

Attorneys, Guardians ad Litem & Advocates Representing LGBTQ Youth

Whether you are aware of it or not, if you advocate for young people in the child welfare and juvenile justice systems, you work with young people who are lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity (“LGBTQ”). Lawyers and youth advocates should develop an understanding of the unique issues faced by these clients and cultivate advocacy strategies that are sensitive to their needs.

BE A VISIBLE ADVOCATE FOR LGBTQ YOUTH.

You don't have to be LGBTQ yourself to be an effective advocate for LGBTQ youth. By standing up for LGBTQ clients facing harassment and discrimination and publicly supporting their rights you act as a visible, much-needed advocate for LGBTQ youth in care. Let all of your clients know that you will not judge them and will work hard for them no matter what they tell you. Display LGBTQ-friendly signs and posters for your clients and others to see. Never use anti-LGBTQ slurs or rely on negative stereotypes of LGBTQ people.

BE AWARE THAT LGBTQ YOUTH ARE IN OUT-OF-HOME CARE IN DISPROPORTIONATE NUMBERS.

Research shows that young people facing family rejection, harassment and school failure are more likely to enter the child welfare and juvenile justice systems. At home, LGBTQ youth and those perceived to be LGBTQ are more likely to face disapproval, abuse and neglect — including being thrown out of their homes — than their non-LGBTQ peers. It may be harder to find supportive permanent placements for LGBTQ youth once they are in the foster care system, extending their length of time in care. On the streets, LGBTQ teens may be forced into illegal activities, including

sex work, to support themselves. LGBTQ youth of color congregating in public places may face selective enforcement of “quality of life” offenses and “morals” regulations. Violations of age-of-consent laws among young people of the same sex are more likely to be criminally charged and punished more harshly than violations among young people of the opposite sex. These factors contribute to the disproportionate numbers of LGBTQ youth in out-of-home care.

BE AWARE THAT LGBTQ YOUTH IN OUT-OF-HOME CARE ARE VULNERABLE TO MISTREATMENT AND DISCRIMINATION.

While of course parents have the right to inculcate their values in their children, this doesn't extend to a right to subject children to harm and abuse. You should be prepared to advocate on behalf of a child who is not safe at home because of parental intolerance. Often misunderstood within the child welfare and juvenile justice systems as well, many LGBTQ youth face abuse, harassment and isolation once in care. In foster family homes and group care facilities, LGBTQ youth are often mistreated and even harmed by staff, caregivers and other young people. Some are forced to convert to anti-LGBTQ religions and practices. In the delinquency system, LGBTQ youth may be placed in more restrictive and punitive settings than their offenses warrant,

FOSTERING TRANSITIONS

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or isolated or segregated from the general population for their own protection or based on the misguided notion that others need to be protected from them. There currently is a serious dearth of LGBTQ-sensitive child welfare and juvenile justice services and placements. Your LGBTQ clients need your help to ensure they receive safe and appropriate treatment. Canvas the available resources in your community. Develop and maintain a network of LGBTQ-sensitive youth service providers to whom you can refer LGBTQ clients.

AS A ZEALOUS ADVOCATE, BE PREPARED TO CONFRONT ANTI-LGBTQ DISCRIMINATION AT ITS SOURCE.

Rather than simply advocating for the removal of an LGBTQ client from an unsafe placement, zealously advocate for an institutional response to the discrimination and mistreatment. Whether in a child welfare or juvenile justice facility, in a school or in the community, confront the bias or abuse at its source in order to ensure that it will not happen again to another child. Be prepared to file a grievance or complaint against an offending institution on behalf of an LGBTQ client. At the same time, advise your vulnerable clients of the realities of congregate care. Advocate for them in their decisions regarding dress and gender expression.

PROTECT THE PRIVACY OF YOUR CLIENTS.

Even if your client is open with you and others about his or her sexual orientation and gender identity, the client should always be treated as the gatekeeper of this information. Never “out” your client without their consent. Instead, be aware that just because a client is open with you about his or her identity does not necessarily mean that they are out to everyone. Object to this information being unnecessarily included in case management and service planning documentation.

BE AWARE OF THE LEGAL PROTECTIONS AVAILABLE TO YOUR LGBTQ CLIENTS.

Federal law requires that a plan be developed for every child in state custody to assure “safe and proper care consistent with the child’s best interest and special needs.” 42 U.S.C. § 671(a)(16) and (5)(A). Ensure that the unique needs of your LGBTQ clients are addressed and met through the service plan. However, it is *not* necessarily appropriate that the plan include confidential information regarding your client’s sexual orientation or gender identity that could later be used against them by those harboring anti-LGBTQ bias. Under the Fourteenth Amendment to the U.S. Constitution, all young people in state custody have the affirmative right to protection

from harm. This right — the substantive due process liberty interest in safety — includes the right to appropriate services, medical care and safe placements. LGBTQ young people harmed or discriminated against while in state custody have brought successful civil rights lawsuits against state officials, some resulting in sizeable monetary damage awards (e.g., *R.G. v. Koller*, District of Hawaii, 2006, and

Rodriguez v. Johnson, Southern District of New York, 2006).

Some transgender people have successfully argued that state nondiscrimination laws that require reasonable accommodation for people with disabilities apply to those diagnosed with gender identity disorder, and that denying transgender youth the right to dress in ways that are consistent

with their gender identities in group homes is discrimination based on disability (e.g., *Doe v. Bell*, New York, 2003). Be aware of state nondiscrimination laws, particularly those that are LGBTQ-inclusive, and seek their enforcement on behalf of your clients in out-of-home care.

CONNECT WITH ADDITIONAL RESOURCES.

The American Bar Association’s Center on Children and the Law publication *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* offers advice for advocates representing LGBTQ youth in care. For more information, see www.abanet.org/child/lgbtq.shtml.

The many other components of Getting Down to Basics offer additional support.

This tool kit includes additional handouts covering a variety of topics addressing the needs of LGBTQ youth and adults involved with the child welfare and juvenile justice systems, such as *Foster Parents Caring for LGBTQ Youth*, *Basic Facts About Being LGBTQ*, *Caseworkers with LGBTQ Clients*, *Teaching LGBTQ Competence in Schools of Social Work*, *Working with Transgender Youth*, *Information for LGBTQ Youth in Care* and *LGBTQ Youth Resources*. To order free copies of the *Getting Down to Basics* tool kit, contact Lambda Legal at 1-866-LGBTTeen (toll free) or 212-809-8585, or download it for free at www.lambdalegal.org or www.cwla.org.

“ Many individuals and agencies are afraid to call attention to LGBTQ foster care issues because it may cause personal and professional backlash. ”

– *Child welfare professional*

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