do so. If someone challenges you on it, one appropriate way to respond is by sharing that we know from the research that individuals do best when they are affirmed and supported. Therefore, it is the practice of staff to use the name and pronouns that the individual states affirms them. If others knowing the youth's identity poses concerns for safety or potentially harming relationships the youth has, ask the young person how they would like to proceed. Information about SOGI is personal and the decisions about who to share it with and when are up to the young person. If the youth would like to share their information, regardless of the outcomes, then services and supports should be offered as appropriate. For example, if there is a safety concern, staff should follow standard protocols to ensure the youth is as safe as possible. If the young person feels the information might harm their relationship with family, it is appropriate to seek services that will help educate the family and, in some cases, clinical programs may be necessary.



What do I document if someone comes out to me, but they aren't out to other people?

In general, decisions to document this information should be informed by the individual's wishes, an understanding of who they are out to, who they feel is unsafe to share this with, who will see the information if documented, and how relevant the information is to case planning. Individuals should also be informed in advance about who will have access to documented information. Staff should also consult their agency's documentation policy.

What if I have to use the legal name on documentation?

It is very rare that a young person's legal name is required on all documentation. On the rare occasion that a legal name is required, it is best to write the person's chosen name and pronouns first, then follow it with "also known as" and their legal name. When this occurs, make sure the young person knows who has access to this document. For example, is this going on a court report that will be read aloud? If so, the young person might not want their chosen name and pronouns documented.

How do we make placement decisions if they decline to answer the question about their gender identity?

In the event that a young person declines to answer the question about gender identity, placement decisions would be made based on the young person's legal sex. However, young people should be notified about why you are asking them about gender identity and be given all the necessary information to make an informed decision. They should also be informed of the protocol for updating the information should they wish to share it at another time.

What do I need to do if a young person says they are intersex?

Placement decisions should be made based on the person's gender identity and where the young person feels safer. PREA standards state that transgender and intersex placements should be made on a case-by-case basis and that youth should be involved in determining the best placement given their safety concerns and vulnerability.



How do I ensure someone is not making up their SOGI to get special treatment?

You cannot tell how someone identifies by looking at them. Therefore, staff should not assume someone is making up their SOGI based on stereotypes or suspicions. The risk of someone lying about being LGBTQ2S+ is far less than the very real risk of an LGBTQ2S+ person being harassed and sexually assaulted in a facility. Therefore, if a youth tells you they are LGBTQ2S+, their safety should be assessed as such. PREA Standard 115.41 requires that “the intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization ... whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.” Facilities are responsible for using an objective screening instrument to assess this risk. Your agency should have identified an objective screening instrument that includes LGBTQ2S+ identities to help assess for this risk.

What if my facility does not have any resources or policies to address their SOGI?

Each facility needs to ensure its practices and protocols are aligned with PREA, Title IX, the Bostock decision, and any other federal guidance and law that states best practices for LGBTQ+ youth who are justice-involved. If a facility does not have written guidance on how to implement these standards, they can use the [National PREA Resource Center Guide on Model Policy: Transgender, Gender Nonconforming, and Intersex Youth in Confinement Facilities](#) to develop those necessary policies.

Where should I place a youth if they say they are a boy but are afraid to be placed in the boys' facility?

Staff should make housing decisions based on what is best for the youth’s health and well-being. Transgender and nonbinary youth are at heightened risk for sexual violence and their safety should be prioritized. Staff should consider any recommendations from the youth’s regular health provider as well as the views of the facility’s medical or mental health provider about the impact of a placement on the youth's well-being. Staff should also consider the youth’s perception of their own safety as well as the potential management and security capacity to ensure safety at each facility. Staff should also monitor the housing assignment through regular observation of and communication with the youth and staff to help minimize risk and make decisions about possible adjustments as needed.

If youth are ever removed from the general population and placed in another part of the facility out of concern for their safety, staff should ensure that youth receive educational and health services, regular recreation, routine checks, and tailored programming. Seclusion or solitary confinement should never occur for any youth.



Who should observe a urinalysis for transgender youth?

Staff should conduct searches and drug testing of transgender and intersex youth professionally, respectfully, and in the least intrusive manner possible. Besides the laws and standards governing searches of youth in general, the PREA regulations limit the circumstances under which staff are permitted to conduct cross-gender searches and observations of youth. In many cases, facilities are moving toward less intrusive methods of drug testing, such as hair and saliva samples. However, if the facility is still conducting urinalysis, then the best practice is to ask the youth to indicate which gender of staff should observe the sample collection.

References

- [1] Center for American Progress. (2017). Unjust: LGBTQ+ Youth incarcerated in the juvenile justice system. Retrieved from <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>.
- [2] Wilson et al., “Disproportionality and Disparities among Sexual Minority Youth in Custody,” *Journal of Youth & Adolescence*, 2017
- [3] Center for American Progress. (2017). Unjust: LGBTQ+ Youth incarcerated in the juvenile justice system. Retrieved from <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>.
- [4] The Trevor Project. (2021). 2021 National Survey on LGBTQ Youth Mental Health. West Hollywood, California: The Trevor Project. For additional information please contact: Research@TheTrevorProject.org.

